

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 PRELIMINARY APPROVAL OF CLASS SETTLEMENT
AND FOR CERTIFICATION OF SETTLEMENT CLASSES**

[¶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 they seek to represent, for an order granting Preliminary Approval of the class action Settlement between Plaintiffs and Defendant, Gate City Bank.

[¶2] Having considered the Plaintiffs' Motion for Preliminary Approval, the declaration 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:

[¶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,

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*.

is preliminarily 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 conditionally 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] The Court conditionally finds, for settlement purposes only and conditioned upon the entry of this Order and the Final Approval Order, 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 conditionally certifying the Settlement Classes.

[¶7] The Court approves, as to form and content, the Notices, including the Email Notice, Postcard Notice, and Long Form Notice, attached to the Agreement as Exhibits 1 and 2. The Notices contain all of the essential elements necessary to satisfy the requirements of N.D. R. Civ. P. 23(g) and state due process provisions, including a description of the Settlement's material terms; a date by which members of the Settlement Classes may opt-out of the Settlement; a date by which Settlement Class Members may object to the Settlement; the Final Approval Hearing date; and Settlement Website address where the members of the Settlement Classes may access the Agreement, Long Form Notice, and other related documents.

[¶8] The Court approves the Notice Program, as described in the Agreement. As soon as possible after the entry of this order, and no later than 60 days prior to Final Approval Hearing, the Settlement Administrator will complete the Notice Program as provided in the Agreement. The Email Notice, Postcard Notice, and Long Form Notice shall be updated by Class Counsel and Gate City to include the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court herein. The Court finds that the Notice Program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive Notice, and that it meets the requirements of due process and N.D. R. Civ. P. 23.

[¶9] The Notice will identify the opt-out and objection deadline of 30 days prior to the Final

Approval Hearing.

[¶10] Any member of either or both of the Settlement Classes may, upon request, opt-out of the Settlement pursuant to N.D. R. Civ. P. 23(h) by submitting to the Settlement Administrator at the physical address listed in the Notice, an opt-out request letter. To be effective, this letter must be postmarked no later than the last day of the Opt-Out Period and must include the member's name and last four digits of his or her account number(s) or former account number(s), address, telephone number, and email address. All persons who timely submit properly completed requests to opt-out shall have no rights under the Agreement, shall not share in the benefits of the Agreement, and shall not be bound by the Agreement.

[¶11] Any member of either or both of the Settlement Classes, and who does not opt-out from the Settlement, may object to the terms of the proposed Settlement as reflected in the Agreement, the certification of the Settlement Classes, the entry of the Final Approval Order, the amount of attorneys' fees and costs requested by Class Counsel, and/or the amount of the Service Awards requested for the Class Representatives. To be valid and considered by the Court, an objection must include: (a) the name of this case, which is *Mary Lou Fallis, et al. v. Gate City Bank*, The East Central District Court, Cass County, State of North Dakota, Case No. 09-2019-CV-04007; (b) the objector's full name, address and telephone number; (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (e) the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case; (f)

the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (g) a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years; (h) any and all agreements that relate to the objection or the process of objecting— whether written or oral—between objector or objector's counsel and any other person or entity; (i) the identity of all counsel, if any, representing the objector who will appear at the Final Approval Hearing; (j) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (k) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (l) the objector's signature. All evidence and legal support a Settlement Class Member wishes to use to support an objection must be filed with the Court. Objections must be mailed to Clerk of the Court, Class, Counsel, Defendant's counsel, and the Settlement Administrator at the at the physical addresses listed in the Long Form Notice. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period (30 days before the Final Approval Hearing), as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

[¶12] Any Settlement Class Member who does not make his or her objection in the manner and by the date set forth in this Order shall be deemed to have waived any objections and shall be

forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

[¶13] Plaintiffs and Gate City may file responses to any objections that are submitted. Any Settlement Class Member who timely files and serves an objection in accordance with this order may appear at the Final Approval Hearing, either in person or through an attorney.

[¶14] For purposes of settlement only, the Court finds and determines that it will likely find at the final approval stage that Plaintiffs will fairly and adequately represent the interests of the Settlement Classes in enforcing their rights in the Action, and appoints them Class Representatives, and the following attorneys are preliminarily appointed as Class Counsel for the Settlement Classes:

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[¶15] The Parties have selected Epiq Systems Class Action and Claims Solutions, Inc. (“Epiq”) to serve as the Settlement Administrator. The Court hereby approves of and appoints Epiq as the Settlement Administer and directs Epiq to commence the Notice Program and to otherwise comply with all obligations of the Settlement Administrator as outlined in the Agreement.

[¶16] Papers in support of Final Approval of the Agreement, inclusive of Class Counsel’s application for attorneys’ fees and costs and for Service Awards for the Class Representatives,

shall be filed no later than 15 days before the last day of the Opt-Out Period. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and costs, and for Service Awards for the Class Representatives. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement, to Class Counsel's application for attorneys' fees and costs, or the Service Awards application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement and this Order.

[¶17] The dates of performance contained herein may be extended by order of the Court, for good cause shown, without further notice to the Settlement Classes.

[¶18] The Settlement will not become effective unless the Court enters a Final Approval Order finally approving the Settlement. If the Agreement does not become effective in accordance with the Agreement, or if the Agreement is not finally approved, then the Agreement shall become null and void, and this Preliminary Approval Order shall be null and void and shall be vacated. In such a case, the Parties shall proceed in all respects as if the Agreement had not been executed and the Parties shall in no way be prejudiced in proceeding with or defending this Action, the provisional class certification effected herein will be null and void, and Gate City shall have the right to oppose and object, on any and all grounds, to certification of the Settlement Classes or any other classes at any future time.

[¶19] The Final Approval Hearing will be conducted in Courtroom ECJD #3, of the East Central District Court, Cass County, State of North Dakota, located at 211 9th St S, Fargo, North Dakota 58103 on _____, 2022, at __:__ a.m./p.m. The hearing may be in person or virtually and the Court will advise the Parties at least 15 days prior to the hearing date. No later than 10 days before

the hearing, the Settlement Administrator shall post to the Settlement Website the manner in which the hearing shall be held.

[¶20] All pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

[¶21] Upon the entry of this Order, the Class Representatives and all members of the Settlement Classes shall be provisionally enjoined and barred from asserting any claims against Gate City and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as whether to grant Final Approval of the Settlement.

[¶22] This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be evidence of an admission or concession by Gate City of any liability or wrongdoing by Gate City or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the conduct alleged in the Action or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to the conduct alleged in the Action. Gate City may file the Agreement in any action or proceeding that may be brought against it in order to support a defense or counterclaim 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 or counterclaim.

[¶23] For the benefit of the Settlement Classes and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this

Court.

[¶24] Class Counsel and counsel for Gate City are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notices that they jointly agree are reasonable or necessary.


[¶25] The Court confirms the following schedule (which the Court, upon showing of good cause by the Parties, may extend any of the deadlines):

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| Deadline to Complete Notice Program | 60 days prior to Final Approval Hearing |
| Deadline for Class Counsel to File the Motion for Final Approval of the Settlement, Application for Attorneys' Fees, Costs, and Service Awards | 45 days prior to the Final Approval Hearing |
| Deadline for Members of the Settlement Classes to Opt-Out of the Agreement | 30 days prior to the Final Approval Hearing |
| Deadline for Settlement Class Members to Object to the Settlement | 30 days prior to the Final Approval Hearing |
| Deadline to Respond to Objections | 15 days prior to the Final Approval Hearing |
| Final Approval Hearing | _____, 2022 at __:__ a.m./p.m. |

Signed: 11/29/2021 3:34:10 PM

IT IS SO ORDERED

Date: _____



The Honorable Steven E. McCullough
Judge of the District Court

Signed: 11/29/2021 3:36:00 PM

Final Approval Hearing to be held during the Court's next hearing week after 6/15/2022.

