

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY, MONTANA**

JOSEPH BEN MATTINGLY, JILL S.
MATTINGLY, and STEVEN R. SMITH, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

STOCKMAN BANK OF MONTANA,

Defendant.

Cause No. DV-21-01027

Judge: Rod Souza

**ORDER GRANTING PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

WHEREAS, Plaintiffs in the above-captioned Action have applied for an order, pursuant to Montana Rule of Civil Procedure 23, preliminarily approving the Settlement Agreement and Release (the “Agreement”) entered into between Plaintiffs Joseph Ben Mattingly, Jill S. Mattingly, and Steven R. Smith, individually and on behalf of the proposed Classes, and Defendant Stockman Bank of Montana (“Stockman Bank”); and

WHEREAS, this Court having reviewed the Agreement as submitted to the Court with the Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”); and

WHEREAS, this Preliminary Approval / Notice Order incorporates the Agreement, its exhibits, and the terms used herein shall have the meaning and/or definitions given to them in the Agreement, as submitted to the Court with the Motion for Preliminary Approval;

NOW, THEREFORE, pursuant to Montana Rule of Civil Procedure 23(e) and after the consideration of the Agreement and its exhibits;

IT IS HEREBY ORDERED as follows:

1. The Court finds that the Agreement proposed by Plaintiffs is fair, reasonable, adequate and likely to be approved at a final approval hearing such that giving notice is justified. The representations, agreements, terms, and conditions of the Settlement, as embodied in the Agreement and the exhibits attached thereto, are preliminarily approved pending a final hearing on the Settlement as provided herein.

2. The Court finds that the Agreement was negotiated with the assistance of neutral Hon. Edward Infante (Ret.), and there is no reason to believe that it was not the result of extensive, arm's-length negotiations between the parties after Class Counsel and Stockman Bank's Counsel had investigated the claims, sufficiently litigated the claims, and became familiar with the strengths and weaknesses of the claims. The Settlement appears not to be collusive, and has no obvious defects, and falls within the range of reasonableness.

3. The Court finds that for settlement purposes only, it will likely certify at the final approval stage the Settlement Classes, which consist of:

The APPSN Fee Class: those customers of Defendant who were charged APPSN Fees between November 29, 2016 and October 1, 2020.

The Retry NSF Fee Class: those customers of Defendant who were charged Retry NSF Fees between August 20, 2016 and July 4, 2020.

4. For purposes of the Settlement, The Court preliminarily finds that these Classes meet the relevant requirements of Montana Rules of Civil Procedure 23(a) and (b)(3) in that: (a) the number of Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Class Members; (c) the claims of the Named Plaintiffs are typical of the claims of the Class Members; (d) the Named Plaintiffs are adequate representatives for the Settlement Class and have retained experienced counsel to represent them; (e) the questions of law and fact common to the Class Members predominate over any questions affecting any individual Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court therefore preliminarily certifies the proposed Classes for purposes of the Settlement only.

5. For purposes of the Settlement only, and pursuant to Montana Rule of Civil Procedure 23(a)(1), the Court preliminarily appoints the following as Class Counsel to act on behalf of the Classes and the Named Plaintiffs with respect to the Settlement:

Paul D. Odegaard
Andrew J. Miller
ODEGAARD MILLER LAW, PC

Sophia G. Gold
KALIELGOLD PLLC

David M. Berger
GIBBS LAW GROUP, LLP

6. KCC is preliminarily appointed as Claims Administrator and shall administer the Notice program. The Claims Administrator shall abide by the terms and conditions of the Agreement that pertain to the Claims Administrator.

7. Having reviewed the proposed Notice program, including the proposed Email Notice, Postcard Notice, and Long Form Notice submitted by the parties as Exhibits 1 and 2 to the

Agreement, the Court approves, as to form and content, such Notices for the purpose of notifying the Classes as to the proposed Settlement and payments under the terms of the Settlement, the Final Approval Hearing, and the rights of the members of the Classes. The Notices contain all of the information necessary to satisfy the requirements of the Montana Rules of Civil Procedure and due process, including the class definition, the identities of the parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the manner in which objections may be submitted, information regarding opt-out procedures and deadlines, and the date and location of the Final Approval Hearing.

8. The Court directs the Claims Administrator to cause a copy of the Email Notice or Postcard Notice to be sent to all Class Members in accordance with the Notice program. Notice shall be sent to all Class Members no later than thirty (30) days from the date of this Order.

9. The Email Notice, Postcard Notice, and Long Form Notice shall be updated by the Claims Administrator to include the Final Approval Hearing date and time as set forth below, and other relevant deadlines.

10. Any person falling within the definition of the Classes may, upon request, be excluded or may opt out from the Classes. In the event a Class Member wishes to be excluded from the Settlement and not bound by the Agreement, that person must sign and mail an Exclusion Letter to the Claims Administrator as provided under the terms of the Agreement. A Class Member may opt out of the Classes at any time before the Bar Date to Opt Out, provided that the Exclusion Letter is postmarked on or before the Bar Date to Opt Out. Any Class Member who does not timely and validly request to opt out shall be bound by the terms of the Agreement. Class Members who timely and validly opt out of the Settlement will not be entitled to an Individual Payment or forgiveness of Uncollected Overdraft Fees.

11. Any Class Member who wishes to object to the Settlement, Class Counsel's application for attorneys' fees and costs, Service Awards for the Named Plaintiffs, to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Classes, or why a final judgment should not be entered thereon, may do so, but must proceed as set forth in this paragraph and the Notice and Agreement. Only a Class Member may submit an objection. No Class Member or other person will be heard on such matters unless they have mailed via first-class mail, postage pre-paid, a written objection (together with any briefs, papers, statements, or other materials that the Class Member or other person wishes the Court to consider, and in accordance with all requirements set forth in the Agreement) to the Claims Administrator postmarked on or before the Bar Date to Object, as set forth in the Notice.

12. Any Class Member who does not make his or her objections 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. Prior to the Final Approval Hearing, Class Counsel shall file with the Court and serve on all parties an affidavit or declaration of the Claims Administrator certifying that the Notice program was completed and providing the name of each Class Member who timely and properly requested exclusion from the Classes. Class Counsel shall include with the filing any objections to the Settlement.

14. 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 / Notice Order.

15. The 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 Stockman Bank of any liability or wrongdoing by Stockman Bank 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.

16. In the event that the Court does not grant Final Approval of the Settlement as provided in the Agreement, then the parties shall proceed in all respects as they existed as of the date of the execution of the Agreement' the terms and provisions of this Preliminary Approval / Notice Order shall have no further force and effect with respect to the parties; and it shall not be used in this case or in any other action or proceeding for any other purpose.

17. Class Counsel and Stockman Bank's Counsel 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 / Notice Order and the Agreement, including without the Court's further approval, making minor form or content changes to the Notices they jointly agree are reasonable or necessary.

18. A Final Approval Hearing will be held at the time and place indicated below to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Classes; (b) whether a Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by Class Counsel with the Motion for Final Approval; (c) whether to approve Class Counsel's application for attorneys' fees and costs, and

for a Service Award for each of the Named Plaintiffs; and (d) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Classes. Class Counsel must file all moving papers and briefs in support of Final Approval, inclusive of Class Counsel's application for attorneys' fees and costs, and for a Service Award for the Named Plaintiffs, no later than fifteen (15) days before the Bar Date to Object.

19. Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, he or she will be represented by Class Counsel.

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

Event	Calendar Days Before Final Approval Hearing
Notice Program Complete (including Initial Mailed Notice and the Notice Re-Mailing Process)	June 19th, 2023 (30 days from this Order)
Motion for Final Approval, Application for Attorneys' Fees, Expenses and Costs, and for Service Awards	July 18th, 2023 (60 days from this Order)
Bar Date to Opt-Out	August 2nd, 2023 (75 days from this Order)
Bar Date to Object	August 2nd, 2023 (75 days from this Order)
Deadline to Respond to Objections, If Any	August 17th, 2023 (90 days from this Order)
Final Approval Hearing	September 25th, 2023 at 3:30 p.m. (at least 120 days from this Order)

IT IS SO ORDERED.

Electronically Signed and Dated Below