



STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER
DOCKET
CIVIL ACTION
Docket No. BCD-CIV-2021-00027

ETHAN A. CHURCHILL and RHONDA
YORK, on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

BANGOR SAVINGS BANK,

Defendant.

PRELIMINARY APPROVAL ORDER

WHEREAS, Plaintiffs in the above-captioned class action (“Action”) have applied for an order preliminarily approving a Settlement Agreement (the “Agreement,” “Settlement Agreement,” or “Settlement”) entered into by the Parties as of April 19, 2022 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action upon the terms and conditions set forth in the Agreement;

WHEREAS, all defined terms used in this Order have the same meanings as set forth in the Agreement;

NOW, THEREFORE, upon the agreement of the Parties, and after consideration of the Agreement and its exhibits,

IT IS HEREBY ORDERED that:

1. 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. For purposes of the Settlement only, the Court finds and determines that the Action may proceed as a class action pursuant to Me. R. Civ. P. 23, on behalf of the following “Settlement Classes”:

Retry Class: All Bangor Account holders who were charged one or more Retry Fees during the Class Period.

APPSN Class: All Bangor Account holders who were charged one or more APPSN Fees during the Class Period.

The Court finds that, for purposes of Settlement only, the Settlement Classes meet the relevant requirements of Me. R. Civ. P. 23 in that: (a) the Settlement Classes are so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class Members; (c) the claims or defenses of the Settlement Class Representatives are typical of the claims or defenses of the Settlement Class Members; (d) the Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Classes, and have retained experienced counsel to represent them; (e) the questions of law or fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

3. Also for purposes of the Settlement only, the Court finds and determines that Ethan A. Churchill and Rhonda York (the “Settlement Class Representatives”) will fairly and adequately represent the interests of, respectively, the Retry Class (Churchill) and the APPSN Class (York) in enforcing their rights in the Action, and appoints (1) Ethan A. Churchill as the Settlement Class Representative for the Retry Class and (2) Rhonda York as the Settlement Class Representative for the APPSN Class.

4. For purposes of the Settlement, the Court appoints Berman & Simmons, P.A. and KalielGold PLLC as Settlement Class Counsel to act on behalf of the Settlement Classes and the Settlement Class Representatives with respect to the Settlement.

5. Epiq is appointed as Settlement Administrator.

6. The terms of the Settlement Agreement (and the Settlement provided for therein) are preliminarily approved as (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical, and procedural considerations of the Action, (b) free of collusion, and (c) within the range of possible final judicial approval, subject to further consideration at the Final Approval Hearing.

7 Having reviewed the proposed form of Class Notice submitted by the Parties as Exhibit A to the Agreement, the Court approves, as to form and content, such Class Notice.

8 The Court directs that the Settlement Administrator cause a copy of the Class Notice to be mailed to all Settlement Class Members who can be identified by Defendant through its records. The mailing is to be made by first class United States mail, postage prepaid, and is to be completed within twenty-one (21) days of the Settlement Administrator's receipt of the Settlement Class Member List from Defendant.

9. The Court finds and determines that mailing of the Class Notice pursuant to this Order constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices.

10. Any person falling within the definition of the Settlement Classes may, upon request, be excluded or "opt out" from the Settlement Class. Any such person who desires to request exclusion from the Settlement Classes must submit a notice of intention to opt out. Such notice of intention to opt out must be mailed to the Settlement Administrator or submitted online, such that it is postmarked or submitted online no later than the Opt Out and Objection Deadline. If there is more than one account holder on an account, all account holders must execute the notice of intention to opt out for the opt-out to be effective. Any notice in which a Settlement Class Member purports to opt out any other person (including any group, aggregate, or putative class involving more than one Settlement Class Member) shall not be considered a valid opt-out. Individuals are not permitted to exclude other individuals, and if there is a group of opt-outs,

each individual Settlement Class Member must evidence his or her intent by complying with the procedures set forth in this Order, the Class Notice, and the Settlement Agreement. Any opt-out submitted by a Settlement Class Member on behalf of a group, aggregate, or putative class shall be deemed valid as to that Settlement Class Member only, and shall be invalid as to the group, aggregate, or putative class. All persons and entities who submit valid and timely notices of intention to opt out as set forth in this Order, the Class Notice, and the Settlement Agreement shall have no rights under the Settlement, shall not share in the distribution of the Settlement Amount, and shall not be bound by the Settlement or any final judgment entered in this Action.

11. A hearing will be held by this Court in the Courtroom of The Honorable Michael A. Duddy, Maine Business and Consumer Court, Cumberland County Courthouse, 205 Newbury Street, Ground Floor, Portland, Maine 04101 at 9:00 a.m. on Monday, December 5, 2022 (“Final Approval Hearing”), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Classes; (b) whether the Final Approval Order should be entered in substance materially the same as Exhibit B to the Agreement; (c) whether to approve any application of Settlement Class Counsel for an award of attorneys’ fees and costs and/or service awards to the Settlement Class Representatives; 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 Settlement Class. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

12. Prior to the Final Approval Hearing, Settlement Class Counsel shall cause an affidavit or declaration to be filed with the Court and served on all Parties certifying that the Class Notice has been provided, as directed in ¶¶ 7 and 8 of this Order.

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

14. Any Settlement Class Member who wishes to object to the Settlement, to any request for an award of attorneys' fees and costs to Settlement Class Counsel, and/or to any request for service awards to the Settlement Class Representatives, or 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 Settlement Class, or why a final judgment should not be entered thereon, may do so, but must proceed as set forth in this paragraph. No Settlement Class Member or other person will be heard on such matters unless they have submitted a written objection together with any briefs, papers, statements, or other materials that the Settlement Class Member or other person wishes the Court to consider, postmarked by the Opt Out and Objection Deadline, as set forth in the Class Notice. Any objection must: (i) attach documents establishing, or provide information sufficient to allow the Parties to confirm that the objector is a member of the Settlement Class; (ii) include a detailed statement of such Settlement Class Member's specific objections; (iii) state the grounds for such objections; and (iv) identify all documents which the Settlement Class Member asks the Court to consider. An objecting Settlement Class Member who intends to appear in person at the Final Approval Hearing must file a Notice of Intention to Appear with the Clerk of Court and serve the Notice on all Parties. Settlement Class Representatives and Defendant may file responses to any objections that are submitted by a Settlement Class Member.

15. Any Settlement Class Member who does not make his or her objections in the manner and by the date set forth in ¶ 14 of 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.

16. All Settlement Class Members shall be entitled to share in the Settlement Amount consistent with the distribution plan outlined in the Settlement Agreement.

17. Upon the entry of this Order, the Settlement Class Representatives and all Settlement Class Members shall be provisionally enjoined and barred from asserting any claims against the Defendant and the Released Parties arising out of, relating to, or in connection with

the Released Claims prior to the Court's decision as to whether to grant Final Approval of the Settlement.

18. Upon the Effective Date, only persons who are Settlement Class Members shall have rights in the distribution of the Settlement Amount, except as provided in the Agreement.


19. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the funds are distributed pursuant to the Agreement or further order of the Court.

20. The Court reserves the right to adjourn or continue the Final Approval Hearing, and any adjournment or continuance may be without further notice of any kind to the Settlement Classes, other than oral announcement at the Final Approval Hearing or at any later hearing.

21. In the event that the "Final Approval Order" does not become "Final," as defined in ¶ I.21 of the Settlement Agreement, then the Settlement shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement, and this Order shall be vacated. In such event, all orders entered and releases delivered in connection with the Settlement shall be null and void. In such event, the Action shall return to its status immediately prior to execution of the Settlement Agreement.

22. Settlement Class Counsel and counsel for Defendant are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice, and other exhibits that they jointly agree are reasonable or necessary.

Date: 06/02/2022



Michael A. Duddy
Judge, Business & Consumer Court

Entered on the docket: 06/06/2022