

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

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**LINDA R. GLASKE, on behalf of herself  
and all others similarly situated,**

**Plaintiff,**

v.

**INDEPENDENT BANK CORPORATION,**

**Defendant.**

**Hon. Muriel D. Hughes  
Case No. 13-009983-CZ**

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**ORDER GRANTING  
PRELIMINARY APPROVAL TO CLASS SETTLEMENT**

At a session of said Court, held in the Courthouse, City of Detroit,  
County of Wayne, State of Michigan on March \_\_\_\_, 2017

**3/9/2017**

Plaintiff and Defendant Independent Bank Corporation (“Independent”) have agreed to a settlement, the terms and conditions of which are set forth in an executed Settlement Agreement and Release (the “Settlement”). The Parties reached the Settlement through arm’s-length negotiations following mediation and several settlement conferences. Under the Settlement, subject to the terms and conditions therein and to final approval by the Court, Plaintiff and the Settlement Class would fully, finally, and forever resolve, discharge, and release their claims in exchange for Independent’s payment of \$2,215,000 to create a common fund to benefit the Settlement Class (inclusive of all attorneys’ fees and costs to Class Counsel and a Service Award to Plaintiff). In addition, Independent has agreed to separately pay for all costs associated with providing Notice to the Settlement Class and administering the Settlement.

The Settlement has been filed with the Court, and Plaintiff and Class Counsel filed an unopposed motion for Preliminary Approval of class settlement (the “motion”). Upon considering the motion and exhibits thereto, the Settlement and exhibits thereto, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and Parties to these proceedings; (2) for settlement purposes only, the proposed Settlement Class meets the requirements of Michigan Court Rule 3.501 and should be certified; (3) the persons identified below should be appointed Class Representative and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm’s-length negotiations between the Parties and their experienced counsel and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice Program and proposed forms of Notice satisfy Michigan law and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement

Class of the terms of the Settlement and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's application for an award of legal fees and expenses ("fee application"), and/or the request for a Service Award for Plaintiff; (7) good cause exists to schedule and conduct a final approval hearing to assist the Court in determining whether to grant Final Approval of the Settlement and enter a Final Approval Order, and whether to grant Class Counsel's fee application and the Service Award for Plaintiff; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED** as follows:

1. As used hereinafter, capitalized terms shall have the definitions and meanings accorded to them in the Settlement.

**Provisional Class Certification**

2. In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class – i.e., all Rule 3.501(A)(1) factors must be satisfied – except that courts need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3. The Court finds, for settlement purposes only, that the Rule 3.501 factors are present and that certification of the proposed Settlement Class is appropriate. The Court, therefore, provisionally certifies the following Settlement Class:

All Independent customers in the United States who had one or more non-business accounts and who, during the Class Period, incurred an Overdraft Fee as a result of Independent's High-to-low Debit Card Transaction Sequencing.

The Class Period is July 31, 2007 through the date of this Order.

4. Specifically, the Court finds, for settlement purposes, that the Settlement Class satisfies the following factors of Michigan Court Rule 3.501:

(a) Numerosity: There are thousands of Settlement Class Members. Their joinder is impracticable. Thus, the Rule 3.501(A)(1)(a) numerosity requirement is met.

(b) Commonality and Predominance: The Rule 3.501(A)(1)(b) bar for proving commonality is met when there is at least one issue whose resolution will affect all or a significant number of the putative class members and such common issues predominate over individualized issues. This Action satisfies this requirement because there are many questions of law and fact common to the Settlement Class that center on Independent's automated and systematic practices and such common issues predominate over individualized inquiries.

(c) Typicality: Plaintiff's claims are typical of the Settlement Class for purposes of this settlement because they concern the same alleged Independent practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief. Rule 3.501(A)(1)(c) is therefore satisfied.

(d) Adequacy: Adequacy under Rule 3.501(A)(1)(d) relates to: (1) whether the proposed class representative has interests antagonistic to the Settlement Class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. Here, there are no conflicts of interest between Plaintiff and the Settlement Class, and Plaintiff has retained competent counsel to represent it and the Settlement Class. Class Counsel here regularly engage in consumer class litigation and other complex litigation similar to the present Action, and have dedicated substantial resources to prosecuting the Action. Moreover, Plaintiff and Class Counsel have vigorously and competently represented the interests of the Settlement Class in the Action.

(e) Superiority: Rule 3.501(A)(1)(e) is satisfied because resolution of the common issues for thousands of Settlement Class Members in a single, coordinated proceeding is superior to many individual lawsuits addressing the same legal and factual issues.

**Appointment of Class Representatives and Class Counsel**

5. The Court appoints Plaintiff Linda Glaske as Class Representative.

6. The Court appoints the following persons as Class Counsel who shall be responsible for handling all Settlement-related matters on behalf of Plaintiff and the Settlement Class:

David H. Fink  
**FINK + ASSOCIATES LAW**  
38500 Woodward Ave.  
Suite 350  
Bloomfield Hills, MI 48304

E. Adam Webb (*Admitted Pro Hac Vice*)  
**WEBB, KLASE & LEMON, LLC**  
1900 The Exchange, S.E.  
Suite 480  
Atlanta, GA 30339

**Preliminary Approval of Settlement**

7. At the preliminary approval stage, the Court’s task is to evaluate whether the Settlement is within the “range of reasonableness.” 4 *Newberg on Class Actions*, § 11.26 (4th ed. 2010). Preliminary approval is appropriate where the proposed settlement is the result of the Parties’ good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason. Settlement negotiations that involve arm’s-length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, § 30.42 (3rd ed. 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery”) (internal quotation marks omitted).

8. The Court preliminarily approves the Settlement and its exhibits, and the exhibits appended to the motion, as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the absence of collusion, and is the product of informed, good-faith, arm's-length negotiations between the Parties, and their experienced counsel, following a mediation and several settlement conferences. The Court further finds that the Settlement, including the exhibits appended to the motion, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate Notice to the Class, as set forth below and in the Settlement, and schedule a final approval hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

**Approval of Notice and Notice Program and Direction to Effectuate Notice**

9. The Court approves the form and content of the Notice to be provided to the Settlement Class, substantially in the forms appended as Exhibits 1 - 3 to the Agreement. The Court further finds that the Notice Program, described in Section VIII of the Settlement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the terms of the Settlement and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee application, and the request for a Service Award for Plaintiff. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Michigan Court Rule 3.501 and the constitutional requirement of due process.

10. The Court directs that Epiq Systems act as the Settlement Administrator.

11. The Settlement Administrator shall implement the Notice Program, as set forth below and in the Settlement, using substantially the forms of Notice appended as Exhibits 1-3 to the Agreement and approved by this Order. Notice shall be provided to the Class Members pursuant to the Notice Program, as specified in Section VIII of the Settlement and approved by this Order. The Notice Program shall include Emailed/Mailed Notice and Long Form Notice on the Settlement Website, as set forth in the Settlement, and the exhibits appended to the motion.

**Final Approval Hearing, Opt-Outs, and Objections**

12. The Court directs that a final approval hearing shall be scheduled for **November 29th**, 2017, at **2:00** ~~a.m.~~/p.m., to assist the Court in determining whether to grant Final Approval to the Settlement and enter the Final Approval Order, and whether Class Counsel's fee application and request for a Service Award for Plaintiff should be granted.

13. The Court directs that anyone within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Long Form Notice at any time during the Opt-Out-Period and the Settlement Agreement. The opt-out deadline shall be 28 days prior to the final approval hearing, and shall be specified in the Emailed/Mailed Notice and Long Form Notice. All those within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Settlement, including, but not limited to, the Releases set forth in Section XIV of the Settlement.

14. The Court further directs that any person in the Settlement Class who does not opt-out of the Settlement Class may object to the Settlement, Class Counsel's fee application, and/or the request for a Service Award for Plaintiff. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and counsel for Independent, at the addresses indicated in the Long Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than the opt-out deadline and include the complete and specific information set forth in paragraph 90 of the Settlement.

**Further Papers in Support of Settlement and Fee Application**

15. Plaintiff and Class Counsel shall file their motion for final approval of the Settlement, request for Service Award for Plaintiff, and fee application no later than 40 days before the final approval hearing.

16. Plaintiff and Class Counsel shall file their responses to timely filed objections to such motion no later than seven days before final approval hearing. If Independent chooses to file a response to timely filed objections to such motion, it also must do so no later than seven days before final approval hearing.

**Effect of Failure to Approve the Settlement or Termination**

17. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- (a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
- (b) All of the Parties' respective pre-Settlement claims and defenses will be preserved;

- (c) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Independent or Plaintiff on any point of fact or law; and
- (d) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders, and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence.

**Stay/Bar of Other Proceedings**

18. All proceedings are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) against any of the Released Parties any action or proceeding in any court asserting any of the Released Claims.

Date: 3/9/2017

/s/ Muriel D. Hughes

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Muriel D. Hughes  
Circuit Court Judge

Stipulated as to form and substance:

/s/ E. Adam Webb  
E. Adam Webb

/s/ Jon M. Bylsma with consent  
Jon M. Bylsma

Attorney for Plaintiff and the Settlement Class

Attorney for Defendant