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David W. Slayton,
Executive Officer/Clerk of Court,
By S. Drew, Deputy Clerk

7 *Attorneys for Plaintiff Maureen Harrold and the*
8 *Class*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10 MAUREEN HARROLD, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 MUFG UNION BANK, N.A.,
15

16 Defendant.

Case No. BC680214

**(Assigned for All Purposes to the Honorable
Elaine Lu, Dept. 9)**

**DECLARATION OF TARAS KICK IN
SUPPORT OF UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 25, 2024
Time: 10:00 a.m.
Department 9

18 Complaint Filed: October 19, 2017

19 Amended Complaint Filed: July 29, 2020
20 Trial Date: None Set

1 **DECLARATION OF TARAS KICK**

2 I, Taras Kick, declare as follows:

3 1. I am an attorney admitted to practice in the State of California and a shareholder of
4 The Kick Law Firm, APC, attorneys for Plaintiff and the class members. I submit this Declaration
5 in support of Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement. I have
6 personal knowledge of the following, except where stated upon information and belief, and if sworn
7 as a witness, I could and would competently testify thereto.

8 2. I have been a member of the California State Bar since 1989, the year I graduated
9 from the University of Pennsylvania Law School. Prior to that, in 1986, I graduated from
10 Swarthmore College, from which I earned a Bachelor of Arts degree in Economics and Psychology.
11 I have served as class counsel in numerous national and state class actions, including being
12 appointed lead counsel and a member of plaintiffs’ executive committees. For over five years, I was
13 a member of the national Board of Directors of Public Justice, including its Class Action
14 Preservation Committee. I am or have been a member of numerous other committees pertaining to
15 consumer class actions, including the American Association for Justice Class Action Litigation Sub-
16 Group; the Consumer Attorneys of California Class Action Group; the American Bar Association
17 Committee on Class Actions & Derivative Suits; and, the State Bar of California Antitrust and
18 Unfair Competition Litigation section. From 2012 through September 2017, I was a Commissioner
19 of the California Law Revision Commission, an independent state agency created by statute in 1953
20 to assist the Legislature and Governor by examining California law and recommending needed
21 reforms, having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chair of the
22 Commission from September 2015 through September 2016 (although my role in this case is
23 independent of any aspect of my duties with the Commission and does not reflect one way or the
24 other any positions of the Commission). The Kick Law Firm, APC primarily represents plaintiffs in
25 class actions.

26 3. The firm’s class action experience in which I have been appointed as either lead class
27 counsel, or co-lead class counsel (unless noted otherwise), includes but is not limited to, the

1 following cases: *Devore v. Dollar Bank*, Court of Common Pleas of Allegheny County,
2 Pennsylvania, Case No. GD-21-008946 (an overdraft fee class action, final approval granted on
3 March 21, 2024); *Galgano v. TD Bank, N.A.*, No. CV2005623RBKSAK (D.N.J.) (an ATM fee class
4 action, final approval granted on July 19, 2023); *Smith v. Bank of Hawaii*, United States District
5 Court for the District of Hawaii, Case No. 1:16-cv-00513 (an overdraft fee class action, final
6 approval granted on December 22, 2020); *Coleman-Weathersbee v. Michigan State University*
7 *Federal Credit Union*, United States District Court for the Eastern District of Michigan, Case No.
8 2:19-cv-11674 (an overdraft fee class action, final approval granted on July 29, 2020); *Walker v.*
9 *People's United Bank*, United States District Court for the District of Connecticut, Case No. 3:17-
10 cv-00304 (an overdraft fee class action, final approval granted on June 29, 2020); *Story v. SEFCU*,
11 United States District Court for the Northern District of New York, Case No. 1:18-cv-00764 (an
12 overdraft fee class action, final approval granted on February 25, 2021); *Salls v. Digital Federal*
13 *Credit Union*, United States District Court for the District of Massachusetts, Case. No. 18-cv-11262-
14 TSH (an overdraft fee class action, final approval granted in January 2020); *Pingston-Poling v.*
15 *Advia Credit Union*, United States District Court for the Western District of Michigan, Case No.
16 1:15-CV-1208 (an overdraft fee class action, final approval granted in January 2020); *Lloyd v. Navy*
17 *Federal Credit Union*, United States District Court for the Southern District of California, Case No.
18 3:17-cv-01280 (an overdraft fee class action, final approval granted May 18, 2019); *Ketner v. SECU*
19 *Maryland*, Civil No.:1:15-CV-03594-CCB (D. MD. 2017) (an overdraft fee class action, final
20 approval granted January 11, 2018); *Towner v. Ist MidAmerica Credit Union*, No. 3:15-cv-1162
21 (S.D. Ill. 2017) (an overdraft fee class action, final approval granted in November 2017); *Lane v.*
22 *Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (an overdraft fee class
23 action, final approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United States
24 District Court for the Middle District of Florida, Case No. 8:15-CV-2743 (an overdraft fee class
25 action, final approval granted); *Ramirez v. Baxter Credit Union*, United States District Court for the
26 Northern District of California, Case No. 16-cv-03765-SI (an overdraft fee class action, final
27 approval granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court,
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1 Case No. 37-2015-00008551 (an overdraft fee class action, final approval granted); *Gunter v. United*
2 *Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-
3 00483-MMD-WGC (an overdraft fee class action, final approval granted); *Hernandez v. Point Loma*
4 *Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (an overdraft fee
5 class action, final approval granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles
6 County Superior Court, Case No. BC625500 (an overdraft fee class action, final approval granted
7 in); *Morales v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-
8 15-100538 (an overdraft fee class action, final approval granted in June 2017); *Manwaring v.*
9 *Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667 (an
10 overdraft fee class action, final approval granted); *Casey v. Orange County Credit Union*, Orange
11 County Superior Court No. 30-2013-00658493-CJ-BT-CXC (an overdraft fee class action, final
12 approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No.
13 BC5860 (an overdraft fee class action, final approval granted); *Fernandez v. Altura Credit Union*,
14 Riverside County Superior Court, Case No. RIC1610873 (an overdraft fee class action, final
15 approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court,
16 Case No. BC628495 (an overdraft fee class action, final approval granted); *Bowens v. Mazuma*
17 *Federal Credit Union*, United States District Court for the Western District of Missouri, Case No.
18 15-00758-CV-W-BP (an overdraft fee class action, final approval granted); *Santiago v. Meriwest*
19 *Credit Union*, Sacramento County Superior Court, Case No. 34-2015-00183730 (an overdraft fee
20 class action, final approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court
21 Case No. BC487140 (final approval granted); *Kirtley v. Wadekar*, United States District Court for
22 the District of New Jersey, Case No. 05-5383 (final approval granted); *Pereyra v. Mike Campbell &*
23 *Associates*, Los Angeles County Superior Court Case No. BC365631 (final approval granted);
24 *Oshaben v. Monster Worldwide, Inc.*, et al., San Francisco County Superior Court Case No. CGC-
25 06-454538 (final approval granted); *Cole v. T-Mobile USA, et al.*, Central District of California Case
26 No. 06-6649 (final approval granted).

27 4. The Kick Law Firm, APC, undertook this case on a contingent basis, with the

1 understanding that the firm would not be compensated for its efforts unless the case was successful.
2 To date, TKLF has not been paid for any of its time spent on this matter. The time spent on this
3 matter by the firm's attorneys has required considerable work that could have, and would have, been
4 spent on other billable matters. As a result of having accepted and been devoted to this case, it is my
5 informed belief this law firm wound up not representing parties in cases it otherwise would have,
6 and which in my opinion likely would have compensated this firm at its hourly rates requested in
7 this matter.

8 5. It is my belief that Plaintiff's \$5,000,000.00 recovery is a fair result given the
9 significant barriers and risk that would loom in the absence of settlement. Based on Plaintiff's expert
10 data analysis, the Settlement Class's most likely recoverable damages at trial would have been
11 approximately \$13.3 million. Each Settlement Class Member's maximum realistic recovery depends
12 on the number of APSN Fees assessed during the Class Period. For some, only one APSN Fee was
13 assessed. An expert is required to evaluate complicated account-level transaction data on the days
14 that Overdraft Fees were assessed and to identify which Debit Card Transactions were authorized
15 against a positive available balance, something the average Accountholder would not recognize
16 from her Account statements. Based on Mr. Olsen's analysis, I believe the Settlement will afford
17 Plaintiff and the Settlement Class a recovery of approximately 37% of their most probable damages,
18 without further risks attendant to litigation. Thus, the Settlement will provide Settlement Class
19 Members with substantial relief, within the range of reasonable recovery in light of the litigation
20 risks.

21 6. Following Plaintiff's preliminary approval briefing, including two supplemental
22 memoranda in support of preliminary approval, the Parties revised the Agreement at the Court's
23 direction, yielding the Amended Settlement Agreement that the Court preliminarily approved on
24 January 25, 2024.

25 7. Defendant has paid \$5,000,000 cash to create the Settlement Fund. That fund will be
26 used to pay (a) Settlement Class Member Payments; (b) any Incentive Award to the Class
27 Representative, up to a maximum of \$10,000; (c) attorneys' fees not to exceed one-third of the
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1 Settlement Fund, meaning \$1,666,500; (d) costs to Class Counsel not to exceed \$60,458.10; and (e)
2 any *cy pres* payment. Defendant shall separately pay Settlement Administration Costs, estimated to
3 be \$93,816.00.

4 8. As discussed in Plaintiff's August 15, 2023, Supplemental Memorandum, this
5 settlement structure benefits the class. In most overdraft fee class action settlements, in my
6 observation, settlement administration costs are paid out of the settlement fund. Here, Defendant is
7 paying the Settlement Administration Costs up front, thereby increasing the amount of the
8 settlement payments available to class members.

9 9. Plaintiff and the Settlement Class faced significant potential legal risks in the absence
10 of a settlement. Union Bank has filed a Motion for Judgment on the Pleadings, which argues that its
11 contracts permitted the assessment of APSN Fees. If Union Bank were to prevail on this argument,
12 the Settlement Class would recover nothing in this action. Union Bank has indicated it further
13 intends to continue raising its argument that all Accountholders were required to arbitrate their
14 claims, which poses a risk that the class would not achieve certification or that only a more limited
15 class would be certified. Even if Plaintiff prevailed on these pre-trial motions and at trial, Union
16 Bank would likely appeal. This additional litigation activity would cost hundreds of thousands of
17 dollars and cause class members to wait years for any eventual recovery. In light of these risks, the
18 settlement amount of \$5,000,000, representing 37% of potential damages, I believe is reasonable.

19 10. Arthur Olsen of Cassis Technology, a preeminent expert in evaluating and analyzing
20 bank data necessary to identify APSN Fees was retained by Plaintiff's counsel. Mr. Olsen spoke
21 with Union Bank's representatives to confirm availability of necessary data. Mr. Olsen has
22 completed the necessary work to identify the APSN Fees assessed to Accountholders in the
23 Settlement Class, allowing the Parties to deliver a class list to the Settlement Administrator for the
24 Notice Program and ultimate distribution of the Net Settlement Fund.

25 11. The following recital in this paragraph of activity on this case is from the Docket
26 Sheet but also based on my personal involvement in the case, including my performance and review
27 of work and documents in the case. Both before and after initiating the action on behalf of the
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1 putative class, Class Counsel diligently investigated the claims alleged and conducted legal research
2 regarding Union Bank’s potential liability and defenses. Plaintiff filed the Complaint on October
3 19, 2017. On March 2, 2018, Union Bank filed a Motion to Compel Arbitration claiming the
4 Account Agreement mandated individual arbitration of Plaintiff’s claims. Arbitration-related
5 discovery occurred with the production of several Account Agreements, fee schedules, change of
6 terms notices, and policy documents. Plaintiff took Union Bank’s deposition. On May 30, 2018,
7 following a hearing, the Court ruled the Account Agreement delegated authority to determine the
8 enforceability of the arbitration provision to the arbitrator. On October 16, 2018, the Honorable
9 Candace Cooper (Ret.) was appointed as the Arbitrator. On March 7, 2019, Plaintiff submitted her
10 Amended Demand for Arbitration in the Arbitration, attaching her First Amended Class Action
11 Complaint, and her Motion to Declare Arbitration Agreement Unenforceable. After briefing, on
12 May 21, 2019, Arbitrator Cooper heard that motion, the parties submitted supplemental authority,
13 and on August 19, 2019, she denied it. On September 4, 2019, during a status conference, Plaintiff
14 sought permission to file a supplemental brief on the “poison pill” issue raised in her motion. With
15 approval, both Parties submitted supplemental briefing. On December 15, 2019, Arbitrator Cooper
16 issued her Supplemental Order re Arbitrability, ruling that because the waiver of public injunctive
17 relief in the arbitration provision was unenforceable, the “poison pill” provision rendered the entire
18 arbitration provision null and void. Arbitrator Cooper thus rescinded portions of her prior order and
19 dismissed the arbitration. The Action then moved back to this Court. On March 24, 2020, Union
20 Bank filed a Motion to Vacate the Arbitration Award, which the Court denied on July 27, 2020. The
21 Court lifted the stay of the proceedings and ordered that Plaintiff’s First Amended Complaint be
22 filed and served, which Plaintiff did on July 28, 2020. On September 14, 2020, Union Bank filed its
23 Answer to the First Amended Complaint, which included a general denial of the allegations and
24 affirmative defenses. Union Bank notified Plaintiff of its intent to move to reassign the case to a
25 judicial referee under Civil Code § 638, which Plaintiff opposed. The Parties submitted briefing on
26 Union Bank’s Motion to Compel Judicial Reference. On February 4, 2021, the Court issued its
27 tentative ruling granting that motion, which became the Order of the Court on February 8, 2021. On

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1 April 13, 2021, the Joint Status Report indicated agreement to proceed in judicial reference before
2 the Honorable Rita “Sunny” Miller (Ret.), who was appointed on April 21, 2021. The possibility of
3 settlement was raised but settlement talks did not progress. On November 18, 2021, the Parties
4 submitted a Joint Status Report asking to move forward with the judicial reference proceedings.
5 Plaintiff served interrogatories and document requests to which Union Bank responded. On January
6 25, 2022, Union Bank filed a Motion for Judgment on the Pleadings, arguing the Account
7 Agreement permitted the challenged APSN Fees. On February 14, 2022, the Parties filed a
8 stipulation to stay the case pending mediation, which Judicial Referee Miller granted on March 21,
9 2022. In addition to arbitration-related discovery resulting in production of all relevant Account
10 agreements that allowed them to evaluate changes Union Bank made to its contractual provisions
11 regarding its overdraft fee practices and/or policies, the Parties engaged in informal discovery
12 regarding an estimate of the aggregate relevant APSN Fees assessed during the Class Period, as well
13 as analyzed and estimated damages recoverable by Plaintiff and the Settlement Class should they
14 succeed on their claims.

15 12. Following a full-day mediation on April 22, 2022, with JAMS mediator Robert
16 Meyer, Esq., the Parties agreed in principle to settle, with the material terms memorialized in a May
17 4, 2022, Term Sheet. The Parties’ May 5, 2022, Joint Status Report confirmed the agreement in
18 principle and requested the Court continue the stay of all deadlines. To gather full Account-level
19 transaction data sufficient for Plaintiff’s expert to determine membership in the Settlement Class,
20 the Court extended the deadline to file this Motion several times. Plaintiff’s expert completed the
21 work necessary to identify Accountholders in the Settlement Class and their APSN Fees. The Parties
22 signed the Agreement effective January 25, 2023. Following Plaintiff’s preliminary approval
23 briefing, including two supplemental memoranda in support of preliminary approval, the Parties
24 revised the Agreement at the Court’s direction, yielding the Amended Settlement Agreement that
25 the Court preliminarily approved on January 25, 2024.

26 13. Plaintiff is represented by experienced Class Counsel. Class Counsel collectively has
27 decades of experience in class action litigation and has successfully handled national, regional, and
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1 statewide class actions throughout the United States, in both state and federal courts. For over a
2 decade, each of the attorneys applying to be appointed Class Counsel have focused a substantial
3 portion of their class action practices on cases challenging Overdraft Fees and other bank fees
4 assessed by financial institutions. Class Counsel’s detailed experience in such cases is filed with the
5 Motion For Fees. Class Counsel have evaluated the reasonableness of the proposed Settlement in
6 light of their extensive experience in similar overdraft fee class actions and believe it to be fair and
7 in the best interests of the Settlement Class.

8 14. Accountholders maintained Accounts that were assessed APSN Fees based on
9 uniform Account Agreements and promises. Common legal issues that unite the Settlement Class
10 include (1) the elements of Plaintiff’s claims and Union Bank’s defenses (including the arbitration
11 defense), (2) whether Union Bank breached its contracts and the covenant of good faith and fair
12 dealing by assessing APSN Fees, (3) whether Union Bank violated the UCL or CLRA or committed
13 statutory fraud when assessing APSN Fees, (4) whether Plaintiff and the Class Members have
14 sustained damages, and (5) the measure of damages or restitution. No legal issues affect only
15 individual Accountholders in the Settlement Class.

16 15. Plaintiff’s claims are typical. They are based on the same facts and underlying legal
17 theories as other Accountholders in the Settlement Class. Like them, she was assessed APSN Fees,
18 and all Settlement Class Members were assessed these fees pursuant to the same uniform contracts.

19 16. Class Counsel have extensive background in litigating complex litigation and
20 consumer class actions, have been appointed class counsel in prior and similar cases, and have the
21 resources necessary to prosecute this Action to its conclusion. They and their law firms have
22 recovered hundreds of millions of dollars for classes they represented. Class Counsel are qualified
23 to represent the Settlement Class and will, along with Plaintiff, continue to vigorously protect the
24 interests of the Settlement Class. Plaintiff’s claims are not antagonistic to or in conflict with other
25 Accountholders’ claims. She pursues the same legal theories challenging the same course of Union
26 Bank’s conduct. Plaintiff’s and the Settlement Class’s claims turn on the same alleged promises,
27 misrepresentations, and omissions, and she seeks remedies equally applicable and beneficial to her

1 fellow Accountholders.

2 I declare under penalty of perjury pursuant to the laws of the State of California that the
3 foregoing is true and correct.

4 Executed this 10th day of June, 2024, at Los Angeles, California.

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/s/ Taras Kick
Taras Kick

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