

**FILED**  
Superior Court of California  
County of Los Angeles  
**JUL 25 2024**  
W. Stalton, Executive Officer/Clerk of Court  
By: R. Arraiga, Deputy

**FINAL ORDER RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**Maureen Harrold v. MUFG Union Bank, N.A.**

**Case No.:** BC680214

**Hearing Date:** July 25, 2024

**Department** SSC-9

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is **\$5,000,000**, non-reversionary. (¶3.1)
- B. The Net Settlement Amount (|Net|) is the GSA minus the following:
  - o **\$1,666,500** (33.33%) for attorney fees to Class Counsel (¶116);
  - o **\$53,299.09** for litigation costs (Joint Decl., ¶64.); and
  - o **\$7,500** (reduced amount) for a Service Payment to the Named Plaintiff Maureen Harrold (¶121);
- C. Plaintiffs' release of Defendants from claims described herein.

By **September 23, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b).

By **November 26, 2025**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

The Court hereby sets a **Non-Appearance Case Review for December 1, 2025, 8:30 a.m., Department 9.**

**BACKGROUND**

This is a bank overdraft fee class action. Defendant MUFG Union Bank, N.A. is headquartered in San Francisco, California, providing retail banking services to consumers, including debit card services used in conjunction with checking accounts.

Plaintiff filed her initial Complaint on October 19, 2017. She submitted her First Amended Complaint on March 7, 2019. Plaintiff's First Amended Class Action Complaint alleges putative class claims that Defendant improperly charged Overdraft Fees on Debit Card Transactions that authorized against a positive balance but settled against a negative balance due to intervening charges. These challenged fees are also referred to as "authorize positive settle negative" or APSN Fees. Plaintiff alleges claims of breach of contract including the covenant of good faith and fair dealing and violations of California consumer protection laws. Plaintiff

sought relief including damages and/or restitution for all APSN Fees; an injunction against Defendant barring it from continuing to misrepresent its Overdraft Fee policies in its publicly available account documents, continuing to charge Overdraft Fees on transactions that do not actually overdraw accounts, and conducting business via the complained-of unlawful and unfair business practices; pre-judgment interest; attorney's fees and costs.

On March 2, 2018, Defendant filed a Motion to Compel Arbitration asserting the Account Agreement mandated individual arbitration of Plaintiff's claims. Arbitration-related discovery occurred with the production of several Account Agreements, fee schedules, change of terms notices, and policy documents. Plaintiff took Defendant's deposition regarding arbitration issues. On May 30, 2018, following a hearing, the Court ruled the Account Agreement delegated authority to determine the enforceability of the arbitration provision to the arbitrator. On October 16, 2018, the Honorable Candace Cooper was appointed as the Arbitrator. On March 7, 2019, Plaintiff submitted her Amended Demand for Arbitration in the Arbitration, attaching her First Amended Class Action Complaint, and her Motion to Declare Arbitration Agreement Unenforceable. On May 21, 2019, Arbitrator Cooper heard that motion, the parties submitted supplemental authority, and on August 19, 2019, she denied it.

However, on September 4, 2019, during a status conference, Plaintiff sought permission to file a supplemental brief on the "poison pill" issue raised in her motion. With approval, both Parties submitted supplemental briefing. On December 15, 2019, Arbitrator Cooper issued her Supplemental Order re Arbitrability, ruling that because the waiver of public injunctive relief in the arbitration provision was unenforceable, the "poison pill" provision rendered the entire arbitration provision null and void. Arbitrator Cooper thus rescinded portions of her prior order and dismissed the arbitration. The Action then moved back to this Court.

On March 24, 2020, Defendant filed a Motion to Vacate the Arbitration Award, which the Court denied on July 27, 2020. The Court lifted the stay of the proceedings and ordered Plaintiff's First Amended Complaint be filed and served, which Plaintiff filed and served on July 28, 2020.

Defendant notified Plaintiff of its intent to move to reassign the case to a judicial referee under Civil Code § 638, which Plaintiff opposed. The Parties submitted briefing on Defendant's Motion to Compel Judicial Reference. On February 4, 2021, the Court issued its tentative ruling granting that motion, which became the Order of the Court on February 8, 2021. On April 13, 2021, the Joint Status Report indicated agreement to proceed in judicial reference before the Honorable Rita "Sunny" Miller (Ret.), who was appointed on April 21, 2021.

On January 25, 2022, Defendant filed a Motion for Judgment on the Pleadings, arguing the Account Agreement permitted the challenged fee practice. On February 14, 2022, the Parties filed a stipulation to stay the case pending mediation, which Judicial Referee Miller granted on March 21, 2022.

Counsel represent that prior to the mediation, in addition to arbitration-related discovery resulting in production of all relevant Account agreements that allowed Plaintiff to evaluate changes Defendant made to its contract promises regarding its overdraft fee practices and/or policies, the Parties engaged in informal discovery regarding an estimate of the aggregate relevant APSN Fees assessed during the Class Period and also analyzed and estimated the most probable calculation of damages recoverable by Plaintiff and the Settlement Class.

Class Counsel also represent that they engaged in data analysis with the assistance of Plaintiff's expert, Arthur Olsen of Cassis Technology, a preeminent expert in evaluating and analyzing bank data necessary to identify APSN Fees. Class Counsel spent time analyzing data

regarding Defendant's fee revenue related to the assessment of APSN Fees, with Mr. Olsen's assistance. Prior to mediation, Defendant supplied information concerning its estimate of most probable damages and provided aggregate Overdraft Fee information for the relevant time period from which Plaintiff's counsel have been able to work with the Mr. Olsen to scrutinize Defendant's estimate. Class Counsel and Plaintiff's expert used this data to analyze the damages at issue for mediation. After the Term Sheet was signed, Mr. Olsen spoke with Defendant's representatives to confirm availability of necessary data for a classwide analysis. Mr. Olsen has completed the necessary work to identify the APSN Fees assessed to Accountholders in the Settlement Class, allowing the Parties to deliver a class list to the Settlement Administrator for the Notice Program and ultimate distribution of the Net Settlement Fund.

Following a full-day mediation on April 22, 2022, with mediator Robert Meyer, Esq. of JAMS, the Parties reached an agreement in principle to settle, with the material terms memorialized in a May 4, 2022 Term Sheet. A fully executed copy of the Settlement Agreement was filed with the Court on January 30, 2023 attached to the Plaintiff's Memorandum Of Points And Authorities In Support Of Unopposed Motion For Preliminary Approval Of Class Action Settlement ("Motion") as Exhibit A.

On April 26, 2023 and September 5, 2023 the Court continued preliminary approval for counsel file supplemental information and revisions. In response, on December 29, 2023, counsel filed a fully executed Amended Settlement Agreement.

Preliminary Approval was granted on January 25, 2024. Notice was given to the Class Members as ordered. (See Declaration of Scott M. Fenwick ("Fenwick Decl."); Declaration of Patrick M. Passarella ("Passarella Decl."))

Now before the Court is the motion for final approval of the settlement agreement.

#### **CLASS DEFINITION AND ESSENTIAL MONETARY TERMS OF SETTLEMENT AGREEMENT**

- Settlement Class means all MUFG Union Bank, National Association consumer checking Accountholders in California who were assessed one or more APSN Fee during the Class Period. Excluded from the Settlement Class is Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Accountholders in the Settlement Class who make a timely election to be excluded by opting-out; and all judges and judicial referees assigned to these proceedings and their immediate family members. (Settlement, ¶69)
  - Class Period means the period from October 19, 2013 through February 28, 2019. (¶37)
- The Gross Settlement Amount ("GSA") is **\$5,000,000**, reversionary. (¶76; ¶108)
- The Net Settlement Amount ("Net") (**\$3,272,700.91**) is the GSA minus the following:
  - Up to **\$1,666,500** (33.33%) for attorney fees (¶116);
    - The following law firms have an agreement to split attorneys' fees: McCune Law Group and The Kick Law Firm, APC will collectively receive 25% of the total attorneys' fees or their relative lodestar, whichever is greater; Tycko and Zavareei LLP and Kopelowitz Ostrow P.A. will each receive 40% of the remainder of the attorneys' fees; and KalieGold PLLC will receive the final 20% of the attorneys' fees. (Supp. Brief ISO MPA, ¶1.)
  - Up to **\$60,458.10** for litigation costs (Joint Decl., ¶64.); and
  - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶121);

- Defendants will separately pay Settlement Administration Costs estimated by the proposed Settlement Administrator to be **\$93,816**. (¶76; Joint Decl., ¶39)
- Funding of Settlement: The Settlement Fund will be funded into an escrow account established by the Settlement Administrator within 10 days of the Court’s entry of the Preliminary Approval Order. (¶72)
- Disposition of Residual Funds: Within one year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks (Residual Funds) shall be distributed as follows: (¶108)
  - First, any Residual Funds shall be payable to Defendant for the amount that it paid for Settlement Administration Costs. (¶108.a)
  - Second, any Residual Funds remaining after distribution shall be distributed on a pro rata basis to participating Settlement Class Members who received Settlement Class Member Payments, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair. Should such a second distribution be made, Current Accountholders shall receive an Account credit and Past Accountholders will receive a check. Any second distribution checks shall be valid for 90 days. (¶108.b)
  - Third, in the event the costs of preparing, transmitting and administering such subsequent payments to Settlement Class Members do not make individual distributions economically feasible or practical or other specific reasons exist that would make such further distributions impossible or unfair, or if such a second distribution is made and Residual Funds still remain, Class Counsel and Defendant shall seek the Court’s approval to distribute the Residual Funds to a *cy pres* recipient in accordance with California Code of Civil Procedure Section 384. The Parties shall propose Jump\$tart Coalition (<https://cajumpstart.org/about-us>) as the *cy pres* recipient, an entity that is a nonprofit organization or foundation to support projects that will benefit the Settlement Class or similarly situated persons and works to promote financial literacy in California. The Parties’ counsel shall identify their lack of interest or involvement in the governance or work of the *cy pres* recipient in a declaration supporting the request to approve the *cy pres* recipient. (¶108.c)
    - The parties and their counsel represent that they do not have any interest or involvement in the governance or work of the California Jump\$tart Coalition. (Declaration of Nancy R. Thomas, ¶3; Supp. Joint Decl. ¶¶6-7.)

### **ANALYSIS OF SETTLEMENT AGREEMENT**

#### **A. Does a presumption of fairness exist?**

The Court preliminarily found in its Order on January 25, 2024 that the presumption of fairness should be applied. No facts have come to the Court’s attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

#### **B. Is the settlement fair, adequate, and reasonable?**

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class.

KalielGold PLLC's	72.8	\$777 - \$878	\$62,958.90
<b>TOTAL</b>	<b>2,331.9</b>		<b>\$1,175,581.80</b>

(Gold Decl. ISO Fees, ¶¶49-57, 59-61 and Exhibit 2 thereto; Kick Decl. ISO Fees, ¶¶10-11; McCune Decl. ISO Fees, ¶¶17-23; Kaliel Decl. ISO Fees, ¶¶12-13; Streisfeld Decl. ISO Fees, ¶¶11-12, 21-22.)

Therefore, Class Counsel have incurred a total loadstar of \$1,175,581.80, resulting in a multiplier of 1.41 to reach the fee request. (Gold Decl. ISO Fees, ¶¶63-64; Kick Decl. ISO Fees, ¶11; McCune Decl. ISO Fees, ¶23, Kaliel Decl. ISO Fees, ¶14; Streisfeld Decl. ISO Fees, ¶23.)

As for costs, Class Counsel has incurred costs of \$53,299.09. (Gold Decl. ISO Fees, ¶¶49-62; Kick Decl. ISO Fees, ¶11; McCune Decl. ISO Fees, ¶24; Kaliel Decl. ISO Fees, ¶16; Streisfeld Decl. ISO Fees, ¶25.)

Class Counsel is requesting \$53,299.09 in costs, which is less than the settlement cap of \$60,458.10. (*Ibid.*) The costs in this case include, but are not limited to, costs associated the filing/service costs (\$18,290.63), mediation costs (\$8,403.78), court reporting/transcript costs (\$1,529.81), and expert expenses (\$21,700), (*Ibid.*) The costs appear reasonable and necessary to the litigation.

#### **D. Incentive Award to Class Representative**

The Settlement Agreement provides for up to **\$10,000** for an incentive award to the class representative. (Settlement Agreement, ¶121.)

Plaintiff Harrold represents that her contributions to this litigation include, but are not limited to spending at least 65 hours on the following: obtaining counsel, gathering documents, reviewing documents, answering counsel's questions, and reviewing the settlement agreement. (Harrold Decl., ¶3.)

The court notes that the above is commendable, yet not exceptional. Based on the above, the Court hereby awards an enhancement award in the amounts of **\$7,500**.

#### **E. Claims Administration Costs**

The claims administrator requests **\$96,312.74** for the costs of administering the settlement. (Fenwick Decl., ¶17.) As of June 7, 2024, Kroll has billed \$37,712.74 for services and fees incurred in the administration of this matter, and estimates that it will bill an additional \$58,600 to complete the administration of this Settlement. (*Ibid.*)

The Settlement provides that Defendants will separately pay Settlement Administration Costs estimated by the proposed Settlement Administrator to be \$93,816. (¶76; Joint Decl., ¶39). Kroll represents that the higher than expected cost for notice and administrative services is attributable to the following factors: a higher than expected volume of valid email addresses were received, requiring additional Email Notices to be sent; a higher than expected volume of callers to the toll-free phone number; a higher than expected volume of mail correspondence from Class Members; additional time spent on Notice material review; and additional time spent on data processing. (Fenwick Decl., ¶17.)

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Based on all the work performed by the Claims Administrator, the Court hereby awards costs in the requested amount to be paid by Defendant separately from the Settlement Fund subject to reimbursement from residual funds to the extent available pursuant to the Settlement Agreement.

IT IS SO ORDERED.

DATED: July 25, 2024

A handwritten signature in cursive script that reads "Elaine Lu". The signature is written in black ink and is positioned above a horizontal line.

Elaine Lu  
Judge of the Superior Court