

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (BOSTON)**

MARK BETTENCOURT, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

JEANNE D'ARC CREDIT UNION and
DOES 1 through 100,

Defendants.

Case No.: 1:17-CV-12548-NMG

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF THE CLASS ACTION SETTLEMENT**

The Court, having considered the plaintiffs' Motion for Preliminary Approval of the class Action settlement, and all supporting documents thereto (collectively, the "Motion"), and the Settlement Agreement and Release (the "Settlement Agreement"), orders as follows:

1. The Defined Terms in this order shall have the same meaning given such terms in the Settlement Agreement.
2. The Court finds, on a preliminary basis, that the class, as defined in the Settlement Agreement ("Settlement Class"), meets all the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. Accordingly, the court provisionally certifies the Settlement Class, which is composed of the following class members:

"Class Member" shall mean those members of Defendant who had a checking account with Defendant prior to February 15, 2016, and were assessed an Overdraft Fee on any type of payment transaction from December 22, 2011, through June 29, 2019, against their checking account if, at the time such fee was assessed, the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee."

3. The Court provisionally appoints Mark Bettencourt as the Class Representative of the Settlement Class.

4. The Court appoints KCC Class Action Services LLC (“KCC”) as the Claims Administrator under the terms of the Settlement Agreement.

5. For purposes of the Settlement Agreement, the Court further provisionally finds that counsel for the settlement Class, Richard D. McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, are qualified, experienced, and skilled attorneys capable of adequately representing the settlement class, and they are provisionally approved as Class Counsel.

6. This certification of a preliminary Settlement Class, under this order, is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of the defendant in this action that any other proposed or certified class action is appropriate for class treatment pursuant to the Federal Rules of Civil Procedure or any similar statute, rule or common law. The entry of this order is without prejudice to the rights of the defendant to oppose class certification in this action, should the settlement not be approved or not be implemented for any reason, or to terminate the Settlement Agreement, as provided therein.

7. The Court provisionally, and solely for purposes of this settlement, finds that the members of the Settlement Class are so numerous that joinder of all members would be impracticable, that the litigation and proposed settlement raise issues of law and fact common to the claims of the Class Members, and these common issues predominate over any issues affecting only individual members of the Settlement Class, that the claims of Mark Bettencourt (the “Named Plaintiff”) are typical of the claims of the Settlement Class, that in prosecuting this Action and negotiating and entering into the Settlement Agreement, the Named Plaintiff and his

counsel have fairly and adequately protected the interests of the Settlement Class and will adequately represent the Settlement Class in connection with the settlement, and that a class action is superior to other methods available for adjudicating the controversy.

8. The Court has reviewed the Settlement Agreement and the Notice of Pending Class Action and Proposed Settlement attached thereto ("Notice") (Exhibit 1 to the Settlement Agreement) and finds that the settlement memorialized therein falls within the range of reasonableness and potential for final approval, thereby meeting the requirements for preliminary approval, and that the Notice should go out to the Settlement Class in the manner described in the Settlement Agreement. The settlement appears to be reasonable in light of the risk inherent in continuing with litigation. The Court also notes that the settlement is a non-reversionary one where no money will be returned to the Defendant. The Court also notes that the settlement was the product of an arm's length negotiation involving experienced counsel.

9. Defendant Jeanne D'Arc Credit Union will pay into the Settlement Fund \$1,197,000. Attorneys' fees will be awarded in an amount not to exceed 30% of the Settlement Fund. Costs and expenses will be awarded not to exceed \$70,000.

10. The Court finds that the methods of providing notice prescribed in the Settlement Agreement meets the requirements of the Federal Rules of Civil Procedure and due process, are the best notice practicable under the circumstances, shall constitute due and sufficient notice to all persons entitled thereto, and complies with the requirements of the Constitution of the United States, and all other applicable laws.

11. For the purposes stated and defined in the Settlement Agreement, the court hereby sets the following dates and deadlines:


The Claims Administrator Sends Notice and Website Goes Live	Twenty Days After the Date of this Order
The Last Day to Opt-Out	Thirty Days After the Claims Administrator Sends Notice
The Motion for Final Approval and Attorneys' Fees Filed with the Court	Thirty-Five Days After Claims Administrator Sends Notice
Last Day to Object	Fifteen Days After the Motion for Final Approval and Attorneys' Fees is Filed with the Court
Last Day to File Responses to Objections and Class Counsel's and Defendant's Replies in Support of the Motion for Final Approval and Attorneys' Fees	Ten Days After the Last Day to Object
Final Approval Hearing	Twenty Days After the Last Day to Object or as the Court's Schedule Provides
The Claim Administrator's Filing of the Final Report	Thirty Days After the Time to Cash Checks has Expired

12. The Court hereby approves and adopts the procedures, deadlines, and manner governing all requests to be excluded from the Class, or for objecting to the proposed settlement, as provided for in the Settlement Agreement.

13. All costs incurred in connection with providing the Notice and settlement administration services to the Class Members shall be paid from the Settlement Fund.

14. If the settlement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection therewith shall terminate without prejudice to the status quo ante and rights of the parties to the action as they existed prior to the date of the execution of the Settlement Agreement, except as otherwise provided in the Settlement Agreement.

It is so ordered this 26th day of March 2020, at Boston, Massachusetts.


 Honorable Nathaniel M. Gorton
 United States District Judge

CERTIFICATE OF SERVICE

I certify that on March 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants in the above-referenced matter.

/s/ Richard D. McCune

Richard D. McCune