

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**TRACY AND DENNIS COX, on behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

Case No. 5:23-cv-392

FIRST COMMUNITY BANK,

Defendant.

PRELIMINARY APPROVAL ORDER

Plaintiffs, Tracy and Dennis Cox, and Defendant, First Community Bank, have entered into a proposed Class Action Settlement Agreement (the “Settlement”). Plaintiffs have moved the Court to certify the Settlement Class under Federal Rules of Civil Procedure 23(a) and (b)(3); to grant preliminary approval to the Settlement under Federal Rule of Civil Procedure 23(e); to approve the form and method for giving notice of the proposed Settlement to the Settlement Class; and to schedule a final approval hearing on the Settlement after the deadlines to object to, or opt out of, the Settlement have passed. Defendant does not oppose the motion.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.
2. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over the Class Representatives and Defendant in the above-captioned case (the “Parties”).

3. The Court finds that, solely for the purposes of settlement and notice, the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) have been met, specifically:

- a. The class is so numerous that joinder of all members is impracticable, as there are thousands of Class Members;
- b. There are questions of law or fact common to the class based upon the claims raised in the lawsuit relating to the Challenged Fees;
- c. The claims of the Class Representatives are typical of the claims of the Class Members because they arise from the same Challenged Fees practices;
- d. The Class Representatives and Class Counsel will fairly and adequately protect the interests of the Class Members;
- e. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members;
- f. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, as the claims are numerous.

4. The Court therefore **CERTIFIES** the following Plaintiff Class for settlement purposes only:

All persons who were charged one or more Challenged Fees by Defendant during the state specific Class Period.

The state specific “Class Period” is the period of: (i) June 24, 2012, to July 31, 2020, for Class Members whose accounts were opened in West Virginia; (ii) June 24, 2016, to July 31, 2020, for Class Members whose accounts were opened in Tennessee; (iii) June 24, 2017, to July 31, 2020, for Class Members whose accounts were opened in Virginia; and (iv) June 24, 2019, to July 31, 2020, for Class Members whose accounts were opened in North Carolina. “Challenged Fees” means (1) overdraft fees on debit card transactions that were authorized against a sufficient available account balance

but subsequently settled against an insufficient available account balance (“APSN Fees”); and (2) nonsufficient funds fees or overdraft fees on transactions that were resubmitted by a third-party after having previously been assessed a nonsufficient funds fee (“Retry Fees”). Excluded from the Class are Defendant’s current and former officers, directors, affiliates, legal representatives, successors, subsidiaries, and assigns, along with all judges who have presided over this matter and their immediate families and judicial staff. The Court appoints Tracy and Dennis Cox as Class Representatives, and the Court appoints Cohen & Malad, LLP, Stranch, Jennings & Garvey, PLLC, and Rod Smith Law, PLLC as Class Counsel.

5. The Court finds that the terms of the Settlement are within the range of a fair, reasonable, and adequate compromise under the circumstances of this case. The Court therefore preliminarily approves the Settlement and directs the parties to the Settlement Agreement to perform and satisfy the terms and conditions that are triggered by such preliminary approval.

6. The Court approves the form and method of notice provided for in the Settlement and finds that it complies with the applicable rules and the requirements of Due Process. The Court appoints Verita Global (f/k/a KCC Class Action Services, LLC), as Settlement Administrator and orders the Settlement Administrator and the Parties to implement the notice program set forth in the Settlement. Subject to approval of invoices by Class Counsel, the Settlement Administrator is authorized to be paid for services as provided in the Settlement.

7. A final approval hearing (the “Final Approval Hearing”) shall be held before the undersigned at **3:00 o’clock, on November 12, 2024, at the Robert C. Byrd United States Courthouse in Charleston**, for the purpose of: (a) determining whether the Settlement Agreement is fair, reasonable, and adequate and should be finally approved; (b) determining whether a Final Approval Order should be entered; and (c) considering Class Counsel’s application for an award of attorneys’ fees and expenses and any service awards from the Settlement Fund. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Class Members, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Class Members.

8. Members of the Settlement Class shall be afforded an opportunity to request exclusion from the Class. A request for exclusion from the Class must comply with the requirements for form and timing set forth in the Detailed Notice included in the Settlement. Members of the Settlement Class who submit a timely and valid request for exclusion shall not participate in and shall not be bound by the Settlement. Members of the Settlement Class who do not timely and validly opt out of the Class in accordance with the Detailed Notice shall be bound by all determinations and judgments in the action concerning the Settlement.

9. Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement Agreement. Any objection must

comply with the requirements for form and timing set forth in the Detailed Notice included in the Settlement. If the Class Member or his or her counsel wishes to speak at the Final Approval Hearing, he or she must comply with the requirements for form and timing set forth in the Detailed Notice included in the Settlement.

10. Any Class Member who does not make his or her objection known in the manner provided in the Settlement Agreement and Detailed Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement Agreement.

11. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement Agreement must meet the requirements set forth above, including the deadline for filing objections, and also must be accompanied by any evidence, briefs, motions or other materials the proposed intervenor intends to offer in support of the request for intervention.

12. Any lawyer intending to appear at the Final Approval Hearing must be authorized to represent a Class Member, must be duly admitted to practice law before this Court, and must file a written appearance. Copies of the appearance must be served on Class Counsel and Defendant's Counsel.

13. Not more than ten (10) days after the Exclusion Deadline, the Settlement Administrator shall provide Defendant's Counsel and Class Counsel a Notice of Settlement Exclusions, listing the names of all persons or entities who timely and validly excluded themselves from the Settlement Agreement, and Class Counsel shall promptly file the list with the Court.

14. Prior to the Final Approval Hearing, Class Counsel shall file a motion for approval of the attorneys' fees, expenses, and service awards to be paid from the Settlement Fund, along with any supporting materials.


15. If the Settlement does not become effective or is rescinded pursuant to the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Class Representatives and Defendant, and all Orders issued pursuant to the Settlement shall be vacated.

17. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement.

SO ORDERED.

ENTER: August 16, 2024




Frank W. Volk
United States District Judge