

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

**HEATHER LESLIE, JEANINE
DUNN, TAMELA HAMPTON, and
JESSIE BEASLEY, on behalf of
themselves and all others similarly
situated,**

Plaintiffs,

v.

**REDSTONE FEDERAL CREDIT
UNION,**

Defendants.

Case No.: 5:20-cv-00629-LCB

**BEVERLY MACON and
SAVANNAH GARNER, on behalf
of themselves and all others
similarly situated,**

Plaintiffs,

v.

**REDSTONE FEDERAL CREDIT
UNION,**

Defendants.

Case No.: 5:21-cv-01682-LCB

ORDER

On June 30, 2023, plaintiffs Tamela Hampton, Beverly Macon, and Savannah Garner (“Plaintiffs”) moved on behalf of themselves and a proposed settlement class

for final approval of their class-action Settlement Agreement and Release (their “Agreement”), for an award of attorneys’ fees and counsels’ reasonable costs, and for their Settlement Administrator’s reasonable fees and costs. (Doc. 89; Doc. 38).¹ In accordance with Rule 23(e)(2) of the Federal Rules of Civil Procedure, the Court called a hearing to evaluate the propriety of the parties’ proposal. (Minute Entry dated October 5, 2023). After reviewing the motion and supporting papers, including the Agreement with Defendant Redstone Federal Credit Union (“Redstone” or “Defendant”) and the Memorandum in support of the Motion, and having considered counsel’s arguments, the Court **GRANTS** the plaintiffs’ unopposed motion (Doc. 89; Doc. 38) and approves the class action settlement, the award of attorneys’ fees and costs, and the Settlement Administrator’s fees and costs.

LEGAL STANDARDS

I. Class Action Certification

Federal Rule of Civil Procedure 23(a) permits “one or more members of a class” to sue “as representative parties on behalf of all members only if” each of four prerequisites has been met:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;

¹ This motion has been docketed in both *Leslie v. Redstone Federal Credit Union*, 5:20-cv-629-LCB and *Macon v. Redstone Federal Credit Union*, 5:21-cv-1682, which have been consolidated under the *Leslie* action. Parallel citations are to the lead case first, the member case second.

- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Even if the case satisfies these four prerequisites, “[a] class action may be maintained” only if the court also finds that:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

FED. R. CIV. P. 23(b).

II. Settlement Approval

Under Federal Rule of Civil Procedure 23(e), parties may settle “[t]he claims, issues, or defenses of . . . a class proposed to be certified for purposes of settlement . . . only with the court’s approval.” If a proposed settlement “would bind class members,” then “the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate.” FED. R. CIV. P. 23(e)(2). To make this finding, the court should consider the following factors:

(A) whether the class representatives and class counsel have adequately represented the class;

(B) whether the proposal was negotiated at arm's length;

(C) whether the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3);
and

(D) the proposal treats class members equitably relative to each other.

Id. In addition to these factors, the court must consider six additional touchstones of fairness and adequacy:

- (1) the likelihood of success at trial;
- (2) the range of possible recovery;
- (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable;
- (4) the complexity, expense and duration of litigation;
- (5) the substance and amount of opposition to the settlement; and
- (6) the stage of proceedings at which the settlement was achieved.

Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984).

12. **Attorney's Fees and Costs**

Federal Rule of Civil Procedure 23(h) allows the court to award “reasonable attorney’s fees and nontaxable costs” in a class action. Although a hearing on the fee award is discretionary, the court “must find the facts and state its legal conclusions” supporting its decision.

In class action suits, courts calculate attorney’s fees under one of two methods: (1) the percentage method, or (2) the lodestar method. *In re Home Depot Inc.*, 931 F.3d 1065, 1076 (11th Cir. 2019). Under the percentage method, courts evaluate the propriety of the award percentage by considering the twelve so-called *Johnson* factors:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;

- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and the length of the professional relationship with the client;
- (12) awards in similar cases.

Camden I Condo. Ass’n, Inc. v. Dunkle, 946 F.2d 768, 772 (11th Cir. 1991) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974)). In the Eleventh Circuit, the “benchmark range” for a percentage-based award is 20–30%, though courts may authorize higher fees. *In re Home Depot Inc.*, 931 F.3d at 1076.

The lodestar method looks to the hours spent on the case and multiplies these by a reasonable rate for the work performed. *Id.* This product, known as the lodestar, can be modified upward with a multiplier. *Id.*

Where the Court awards attorney’s fees from a common fund that the attorneys have established through litigation for the benefit of the settlement class, the Eleventh Circuit has prescribed the percentage method as the better of the two. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991).

FINDINGS AND CONCLUSIONS

After reviewing the motion and supporting papers, including the Settlement Agreement and Release, and upon consideration of the controlling legal authorities and counsels' arguments at the final approval hearing, the Court finds as follows:

1. This Final Approval Order and Final Judgment incorporates the Agreement, and the terms used in this order shall have the meanings or definitions given to them in the Agreement.

2. A review of the record shows the Settlement to be fair, adequate, and reasonable in all respects.

3. Class representatives and class counsel have adequately represented the class.

4. Negotiations have taken place in good faith and at arm's length between Class Counsel and Defendant's Counsel which resulted in the Agreement.

5. The Agreement provides adequate relief to the Settlement Class: it provides them with substantial value in the form of a monetary payment in the form of a check or an account credit to Settlement Class Members, in addition to the forgiveness of certain Uncollected Fees.

6. Direct Notices were provided to Class Members in compliance with the Agreement, the Preliminary Approval Order. The Notices (i) fully and accurately informed Settlement Class Members about the lawsuit and Settlement; (ii) provided

sufficient information so that Class Members could decide whether to accept the benefits offered, opt out and pursue their own remedies, or object to the Settlement; (iii) provided procedures for Class Members to submit written objections to the Settlement, Class Counsel's request for attorneys' fees, litigation costs, and administrative costs to the Settlement Administrator, to appear at the Final Approval Hearing, and to state objections to the Settlement; and (iv) provide the time, date, and place of the Final Approval Hearing. The notice program provided for in the Agreement has been implemented and fully satisfies the requirements of due process.

7. One Settlement Class Member, [REDACTED], opted out of the Settlement by the deadline.

8. No objections to the Settlement were made by the deadline to object.

9. As stated in the Preliminary Approval Order, the proposed Settlement Class, as defined below, meets all the legal requirements for class certification, for settlement purposes only, in that (a) the members of the Settlement Class are so numerous as to make joinder impracticable; (b) there are questions of law and fact common to the Settlement Class, and such questions predominate over any questions affecting only individual Settlement Class members; (c) Plaintiffs' claims and the defenses thereto are typical of the claims of Settlement Class members and the defenses thereto; (d) Plaintiffs and their counsel can and have fairly and adequately

protected the interests of the Settlement Class members in this action; and (e) a class action is superior to all other available methods for fairly and efficiently resolving this action and provides substantial benefits to the parties, the Settlement Class members and the Court. The Court therefore certifies the Settlement Class for settlement purposes only.

10. The parties value the Settlement at \$3,976,031, which they calculate as the combined value of the common-fund monetary relief and debt forgiveness the Settlement will provide the class members. More specifically, Defendant has agreed to create a common fund of \$3,700,000, which will be distributed directly to class members, and to forgive \$276,031 of certain uncollected fees. An award of **\$1,325,211** in attorneys' fees to Class Counsel is thus fair and reasonable in light of the nature of this case, Class Counsel's experience and efforts in prosecuting the Actions, and the benefits obtained for the Class. Under the percentage method, this award comes just under one-third the value of the settlement, a figure within the range of awards other courts in this circuit have authorized in similar cases. Moreover, given the costs that counsel have shown that they reasonably incurred in litigating these cases, an award of **\$28,913.54** in costs is also reasonable.

11. Costs and fees to the Settlement Administrator, currently estimated to be **\$148,573.89**, is also fair and reasonable in light of its work in disseminating notice to the Settlement Class and administering the Settlement and the Settlement Fund.

The Court therefore **ORDERS**:

12. The Settlement is approved.

13. **Settlement Class.** In accordance with Rule 23(c) of the Federal Rules of Civil Procedure, the Settlement Class is defined as:

All persons who are members of the Multiple NSF Fee Class, Regulation E Class, and/or the Sufficient Funds Class.

Multiple NSF Fee Class: All current or former members of Defendant who were assessed Multiple NSF Fees on a consumer account. Multiple NSF Fees mean nonsufficient funds fees and overdraft fees that were charged and not refunded from December 20, 2015 to July 1, 2021 for ACH and check transactions that were re-submitted by a merchant after being rejected for insufficient funds.

Regulation E Class: All current or former members of Defendant who were assessed Regulation E Overdraft Fees on a consumer account. Regulation E Overdraft Fees mean overdraft fees that were charged to members of Defendant and not refunded from May 5, 2014 to July 1, 2021 for non-recurring debit card or ATM transactions.

Sufficient Funds Class: All current or former members of Defendant who were assessed Sufficient Funds Overdraft Fees on a consumer account. Sufficient Funds Overdraft Fees mean overdraft fees that Defendant assessed and did not refund from May 5, 2014 to July 1, 2021 where there was enough money in the member's account to cover the transaction in question if holds placed on deposits, holds for pending debit card transactions, and legal and other holds were not deducted from the account balance.

14. Moreover, in accordance with Rule 23(c), the class claims were defined as breach of contract and violation of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq. ("EFTA"). The disputed issues included whether Redstone breached its contract by assessing certain overdraft fees and insufficient funds fees as alleged

in the Actions; whether Redstone violated the EFTA as alleged in the Actions; and whether the Settlement Class Members were damaged by Redstone's conduct and, if so, the proper measure of damages. As to defenses, Redstone denied that it had breached the contract with its members and denied that it had violated EFTA. Redstone argued that its agreement with its members was unambiguous and that the fees which were assessed were in accordance with its contracts and applicable law. Further, Redstone asserted that certain members' claims were subject to individual arbitration.

15. **Binding Effect of Order.** This Order applies to all claims or causes of action settled under the Agreement and binds all Settlement Class Members.

16. **Release.** As of the Effective Date of the Agreement, the Releasing Persons are deemed to release and forever discharge the Defendant Releasees from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, damages, suits, controversies, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether based on any law of any kind, whether known or unknown, asserted or unasserted, suspected or unsuspected, foreseen or unforeseen, fixed or contingent, which Releasing Persons have, own or hold against any of the Defendant Releasees that arise out of or relate to the facts and claims alleged in the Actions.

Each Releasing Person is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the claims that are the subject of the Release.

The Releasing Persons may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims that would be subject of the Release. Nevertheless, the Releasing Persons expressly agree to be bound by the Agreement, including the releases set out in the Agreement.

17. Payments to Class Members. Within fourteen days after the Effective Date, Defendant shall transfer the Settlement Fund to the Settlement Administrator, less the total amount that will be credited to Settlement Class Members by Defendant, as provided in Section 11(d)(iv)(5)(i) of the Agreement.

Within twenty-four days after the Effective Date, Defendant shall credit the accounts of those Settlement Class Members who are members of Defendant at the time of distribution in the amount of the Individual Payment they are entitled to receive (as calculated by the Settlement Administrator), and the Settlement Administrator shall pay Settlement Class Members who are not members of Defendant at the time of distribution a settlement check via mail in the amount of the Individual Payment they are entitled to receive.

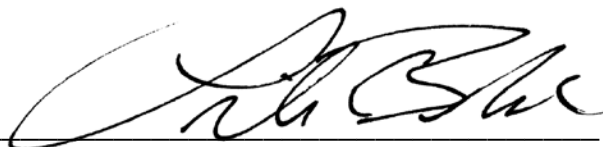
Any uncashed checks and residual amounts held by the Settlement Administrator after 180 days shall be paid either as a secondary distribution to Class Members who received credits or cashed settlement payment checks in accordance with the formulas set forth in Section 11(d)(iv) of the Agreement, or to the *cy pres* recipients nominated by the Parties, the United Way of Madison County (Alabama) and the United Way of Rutherford and Cannon Counties (Tennessee), in equal parts.

18. **Attorneys' Fees and Costs.** Class Counsel is awarded **\$1,325,211** in attorneys' fees. In addition, Class Counsel is awarded **\$28,913.54** in costs. Payments shall be made from the Settlement Fund to Class Counsel within twenty-four days after the Effective Date.

19. **Settlement Administrator's Fees and Costs.** The Court awards the Settlement Administrator its fees and costs, currently estimated to be **\$148,573.89** through the date of completion. Payment shall be made from the Settlement Fund to the Settlement Administrator within twenty-four days after the Effective Date.

20. **Court's Jurisdiction.** Pursuant to the Parties' request, the Court will retain jurisdiction over the Actions and the Parties, including Defendant, all Settlement Class Members, to administer, supervise, construe, and enforce the terms of the Final Approval Order until final performance of the Agreement.

DONE and **ORDERED** this October 20, 2023.

A handwritten signature in black ink, appearing to read 'L.C. Burke', written over a horizontal line.

LILES C. BURKE
UNITED STATES DISTRICT JUDGE