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RODNEY SMITH and the Putative Class

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RODNEY SMITH, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

BANK OF HAWAII and
DOES 1 through 10

Defendants.

Case 1:16-cv-00513-JMS-WRP

ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Trial Date: Vacated

Judge: Hon. J. Michael Seabright

**ORDER GRANTING PRELIMINARY
APPROVAL OF THE CLASS ACTION SETTLEMENT**

The Court, having considered Plaintiff Rodney Smith's 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 classes, as defined in the Settlement Agreement, meet 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 following settlement classes, composed of the following class members:

The Sufficient Funds Class: Those customers of Defendant who, between September 9, 2015 and August 1, 2017, paid a Sufficient Funds Overdraft Charge that was not refunded.

The Dismissed Sufficient Funds Class: Those customers of Defendant who paid a Sufficient Funds Overdraft Charge from September 9, 2010, through September 8, 2015 that was not refunded.

The Regulation E Class: Those customers of Defendant who opted in prior to March 1, 2017, and who from September 9, 2015, through September 30, 2017, paid an overdraft fee on a non-recurring debit card or ATM transaction that was not refunded.

3. The Court provisionally appoints Rodney Smith as the Class

Representative of the three settlement classes.

4. Plaintiff has requested bids for administration services for this case from KCC Class Action Services LLC (“KCC”) and Epiq Class Action & Claims Solutions, Inc. (“Epiq”). The Court appoints the lowest bidder between KCC and Epiq 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 classes, Margery S. Bronster and Robert M. Hatch of Bronster Fujichaku Robbins, 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 classes, and they are provisionally approved as Class Counsel.

6. This certification of preliminary settlement classes, 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 classes 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 classes, that the claims of Rodney Smith (the “Named Plaintiff”) are typical of the claims of the settlement classes, 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 members of the settlement classes and will adequately represent the settlement classes 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 attached Notice of Pending Class Action and Proposed Settlement ("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 considering 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. 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, is 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.

10. 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	Thirty Days After Preliminary Approval
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	If Convenient to this Court's Calendar, Twenty Days After the Last Day to Object or Whatever Date is Convenient to this Court's Calendar
The Claim Administrator's Filing of the Final Report	Thirty Days After the Time to Cash Checks has Expired

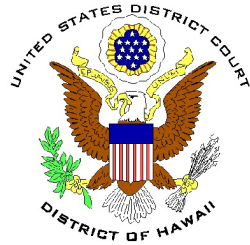
11. The Court hereby approves and adopts the procedures, deadlines, and manner governing all requests to be excluded from the settlement classes, or for objecting to the proposed settlement, as provided for in the Settlement Agreement.

12. All costs incurred in connection with providing notice and settlement administration services to the class members shall be paid from the Settlement Fund.

13. 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 12th day of March 2020.



/s/ J. Michael Seabright
J. Michael Seabright
Chief United States District Judge

RODNEY SMITH, individually and on behalf of all others similarly situated v. BANK OF HAWAII, et al.; Case 1:16-CV-00513-JMS-WRP - ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT