

MICHAEL LEE and MARNETTA BROYLD, *on
behalf of themselves and all others similarly situated*

Plaintiffs

v.

Index No.: 2021005065

CANANDAIGUA NATIONAL BANK &
TRUST

Defendant

**AMENDED ORDER GRANTING PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL**

WHEREAS, Plaintiffs in the above-captioned Class Action have applied for an order, pursuant to CPLR § 901 *et. seq.*, preliminarily approving the Settlement Agreement and Releases entered into between Plaintiffs, individually and on behalf of the proposed Settlement Class Members, and Defendant Canandaigua National Bank & Trust (“CNB”), and this Court having reviewed the Agreement as submitted to the Court with the Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”);

WHEREAS, this Preliminary Approval Order incorporates the Agreement, and its exhibits, and the terms used herein shall have the meaning and/or definitions given to them in the Agreement, as submitted to the Court with the Motion for Preliminary Approval.

NOW, THEREFORE, pursuant to CPLR § 901 *et seq.*, upon the agreement of the Parties, and after consideration of the Settlement Agreement and its exhibits,

IT IS HEREBY ORDERED as follows:

1. The Court finds that the Agreement proposed by the Parties is fair, reasonable, and

adequate and likely to be approved at a final approval hearing such that giving notice is justified. The representations, agreements, terms, and conditions of the Settlement, as embodied in the Agreement and the exhibits attached thereto, are preliminarily approved pending a final hearing on the Settlement as provided herein.

2. The Settlement was negotiated with the assistance of neutral Mediator Hon. Carol E. Heckman (Ret.), and appears to be the result of extensive, arm's length negotiations between the Parties after Class Counsel and CNB's Counsel had investigated the claims, sufficiently litigated the claims, and become familiar with the strengths and weaknesses of the claims. The Settlement appears not to be collusive, has no obvious defects, and falls within the range of reasonableness.

3. The Court finds that it will likely certify at the final approval stage the Settlement Classes for purposes of the Settlement only, consisting of:

Sufficient Funds Fee Class: All current or former customers of Defendant who were assessed Sufficient Funds Fees during the Class Period.

Retry Fee Class: All current or former customers of Defendant who were assessed a Retry Fees during the Class Period.

Excluded from the Settlement Classes are Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

4. The Court finds that this action satisfies all of the prerequisites of CPLR § 901 and that consideration of the CPLR § 902 factors support certification for purposes of settlement. The Court therefore preliminarily certifies the proposed Settlement Class.

5. For purposes of the Settlement only, the Court finds and determines that it will likely find at the final approval stage, pursuant to CPLR § 901(a)(4), that Plaintiffs Michael Lee

and Marnetta Broyld will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the State Court Action, and therefore appoints them as the Class Representative.

6. For purposes of the Settlement only, and pursuant to F CPLR § 901(a)(4), the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Class Representative with respect to the Settlement: Patrick Lannon of Cherundolo Law Firm, PLLC, Jeffrey Kalief and Sophia Gold of KaliefGold PLLC, and Taras Kick of The Kick Law Firm

7. Epiq Class Action and Claims Solutions, Inc., is appointed as Settlement Administrator and shall administer the Notice. The Settlement Administrator shall abide by the terms and conditions of the Agreement that pertain to the Settlement Administrator.

8. Having reviewed the proposed Notice Program, including the proposed Postcard Notice, Email Notice, and Long Form Notice submitted by the Parties as Exhibits 1 and 2 to the Agreement, the Court approves, as to form and content, such Notices for the purpose of notifying the Settlement Class as to the proposed Settlement, the Final Approval Hearing, and the rights of the members of the Settlement Class.

9. The Court directs the Settlement Administrator to cause a copy of the Email Notice or Postcard Notice to be sent to all Settlement Class members in accordance with the Notice Program. The Notice Program shall be completed no later than 60 days before the Final Approval Hearing.

10. The Email Notice, Postcard Notice, and Long Form Notice shall be updated by the Settlement Administrator to include the Final Approval Hearing date and time as set forth below. The Court finds and determines Email Notice and Postcard Notice pursuant to this Order constitutes the best notice practicable under the circumstances.

11. A Settlement Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Settlement Administrator. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Settlement Class Member, state that the Settlement Class Member wishes to exclude himself or herself from the Agreement and shall be signed and dated.

12. Any Settlement Class Member, other than a Settlement Class Member who timely submits an Exclusion Letter, may object to the Agreement. To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Settlement Administrator. The objection must be postmarked on or before the Bar Date to Object and must include the following information:

(i) The objector's name, address, telephone number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(ii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and

(iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

13. All pretrial proceedings in this action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

14. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

15. A Final Approval Hearing will be held in the Courtroom of Daniel J. Doyle, Monroe County Supreme Court, Hall of Justice, Rochester, NY 14604 on **June 26, 2024 at 10:00 a.m.**, to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class Members; (b) whether the Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by the Parties with the Motion for Final Approval; (c) whether to approve Class Counsel’s application for attorneys’ fees and costs, and for a Service Award for each of the Class Representative; and (d) any other matters that may properly be brought before the Court in connection with the Settlement.

16. The Court hereby sets the following schedule of events:

Event	Calendar Days Before Final Approval Hearing
Notice Program Complete (including Initial Mailed Notice and the Notice Re-Mailing Process)	April 1, 2024 (86 days before Final Approval Hearing)
Opt-Out Deadline	May 1, 2024 (56 days before Final Approval Hearing)
Motion for Final Approval, Application for Attorneys’ Fees, Expenses and Costs, and for a Service Award	May 15, 2024 (42 days before Final Approval Hearing)
Deadline to Submit Objections	June 1, 2024 (25 days before Final Approval Hearing)
Deadline to Respond to Objections	June 14, 2024 (12 days before Final Approval Hearing)
Final Approval Hearing	June 26, 2024 at 10:00 a.m. (Approx. 150 days after Prelim. Approval Order)

IT IS SO ORDERED.

DATED: _____, 2024

Hon. Daniel J. Doyle, J.S.C.