STATE OF INDIANA	)	ALLEN SUPERIOR COURT
	) SS:	
COUNTY OF ALLEN	)	CAUSE NO: 02D01-2112-PL-000521

WILLIAM WOODS, KATERINA BOBAY, and DAVID BOBAY, individually and on behalf of all others similarly situated,	)
Plaintiffs,	)
v.	)
THREE RIVERS FEDERAL CREDIT UNION,	)
Defendant.	)

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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The Court should grant finalapproval to the Settlement Agreement and Release (the "Settlement") (filed on January 4, 2024), which provides the following benefits to the Settlement Classes:

- A cash Settlement Fund of $3,300,000.00
- Debt forgiveness of $1,800,000.00
- Automatic payment of the Net Settlement Fund to Class Members by direct deposit or check, with no need to complete any claim form or take any additional action
- No reversion of any part of the Settlement Fund to Defendant; any uncollected funds will be paid to the Indiana Bar Foundation and the United Way of Allen County

The Settlement is the result of arm's-length negotiations and significant litigation and discovery, represents an excellent result for the Settlement Classes, and is a fair, reasonable, and adequate compromise. Given the overwhelmingly positive response from the Class Members after the Court's prior preliminary approval of the Settlement—no Class Members have objected or opted out—the Court should now grant final approval. Final approval will allow the Class Members to receive the benefits of the Settlement and for this matter to be resolved.

Facts

I. The Litigation.

On October 4, 2021, Plaintiff William Woods filed a Class Action Complaint in the Superior Court, Wayne County, Indiana, entitled *Williams Woods*

v. Three Rivers Federal Credit Union, Cause No. 89D02-2110-PL-000052, alleging claims on behalf of a class for breach of contract of the Defendant's Membership, Account and Account Service Agreement and Rate and Fee Disclosure (collectively, the "Membership Agreement"), including breach of the covenant of good faith and fair dealing, unjust enrichment and violation of Indiana's Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq*. ("DCSA") for alleging assessing multiple nonsufficient fund fees on a single transaction.

On October 4, 2021, Plaintiff William Woods served his First Set of Interrogatories and First Requests for Production to the Defendant. Defendant responded to the First Set of Interrogatories and First Requests for Production on June 1, 2023.

On November 17, 2021, an Amended Class Action Complaint ("Amended Complaint") was filed wherein Plaintiffs Katerina Bobay and David Bobay were added as plaintiffs. Within the Amended Complaint, the Plaintiffs asserted claims on behalf of four classes for breach of contract of the Membership Agreement, including breach of the covenant of good faith and faith dealing, unjust enrichment and violation of the DCSA for allegedly (a) assessing multiple nonsufficient fund fees ("NSF Fee") on a single transaction; (b) assessing overdraft fees ("OD Fees") on transactions that authorized positive and settled negative; (c) assessing overdraft

protection transfer fees on transfers that did not prevent an overdraft; and (d) assessing OD Fees or NSF Fees on transactions utilized to verify customer accounts that resulted in no changes to the customer account balances.

On November 24, 2021, Plaintiffs served their Second Set of Interrogatories and Second Requests for Production to the Defendant. Defendant responded to the Second Set of Interrogatories and Second Requests for Production on June 1, 2023.

On November 30, 2021, the Defendant filed a motion to transfer the case to the preferred venue of Allen County, Indiana. The motion was granted and the Superior Court of Wayne County, Indiana ordered the case to Allen County, Indiana. Judge Andrew Williams of the Allen County Superior Court was appointed as the Judge.

On January 18, 2022, the Defendant filed a Motion to Dismiss the Amended Complaint and Brief in Support. The Plaintiffs filed their response to the Motion to Dismiss on March 3, 3022. On March 30, 2022, the Defendant filed a motion for leave to file an oversized reply brief in support of Motion to Dismiss and Motion to Strike all court orders submitted in opposition to the Motion to Dismiss. The Plaintiffs responded to the Motion to Strike on March 31, 2022. On April 7, 2022, the Court granted the Defendant's motion for leave to file an oversized reply brief and accepted the Defendant's reply brief. The reply brief was deemed filed as of

March 30, 2022. A hearing was set on both the Motion to Dismiss and Motion to Strike for April 22, 2022.

On May 6, 2022, Judge Andrew Williams recused himself from the case. Based upon the agreement of the Parties, the case was re-assigned to Judge David Avery.

Plaintiffs served a Supplemental Request for Production on Defendant on May 27, 2022. Defendant responded to the Supplemental Request for Production on June 27, 2022.

A hearing was conducted on the Motion to Dismiss and Motion to Strike on July 19, 2022. On July 19, 2022, two Orders were entered by the Court – one order denying the Motion to Strike and one order taking the Motion to Dismiss under advisement. On August 23, 2022, an Order was entered denying the Motion to Dismiss.

The Defendant filed its Answer to the Amended Complaint on November 11, 2022.

II. Mediation and Settlement.

On November 17, 2022, the Court ordered the Parties to mediation. A mediation was originally set for March 9, 2023, at 9:00 a.m., however, it was later cancelled by the Parties. The Court again ordered the Parties to mediation. Due to

various scheduling conflicts, the mediation in this matter was ultimately conducted on October 9, 2023, with Mediator John Trimble.

Prior to the mediation, the Defendant provided the Plaintiffs with one month of sample data.

After nearly two years of litigating, exchanging data related information, and discovery, the Parties were ultimately able to resolve this matter at mediation resulting in the Settlement, which provides for:

- A cash Settlement Fund of $3,300,000.00
- Debt forgiveness of $1,800,000.00
- Agreed certification of the Settlement Classes under Indiana Trial Rule 23(E) and (B)(3)
- Automatic payment of the Net Settlement Fund to Class Members by direct deposit or check, with no need to complete any claim form or take any additional action
- No reversion of any part of the Settlement Fund to Defendant; any uncollected funds will be paid to the Indiana Bar Foundation and the United Way of Allen County

III. Preliminary Approval and Notice to Class Members

On January 10, 2024, the Court granted preliminary approval to the Settlement. In its Preliminary Approval Order, the Court certified the Settlement Class, found that the Settlement was within the range of a fair, reasonable, and adequate compromise, directed that Court-approved notice be provided to the Class

Members, provided 30 days for Class Members to object to or opt out of the Settlement, and scheduled a final approval hearing, which is now set for May 13.

The Settlement Administrator created a Settlement Website and telephone number for Class Members to obtain information about the Settlement, and on March 20, 2024, the Settlement Administrator sent the Court-approved notice to the 28,842 Class Members. Declaration of Karen Rogan Re: Notice Procedures ("Rogan Decl.") ¶¶ 2–11. The deadline for Class Members to object or opt out of the Settlement passed on April 19, 2024. *Id.* ¶¶ 12–13. Not a single Class Member objected or opted out. *Id.*

Discussion

I. The Court should enter the tendered Final Approval Order, granting final approval to the Settlement as fair, reasonable, and adequate.

Indiana Trial Rule 23(E) requires court approval of a class action settlement. Judicial policy strongly favors class action settlements. *See Hefty v. All Other Members of the Certified Settlement Class*, 680 N.E.2d 843, 848 n.2 (Ind. 1997); *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 313 (7th Cir. 1980) ("In the class action context in particular, there is an overriding public interest in favor of settlement.") (internal quotation omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

In general, the approval process involves four stages: (1) the court determines whether the proposed class meets the requirements for class certification under Trial

Rule 23 and whether the proposed settlement appears fair on a preliminary basis such that the court can grant preliminary approval; (2) upon preliminary approval, court-approved notice of the proposed settlement is sent to the certified class; (3) class members then have an opportunity to opt out of, or object to, the proposed settlement; and (4) a subsequent hearing is held at which the court grants "final approval" upon finding that the settlement is "fair, reasonable, and adequate," after which judgment is entered on the settlement, class members receive the benefits of the settlement, and the defendant is released. *See, e.g.*, *Hefty,* 680 N.E.2d at 851.

Here, the settlement process is in its final stage. The Court has already certified the Settlement Class, found that the Settlement appeared on a preliminary basis to be a fair, reasonable, and adequate compromise, and directed notice to the Class Members. As at preliminary approval, all of the relevant factors favor final approval of the Settlement now, and the only new factor—the response of the Class Members to the Settlement—overwhelmingly supports final approval as no Class Member objects nor has any Class Member chosen to be excluded.

In *Hefty*, the Supreme Court suggested a few basic questions to help determine if a settlement is fair, reasonable, and adequate:

> Does the settlement provide significantly less relief than what seems appropriate in light of discovery? Does the settlement exclude significant claims pursued in the complaint? Was the settlement agreement reached after little or no discovery? Did the settlement negotiations concerning class compensation and attorneys' fees occur at the same time?

Hefty, 680 N.E.2d at 851. Importantly, however, "[w]hen analyzing whether a proposed settlement is fair, reasonable, and adequate, courts 'should refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights.'" *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010) (citing *E.E.O.C. v. Hiram Walker & Sons, Inc.,* 768 F.2d 884, 889 (7th Cir. 1985)).

Here, the terms of the proposed Settlement are well within the range of a fair, reasonable, and adequate compromise when considering the *Hefty* factors. Defendant has agreed to make a significant settlement payment of $3,300,000.00, as well as to forgive $1,800,000.00 in debt. This relief represents a recovery of approximately 80% of estimated damages. Therefore, the Settlement benefit constitutes substantial and appropriate relief for the Settlement Class, especially in light of the risks, costs, and delays of continued litigation that might result in no payment whatsoever.

The Settlement also was reached only after significant discovery and expert damages analysis. After thoroughly litigating the case and participating in an arm's-length mediation, the parties were able to make an informed decision on the appropriate relief for the Settlement Class, given the risks and uncertainties of continued litigation. And the Settlement does not exclude any significant claims pursued in the litigation.

Lastly, the discussion of attorneys' fees did not occur until after the material terms of Settlement Class compensation. The proposed fee is in the standard contingency fee amount, and the final attorneys' fees are subject to approval by the Court as part of final approval of the Settlement. The Settlement is not contingent on any particular fee award, and the fee motion has been filed separately from the request for final approval. Finally, the fact that no Class Member has objected to or opted out of the Settlement overwhelmingly supports that the Class Members themselves believe that the Settlement is fair, reasonable, and adequate and that they view the benefits of the Settlement favorably. Thus, all of the relevant factors support granting final approval at the final approval hearing set for May 13, 2024.

Conclusion

For the foregoing reasons, the Court should enter the tendered Final Approval Order at the final approval hearing on May 13, 2024.

Dated: May 1, 2024

Respectfully submitted,

s/ Lynn A. Toops

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served electronically upon all counsel of record by operation of the Indiana E-Filing System (IEFS) on May 1, 2024.

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