

RECEIVED

APR 18 2018

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, AT NASHVILLE

Dav. Co. Chancery Court

AMY MORTON, on behalf of
Herself and All Others Similarly
Situating,

Plaintiff,

v.

GREENBANK,

Defendant.

F.06-11
Case No. Case No. 11-15-IV

FILED
2018 APR 18 AM 8:46
DAVIDSON CO. CHANCERY CT
CLERK & MASTER
DCAH

**ORDER GRANTING UNOPPOSED MOTION FOR FINAL APPROVAL OF
SETTLEMENT, APPLICATION FOR SERVICE AWARD, AND CLASS
COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, AND
FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE**

On February 16, 2018, Plaintiff and Class Counsel filed their Unopposed Motion for Final Approval of Class Settlement, and Application for Service Award, Attorneys' Fees and Expenses and Memorandum of Law ("Motion"), seeking Final Approval of the Settlement Agreement and Release ("Agreement" or "Settlement") with GreenBank ("GreenBank") and its successor in interest, Capital Bank Corporation ("Capital Bank") (GreenBank and Capital Bank are collectively referred to herein as "the Bank").¹ Plaintiff and Class Counsel also filed declarations

¹ Defendant GreenBank, as of the filing of the Complaint in this action, was a Tennessee statechartered bank and a wholly owned subsidiary of Green Bankshares, Inc. Effective September 7, 2011, GreenBank merged with and into Capital Bank, National Association, which, by September 21, 2012 became a wholly-owned subsidiary of Capital Bank Financial Corp. On November 17, 2015, Capital Bank, National Association converted from a national association to a North Carolina state-chartered bank and subsequently changed the Bank's name to Capital Bank Corporation. Capital Bank consents to the jurisdiction of this Court and, if necessary, to be substituted in this Action as the party-defendant, as Capital Bank is a party to the Agreement, carrying out the terms of the Agreement, and agrees to be bound by the Final Judgment that will be sought approving the Settlement. Capital Bank is a division of First Tennessee National Association.

supplementing the factual record to enable the Court to evaluate the fairness, reasonableness and adequacy of the Settlement and the application for attorneys' fees.² See Exhibits 1-5 to the Motion.

This matter came before the Court on April 17, 2018, for a hearing pursuant to the Court's Amended Preliminary Approval Order dated January 18, 2017. The Court has reviewed all of the filings related to the Settlement and heard argument on the Motion. IT IS, HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the subject matter of this litigation and over all parties to this action, including all Settlement Class Members.
2. Pursuant to Tennessee Rules of Civil Procedure 23.01, 23.02, 23.03 and 23.05, this Court hereby finally certifies this Action as a class action defined as:

All GreenBank customers in the United States who have one or more Accounts and who, between February 1, 2005 and June 30, 2011, inclusive, incurred an Overdraft Fee as a result of GreenBank's Debit Card Transaction processing method, including Debit Re-sequencing.

The Class shall consist of two sub-classes, defined as follows:

Weekend and Holiday High-to-Low Subclass: All members of the Class who incurred an additional Overdraft Fee as a result of GreenBank's practice of Debit Re-sequencing all Debit Card Transactions received for settlement on any Saturday, Sunday, federal holiday, or weekday after GreenBank was closed, where the additional Overdraft Fee would not have been incurred if GreenBank had processed such transactions either chronologically or in order from lowest to highest dollar amount.

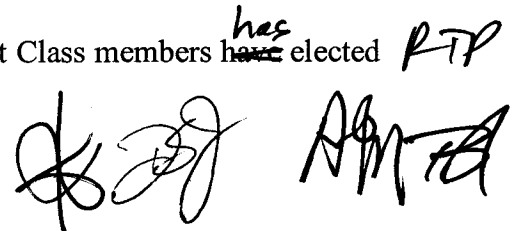
Weekend and Holiday Batch Processing Sub-class: All members of the Class who incurred an additional overdraft fee as a result of GreenBank's practice of processing together all Debit Card Transactions received for settlement on a Saturday, Sunday, federal holiday, or weekday after GreenBank was closed with all Debit Card Transactions received for settlement on the following business day, collectively in order from highest

² This Order incorporates the definitions of terms used in the Agreement attached to the Motion as Exhibit 1.

to lowest dollar amount, where the additional Overdraft Fee would not have been incurred had GreenBank processed all such Debit Card Transactions, in order from highest to lowest dollar amount, separately in chronological date order based on the dates they were received for settlement.

Excluded from the Class are all current GreenBank officers and directors, and the Judge presiding over this Action.

3. The Court confirms the prior appointment of Plaintiff, Amy Morton as Class Representative.
4. The Court appoints the law firms of Kopelowitz Ostrow P.A. and Darren Kaplan Law Firm, P.C., as Class Counsel.
5. With respect to the Settlement Class, this Court finds and concludes that: (a) the Settlement Class is so numerous that joinder of all Settlement Class members is impracticable; (b) there are questions of law and fact common to the Settlement Class and those questions predominate over individual questions; (c) the claims of the Plaintiff are typical of the claims of the Settlement Class; (d) Plaintiff and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is a fair and efficient method for adjudicating this controversy.
6. Pursuant to Tennessee Rule of Civil Procedure 23.05, this Court hereby approves the Settlement and finds that the Settlement is, in all respects, fair, reasonable and adequate to Plaintiff, Settlement Class Members and GreenBank. The Court further finds that the Settlement set forth in the Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Parties. Accordingly, the Settlement is hereby finally approved in all respects. The parties are hereby directed to perform its terms.
7. The Action is hereby dismissed in its entirety with prejudice. One Settlement Class Member has/have objected to the Settlement and only ¹/₇ Settlement Class members ~~have~~^{has} elected RTP

Handwritten signatures and initials at the bottom right of the page. There are two large, stylized signatures on the left and the initials 'RTP' on the right.

to opt-out of the Settlement Class. The ^{identity the} identities of those account holders ^{has} who have opted out are RTP
listed in attached *Exhibit A*.

8. The releases as set forth in the Agreement are expressly incorporated herein.

9. Upon the Effective Date, the Releasing Parties are forever barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind (whether within the United States or not) asserting any of the Released Claims against any of the Released Parties.

10. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties.

11. The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure

23.03, due process and any other applicable law.

12. Pursuant to applicable legal authority, the Court hereby approves Class Counsel's application for attorneys' fees and states that the fees are reasonable in light of the efforts of Class Counsel and the result obtained for the Settlement Class. Class Counsel are hereby awarded attorneys' fees in the amount of \$525,000.00, representing 35% of the Settlement Fund, payable out of the Settlement Fund.

13. The Court hereby approves Class Counsel's request for reimbursement of costs and expenses. Class Counsel are hereby awarded the reimbursement of expenses in the amount of \$148,958.07, payable out of the Settlement Fund.

14. Class Representative, Amy Morton, is hereby awarded a Service Award in the amount of \$5,000.00. The Service Award has been determined by the Court to be fair, reasonable and appropriate. The Service Award shall be payable out of the Settlement Fund. In addition to the Service Award, Plaintiff is also eligible for a share of the payment from the Settlement Fund as a member of the Settlement Class.

15. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) the implementation of the Settlement; and (b) the Parties and the Settlement Class Members for the purpose of construing, enforcing and administering the Agreement.

16. In the event that the Agreement is terminated pursuant to the terms of the Agreement, the parties shall return to the status quo ante in the Action as if the Parties had not entered into the Agreement, and, upon application of either Party, this Judgment shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

17. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed. *Court costs are taxed to Plaintiff. RTP*

DONE AND ORDERED in Nashville, Tennessee, this 18th day of April, 2018.



RUSSELL T. PERKINS
CHANCELLOR

cc: All Counsel of Record

EXHIBIT A

1. Debbie K. Marshall