

**COMMONWEALTH OF KENTUCKY
HARDIN COUNTY CIRCUIT COURT
CASE NO. 19-CI-01559
DIV. 3**

ELECTRONICALLY FILED

JEAN JOHNSON, individually and
on behalf of all others similarly
situated

PLAINTIFF

V.

ORDER APPROVING FEES, EXPENSES, AND SERVICE AWARD

SOUTH CENTRAL BANK

DEFENDANT

* * * * *

Plaintiff has moved for an Order approving payments for attorneys' fees, expenses, and a service award from the \$2.8 million Settlement Fund created by the settlement of this case, and the Court, being duly advised, now finds that the motion should be, and hereby is, **GRANTED**.

The Court **FINDS** and **CONCLUDES** as follows:

1. The Court has granted final approval to the settlement of this case by separate order. The settlement resulted in the created of a Settlement Fund of \$2,800,000.00 paid by Defendant for the benefit of the Settlement Class.

2. Class Counsel prosecuted this action on behalf of the Plaintiff and the Settlement Class on a contingent-fee basis, meaning that Class Counsel was not guaranteed payment for their time and effort. Instead, Class Counsel accepted the risk that they would not be paid for their work, or reimbursed for the expenses they advanced, unless a favorable result was achieved for their clients, at which time they would be paid from the monies recovered. For accepting this

risk, and in recognition of their skill and labor, Class Counsel has shown the Court that they are regularly awarded a fee of one-third of the benefits they obtain in common fund settlements.

3. In the course of prosecuting this action, Class Counsel also advanced no less than \$72,000.03 in litigation expenses for which they have not been reimbursed. Because Class Counsel advanced these expenses on a contingent basis, they were incentivized to incur only reasonable expenses that, in their professional judgment, would aid in prosecuting the case toward a favorable result.

4. The Class Representative has also participated in litigating this action by, among other things, filing the lawsuit, consulting with their counsel, sitting for deposition, and participating in approving the settlement. Without the efforts of the Class Representative, the settlement would never have been achieved. The Settlement Class has benefited from these efforts through the creation of the Settlement Fund from which Class Members will receive payments without having spent the time and effort of filing their own lawsuits.

5. CR 23.08 provides that “[i]n a certified class action the court shall approve or award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Like nearly all jurisdictions, Kentucky law recognizes the “common fund doctrine,” under which a “lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole,” along with reimbursement of reasonable litigation expenses. *Coll. Ret. Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 WL 226112, at *3–5 (Ky. Ct. App. Jan. 16, 2015) (affirming award of attorneys’ fees of one-third (\$7.5 million) from a \$22.4 million common fund recovered for a class) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980)). Courts have found a one-third fee to be generally reasonable,

sometimes awarding even more than that amount. *See, e.g., id.; Ware v. CKF Enters., Inc.*, No. 5:19-183-DCR, 2020 WL 2441415, at *16 (E.D. Ky. May 12, 2020) (“[C]ourts within this circuit have found one-third common fund attorney’s fee awards to be reasonable”); *New England Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 633 (W.D. Ky. 2006) (“Fee awards in common fund cases typically range ‘from 20 to 50 percent of the common fund created.’”); *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2009 WL 5184352, at *11 (W.D. Ky. Dec. 22, 2009) (preliminarily approving attorneys’ fees representing over 50% of the common fund).

6. Here, the Court finds that a fee of one-third of the common funds is reasonable and appropriate considering the experience and skill of counsel, the customary contingent fee, and the amount involved and results obtained. Likewise, the Court finds that the requested expenses are normal litigation costs that were reasonably expended and should, therefore, be reimbursed from the recovery.

7. In addition to Class Counsel, courts often recognize the efforts of plaintiffs whose efforts create a common fund that benefits a class of others by approving payment of a service award from the common fund. *See, e.g., Ware*, 2020 WL 2441415, at *17 (quoting *Ross v. Jack Rabbit Servs., LLC*, No. 3:14-cv-44-DJH, 2016 WL 7320890, at *5 (W.D. Ky. Dec. 15, 2016) (citations omitted)). Courts routinely award \$10,000 or more as service awards to named plaintiffs. *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (approving \$10,000 service award and collecting cases).

8. Here, Plaintiff has requested a service award of \$10,000, and the Court finds that the request is reasonable. By filing this case as a class action, Plaintiff resolved from the outset to benefit not only herself but thousands of other Class Members. Plaintiff assumed the risk of

wasting her own time if the litigation was not successful. Plaintiff diligently worked with Class Counsel to pursue the litigation, providing necessary information and consulting with Class Counsel regarding the litigation and settlement. And she sat for a deposition to represent the interests of the Class. Thus, a service award of \$10,000 is highly reasonable.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

From the \$2,800,000 Settlement Fund, the following payments are approved and awarded, payable as set forth in the Class Action Settlement Agreement:

- A. \$933,333.33 as attorneys' fees to Class Counsel;
- B. \$72,000.03 as reimbursement of litigation expenses to Class Counsel; and
- C. \$10,000 as a service award to Class Representative Jean Johnson.

Class Counsel are directed to provide a copy of this Order to the Settlement Administrator, which shall be responsible for making these payments in conformity with the terms of the settlement.

IT IS SO ORDERED

Dated:



JUDGE, HARDIN CIRCUIT COURT
DIVISION 3