

X10-UWY-CV-12-6015956-S : SUPERIOR COURT  
ALFONSE FORGIONE : COMPLEX LITIGATION DOCKET  
VS. : AT WATERBURY  
WEBSTER BANK, N.A. : MARCH <sup>11</sup>~~8~~, 2016

*Amended*

**██████████ PRELIMINARY APPROVAL ORDER** *NUNC PRO TUNC TO 3/7/16*

This matter coming to be heard on the Unopposed Motion for Preliminary Approval of Class Action Settlement and supporting papers filed by Alfonse Forgione, individually and on behalf of the Settlement Class (as defined below), requesting that the Court: (a) preliminarily approve the proposed Settlement Agreement; (b) preliminarily approve the proposed Plan of Allocation; (c) preliminarily certify for settlement purposes the proposed Class, pursuant to Sections 9.7 and 9.8 of the Practice Book; (d) appoint Alfonse Forgione as class representative; (e) appoint Robert Izard and Mark Kindall, Izard Nobel, LLP, and Hassan A. Zavareei and Jeffrey Kaliel, Tycko & Zavareei LLP, as Settlement Class Counsel; (f) approve the proposed Notice program and the form and content of the Notices; (g) appoint Hilsoft Notifications as the Notice Administrator; (h) approve and order the opt-out and objection procedures set forth in the Settlement Agreement; (i) stay the Litigation against Defendant pending Final Approval of the Settlement; and (j) schedule a Final Fairness Hearing to consider final approval of the settlement.

Having reviewed and considered the Settlement Agreement, the motion and memorandum in support for preliminary approval of the settlement, and having heard and considered the arguments of counsel, the Court makes the findings and grants the relief set forth below, preliminarily approving the settlement contained in the Settlement Agreement upon the

terms and conditions set forth in this Order. Terms and phrases in this Order shall have the same meaning as defined in the Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. Having made the findings set forth below, the Court hereby preliminarily certifies a plaintiff class for settlement purposes only (the "Settlement Class") in accordance with the terms of the Settlement Agreement. The Settlement Class is defined as:

All persons who were holders of debit cards issued by Webster Bank and who were charged an overdraft fee during the period from August 16, 2010 to March 15, 2014, for any debit card transaction authorized in real time by Webster when there were sufficient available funds in the customer's account to pay the full amount of the authorized transaction, but later presented to Webster for payment at a time when there were insufficient available funds in customer accounts to pay the full amount of the transaction as a result of other items having been presented and paid.

Excluded from the defined Settlement Class are Webster, any parent, subsidiary, affiliate or controlled person of Webster, Webster's officers or directors, the judicial officers assigned to this litigation, and members of their staffs, and the heirs, successors and assigns of any of the foregoing. The Settlement also excludes from the proposed Settlement Class any person who timely submits a valid request to be excluded.

2. As provided for in the Settlement Agreement, if the Court does not grant final approval of the settlement set forth in the Settlement Agreement, or if the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Actions shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue.

3. The Settlement Class is so numerous that joinder of all members is impracticable.

4. The Court finds, based on the terms of the settlement described in the Settlement Agreement, that:

- a. There are questions of law and fact common to the Settlement Class;
- b. The claims of Representative Plaintiff are typical of the claims of members of the Settlement Class;
- c. Representative Plaintiff and Settlement Class Counsel will fairly and adequately represent the interests of the Settlement Class. There are no conflicts of interest between Representative Plaintiff and members of the Settlement Class;
- d. Questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual members of the Settlement Class; and
- e. Certification of the Settlement Class is superior to other methods for the fair and efficient adjudication of this controversy.

5. Accordingly, the Court hereby preliminarily certifies the Settlement Class, for settlement purposes only, pursuant to Sections 9-7 and 9-8(3) of the Connecticut Practice Book.

6. The Court preliminarily approves the settlement as being within the range of fair, reasonable, and adequate, subject to final consideration at the Final Fairness Hearing provided for below.

7. The Court preliminarily approves the Plan of Allocation attached as Exhibit 2 to the Declaration of Mark P. Kindall (the "Kindall Declaration") in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, subject to final consideration at the Final Fairness Hearing provided for below.

8. Alfonse Forgione is appointed as Representative Plaintiff.

9. The Court appoints Robert A. Izard and Mark P. Kindall, Izard Nobel, LLP, and Hassan A. Zavareei and Jeffrey Kaliel, Tycko & Zavareei LLP, as counsel for the Settlement Class ("Settlement Class Counsel").

10. A hearing (the "Final Fairness Hearing") shall be held before this Court on July 6 2016 at 10:00 a.m., at the Superior Court for the Judicial District of Waterbury, 400 Grand Street, Waterbury, Connecticut to determine: (a) whether the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class; (b) whether the Court should grant final approval of the settlement and Plan of Allocation; and (c) whether, and in what amount, attorneys' fees, costs, and expenses, and Representative Plaintiff incentive award should be paid to Settlement Class Counsel for distribution. The Court may adjourn and/or continue the Final Fairness Hearing without further notice to Settlement Class Members.

11. The Court approves as to form and content the Notice Plan.

12. The Court approves and appoints Hilsoft Notifications as Notice Administrator.

13. As soon as is possible, and in any event within \_\_\_ days of this Order, notice shall be given to the Class consistent with the Notice Plan and the Settlement Agreement.

14. The Court finds that compliance with the Notice Plan is the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with the requirements of applicable law and due process.

15. Prior to the Final Fairness Hearing, the Settling Parties shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with the Notice Plan.

16. No later than 45 days prior to the Fairness Hearing, Plaintiff shall file a Motion for Final Approval, together with any motion for Attorneys' Fees, costs and expenses, and any motion for an award of an incentive payment.

17. To be excluded from the Settlement, a Settlement Class Member must individually sign and timely submit written notice clearly manifesting his or her intent to a designated Post Office Box established for said purpose. The written notice must refer to *Forgione v. Webster Bank* and must list the account number of the Webster account linked to a Webster Debit Card. In addition, the exclusion request must include, for each account listed:

- a. The full names and current addresses of each person whose name is on the account.
- b. A statement that each person whose name is on the account satisfies the criteria to be a Settlement Class Member.
- c. A statement of intention to exclude each person whose name is on the account from the Settlement Class.
- d. The signature of each person whose name is on the account.

18. All requests for exclusion must be postmarked by no later than 30 days prior to the Fairness Hearing.

19. All persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of the Settlement Agreement, the Judgment Order entered thereon, and all Orders entered by the Court in connection with the settlement set forth in the Settlement Agreement. All persons who submit valid and timely notice of their intent to be excluded from the Settlement Class shall neither receive any benefits nor be bound by the terms of the Settlement Agreement.

20. To object to the settlement, the Plan of Allocation, or to the motions for attorneys' fees, costs and expenses, or for an incentive award, a Settlement Class Member must timely file a written statement of objection with the Court. The written statement of objection must set forth:

- a. the full name, address, and telephone number of the objector;
- b. all reasons for the objection;

- c. the names of all attorneys representing the objector, if any;
- d. the names of all attorneys representing the objector who will appear at the Final Fairness Hearing;
- e. a list of all people the objector will call to testify at the Final Fairness Hearing, if any;
- f. a statement stating whether the objector will appear and/or testify at the Final Fairness Hearing; and
- g. the signature of the objector or the signature of a duly authorized attorney or other duly authorized representative for the objector.

21. To be timely, a written statement of an objection in appropriate form must be filed with the Clerk of the Superior Court, Judicial District of Waterbury, 400 Grand Street, Waterbury, Connecticut, <sup>\*</sup> thirty (30) days prior to the date of the Final Fairness Hearing, and also served on Proposed Settlement Class Counsel, Robert Izard and Mark Kindall, Izard Nobel, LLP, 29 South Main St., Ste. 305, West Hartford, CT 06107, and Hassan A. Zavareei and Jeffrey Kaliel, Tycko & Zavareei LLP, 2000 L St. NW, Suite 808, Washington, D.C. 20036, and Defendant's counsel, James Sicilian, Day Pitney LLP, 242 Trumbull Street, Hartford, CT 06103-1212.

22. All discovery and pretrial proceedings in this litigation, other than confirmatory discovery provided for in the Settlement Agreement, are stayed and suspended until further order of the Court.

23. Neither the Settlement Agreement nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (a) is or may be deemed to be, or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of Webster; or (b) is or may be deemed to be, or may be used as an admission of, or evidence of,

\* Attn: Complex Litigation Docket X10

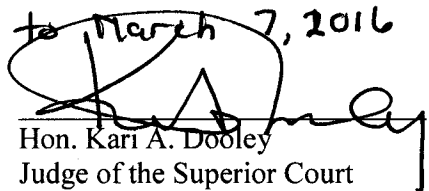
any fault or omission of Webster, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

24. In the event the Court does not grant final approval of the Settlement Agreement or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, the Settling Parties shall be restored to their respective positions in the litigation, except that all scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any Settling Party or litigant. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

25. The Court sets the following schedule for the final approval hearing and the actions which must precede it:

- a. Initial notice shall be mailed or delivered to the Settlement Class by no later than April 21, 2016.
- b. Representative Plaintiff shall file his Motion for Final Approval, Motion for Attorney's Fees, Costs and Expenses, and Motion for Incentive Award by no later than May 20, 2016.
- c. Settlement Class members must file any objections to the Motion for Final Approval, the Motion for Attorneys' Fees, Costs and Expenses, and/or the Motion for Incentive Award by no later than June 6, 2016.
- d. Settlement Class members must file requests for exclusion from the Settlement by no later than June 6, 2016.
- e. Reply briefs may be filed in response to any objections by no later than June 24, 2016.
- f. The fairness hearing will take place on July 6, 2016, at 10:00 a.m., at the Superior Court for the Judicial District of Waterbury, 400 Grand Street, Waterbury, Connecticut, Courtroom 3B

SO ORDERED, nunc pro tunc to March 7, 2016



Hon. Kari A. Dooley  
Judge of the Superior Court

Dated: March 11, 2016