

IN THE IOWA DISTRICT FOR JOHNSON COUNTY

ELISALYNN CLARK, on behalf of herself)
 and all others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 HILLS BANK AND TRUST COMPANY,)
)
 Defendant.)

Case No. LACV080753

PRELIMINARY APPROVAL ORDER

Plaintiff Elisalynn Clark and Defendant Hills Bank and Trust (“HBT”), having made an unopposed motion for preliminary approval of a Settlement Agreement (“the Settlement”) between two Settlement Classes and HBT; and the Court having read and considered the Settlement Agreement,

IT IS ORDERED that:

1. For settlement purposes only and contingent upon the Settlement being finally approved, the Court finds that this action is maintainable as a class action against HBT, for settlement purposes only, on behalf of two Settlement Classes, viz., the Authorized Positive, Purportedly Settle Negative “APPSN” Class¹; and the Retry Nonsufficient Fund (“NSF”) Fee Class.² These classes are defined as follows:

¹ APPSN Fee(s) are fee(s) that HBT charges on certain Point-of-Sale debit card transactions where there was a sufficient balance at the time the transaction is authorized, but an insufficient balance at the time the transaction was presented to HBT for payment and posted to a member's account.

² Retry NSF Fee(s) are fee(s) that HBT charges on the second or third time (or subsequent times) a third party submits an item in an attempt to collect on a check (including an electronic check) or ACH payment item after the first attempted payment was rejected because the customer's account had insufficient balance.

- the APPSN Fee Class shall mean those members of HBT who were charged APPSN Fees between January, 2012 and the date of Preliminary Approval of this Settlement.
- The Retry NSF Fee Class shall mean those members of HBT who were charged retry NSF fees between January, 2012 and the date of Preliminary Approval of this Settlement.³

2. Subject to Final Approval and the entry of Final Judgment, and for settlement purposes only, the Court finds the prerequisites of I.R.C.P. 1.261 are met and hereby certifies the foregoing defined Settlement Class as a class pursuant to I.R.C.P. 1.262 and 1.263. If such Final Approval of the Settlement is not granted, or if the Settlement Order and Final Judgment as contemplated herein is not entered, this Order of Certification shall be vacated and the parties shall be restored without prejudice to their respective litigation positions prior to the date of this Order of Preliminary Approval.

3. The Court finds that the manner and content of Notice specified in the Settlement Agreement and in the exhibits thereto (the “Notice”) will provide the best practicable notice to members of the Settlement Class and satisfies the requirements of due process. Epiq, the third-party administrator, shall send the Notice to the email addresses of all members of the Classes who are current members of HBT. For those members of the Classes who are not current members of HBT, or who have not agreed to receive notices regarding their accounts from HBT by email, or who have agreed to receive emails from HBT but such emails are returned undeliverable, Epiq shall mail the Notice to the members of the Classes by first class United

³ Excluded from the Classes are Defendant’s officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Classes are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

States mail to the best mailing address available in HBT's records. This notice will provide the Settlement Class members with the opportunity request exclusion from the Settlement Class. Such opt out rights may be exercised only individually by a Settlement Class Member, and not by any person in a representative capacity. Notice delivery (via either email or first class U.S. mail) shall be complete within 90 days of Preliminary Approval.

4. The Court preliminary and conditionally approves the settlement of the Class claims as described in the Settlement Agreement for the total sum of \$770,000 (the "Settlement Amount"). The payment of Plaintiffs' attorneys' fees and costs, and any payment to Epiq in excess of \$30,000, shall be paid out of the Settlement Fund, as provided in the Settlement Agreement. The Court preliminarily finds the Settlement to be fair, reasonable, and adequate and in the best interests of the Settlement Class Members. The Court also preliminarily finds the manner and method of distribution of the Settlement Fund to be fair, reasonable, and adequate and the best interests of the Settlement Class Members.

5. A Fairness Hearing shall be held before this Court on **June 25, 2021 at 1:30 p.m. at the Johnson County Courthouse**, to consider and finally determine:

- a. Whether the Settlement should be finally approved by the Court as fair, reasonable, and adequate;
- b. Whether attorneys' fees and expenses should be awarded to Plaintiffs' Counsel;
- c. Whether payment should be made to the Class Representative, as provided in the Settlement Agreement;
- d. Whether the plan of distribution is fair and reasonable; and
- e. Objections, if any, made to the Settlement, or any of its terms.

The fairness hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class Members. No later than fourteen days prior to the Fairness Hearing, Class Counsel shall file a Motion for Final Approval of the Class Action Settlement and any motion for Attorneys' Fee, Expenses, and Representative Plaintiff Service Award.

6. Any person who wishes to opt out of the Settlement Class must send a written request for exclusion in the manner and to the address provided in the Notice approved above. The written opt out request must be received on or before 60 days after Notice has been delivered, which itself shall occur within 90 days of this Order granting Preliminary Approval.

7. Any Settlement Class Member who has not requested exclusion and who objects to approval of the proposed settlement may appear at the Fairness Hearing in person or through counsel retained at his or her own expense to show cause why the proposed settlement should not be finally approved as fair, reasonable, and adequate. However, no person (other than named Parties) may be heard at the Fairness Hearing, or file papers or briefs in connection therewith, unless on or before the date 60 days after Notice has been delivered, which itself shall occur within 90 days of this Order granting Preliminary Approval, such person has filed with the Court and served on Class Counsel and counsel for HBT a timely written objection and a notice of intent to appear, in accordance with procedures specified in the Notice. The objection must be postmarked on or before the Bar Date to Object, and must include the following information: (i) A heading referring to the Clark v. Hills Bank & Trust Company Action with the case number No. LACV080753; (ii) The objector's name, address, telephone number, the last four digits of his or her account number (current or former) or Social Security Number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case; (iii) 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 (iv) 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.

Any member of the Settlement Class who does not object to the Settlement in the manner provided herein shall be deemed to have waived any such objection. Counsel for HBT and Class Counsel shall promptly furnish to all other counsel copies of any objection or notice of intent to appear that comes into counsel's possession.

8. Plaintiff shall file a Motion for Final Approval of the Settlement and for Attorneys' Fees, Expenses, and Representative Service Award, no later than 180 days from the date Preliminary Approval is granted.

9. If the Settlement is finally approved, the Court shall enter a Settlement Order and Final Judgment approving the Settlement Agreement incorporating it as the judgment of the Court, which judgment shall be binding upon all members of the Settlement Class who have not previously requested exclusion in accordance with this Order and the terms of the Settlement Agreement.

10. In the event that the proposed settlement reflected by the Settlement is not approved by the Court, or entry of Final Judgment or Final Approval as provided in the Settlement Agreement does not occur for any reason, then the Settlement Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by the Court in connection therewith, shall become null and void, and shall not be used or referred to for any purpose in this Litigation or any other proceeding. In such event, the Settlement Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice to the rights of any of the Parties thereto, who shall be restored to their respective positions as of the date of the execution of the Settlement.

11. Subject to Final Approval, Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class are permanently enjoined, in either an

individual or representative capacity, from filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members otherwise, or seeking to certify a class in, or organizing customers of HBT into a separate class of persons, as a purported class action (including by seeking to amend a pending complaint to include class allegations) in or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, and or underlying this action which qualify them as Settlement Class Members. The full release is detailed in the Settlement Agreement.

12. Capitalized terms herein shall have the same meaning as defined in the Settlement Agreement.

13. The Parties are hereby authorized without further approval from the Court to adopt such amendments or modifications of the Settlement Agreement and all exhibits thereto as shall be consistent in all respects with this Order and do not limit the rights of the Settlement Class Members.



State of Iowa Courts

Type: OTHER ORDER

Case Number LACV080753 **Case Title** ELISALYNN CLARK V. HILLS BANK AND TRUST COMPANY

So Ordered

A handwritten signature in black ink that reads 'Chad A. Kepros'. The signature is written in a cursive style with a horizontal line underneath it.

Chad Kepros, District Court Judge,
Sixth Judicial District of Iowa