

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

LISA HOLT, on behalf of	)	
herself and all others similarly	)	
situated,	)	
	)	
Plaintiff,	)	
	)	Case No. 4:19-cv-00629-FJG
v.	)	
	)	
COMMUNITY AMERICA CREDIT	)	
UNION,	)	
	)	
Defendant.	)	

**DECLARATION OF LYNN A. TOOPS**  
**IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR AWARD OF**  
**ATTORNEYS’ FEES, COSTS AND EXPENSES, SETTLEMENT**  
**ADMINISTRATOR’S COSTS, AND CLASS REPRESENTATIVE’S SERVICE**  
**AWARD**

I, Lynn A. Toops, declare:

1. I am over 21 years of age, am otherwise competent to testify, have personal knowledge of the matters contained in this declaration, and, if called as a witness, could and would testify competently to them.
2. I am attorney in good standing, duly licensed and admitted to the state bar of Indiana. I have been admitted *pro hac vice* to this Court in this matter. I am currently an Equity Partner of the law firm of Cohen & Malad, LLP (“C&M”), which has offices in Indianapolis, IN.
3. I serve as counsel for Plaintiff in this lawsuit, along with J. Gerard Stranch, IV of Branstetter Stranch & Jennings, PLLC and Jeffrey Kaliel of Kaliel PLLC (collectively, “Class Counsel”).
4. I make this declaration in support of the contemporaneously filed Unopposed Motion for Award of Attorneys’ Fees, Costs and Expenses, Settlement Administrator’s Costs, and Class Representative’s Service Award. Plaintiff requests (1) an award to Class Counsel of

attorneys' fees to be paid from the Settlement Fund in the amount of \$1,026,145.33 (one-third of the value of the \$3,078,436 Settlement); (2) reimbursement of expenses to Class Counsel to be paid from the Settlement Fund in the amount of \$12,286.08; (3) an award of the costs of settlement administration to be paid from the Settlement Fund to KCC Class Action Services, LLC (the "Settlement Administrator") in an amount up to \$62,500; and (4) a service award to be paid from the Settlement Fund to Lisa Holt ("Plaintiff" or "Class Representative") in the amount of \$10,000.

5. On September 4, 2020, the Court issued an Order Preliminarily Approving Class Action Settlement, Certifying the Classes, Appointing Class Counsel, Directing Notice, and Setting Date for Final Approval (the "Preliminary Approval Order"). The Court certified the Classes and found that the proposed Settlement Agreement was fair, reasonable, and adequate, and within the range of possible approval. The Court also found that the form of notice and associated class notification procedures were the best notice practicable to the Classes. The Order set deadlines for objections and opt-outs and set a final approval hearing for 12:00 p.m. on November 20, 2020.

6. Following the Court's Preliminary Approval Order, Class Counsel has continued to devote time and resources to advancing the interests of the Classes by working with the Settlement Administrator to facilitate notice to the Classes.

7. Class Counsel has also devoted and will continue to devote time and resources to preparing a motion for final approval of the Settlement, participating in the final approval hearing, and handling any post-final approval proceedings.

**I. Class Counsel's Fee Request**

8. Class Counsel's fee request in the amount of one-third of the \$3,078,436 Settlement Fund, or \$1,026,145.33, falls within the range of percentage fees considered reasonable in the

Eighth Circuit. *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming 33% fee) (quoting *Khoday v. Symantec Corp.*, No. 11-cv-180, 2016 WL 1637039, at \*9-11 (D. Minn. Apr. 5, 2016)); *In re U.S. Bancorp. Litig.*, 291 F.3d at 1038 (affirming 36% fee); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (affirming 33% fee); *Barfield*, 2015 WL 3460346, at \*4 (awarding one-third fee and collecting cases awarding one-third fees).

9. A fee award of one-third of the Settlement Fund under the common fund doctrine is also appropriate, fair, proper, and reasonable because state and federal courts have approved awards of one-third of the settlement fund in other bank fee litigation. *See, e.g., Terrell et al. v. Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Hardin Cnty., Ky., Cir. Ct., Oct. 2, 2020) (33.3% fee); *Martin v. L&N Fed. Credit Union*, No. 19-CI-002873 (Jefferson Cnty., Ky., Cir. Ct., Jun. 8, 2020) (same); *Graves v. Old Hickory Credit Union*, No. 19-475-II (Davidson Cnty., Tenn., Chanc. Ct., Sept. 3, 2019) (same); *Tisdale v. Wilson Bank & Trust*, No. 19-400-BC (Tenn. Bus. Ct., Mar. 18, 2020) (same); *Hill v. Ind. Members Credit Union*, No. 49D02-1804-PL-016174 (Marion Cnty., Super. Ct., Ind., Jan. 21, 2020) (same); *Hawley v. ORNL Fed. Credit Union*, No. B9LA0107 (Anderson Cnty., Tenn., Jun. 15, 2020) (same); *Plummer v. Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind., Sup. Ct., Oct. 2, 2020) (same); *Brooks et al. v. Canvas Credit Union*, 2019-cv-30516 (Denver Cnty., Colo., Dis. Ct., Feb. 10, 2020) (same); *Liggio v. Apple Fed. Credit Union*, No. 1:18-cv-01059-LO-MSN (E.D. Va., Dec. 6, 2019) (ECF No. 39) (same); *Bodnar v. Bank of Am.*, No. 5:14-cv-03224-EGS (E.D. Pa., Aug. 4, 2016) (ECF No. 90) (same); *Swift v BancorpSouth*, No. 1:10-cv-00090- GRJ (N.D. Fla., Jul. 15, 2016) (ECF No. 102) (approving fee award of 35% of \$24 million settlement); *Schulte v. Fifth Third Bank*, No. 09-cv-6655 (N.D. Ill., Jul. 29, 2011) (ECF No. 123) (approving fee award of 33% of \$9.5 million).

settlement); *Johnson v. Community Bank, N.A.*, No. 12-cv-01405-RDM (M.D. Pa., Nov. 25, 2013) (ECF No. 39) (approving fee award of 33% of \$2.5 million settlement).

10. Class Counsel accepted this case for Plaintiff and the Classes on a contingency fee basis, meaning that it would receive no compensation without a favorable recovery.

11. As a condition of representation, Class Counsel also advanced the costs of litigating this action without guarantee of reimbursement.

12. Class Counsel has devoted a substantial amount of time and resources to this case, which would otherwise have been spent on other matters and revenue-generating business. In litigating this lawsuit, Class Counsel has shouldered the risk of incurring substantial costs and time that would not be remunerated in the event of an adverse judgment.

13. Class Counsel's fee application is also reflective of its expertise and the preeminent success they have achieved in complex, consumer protection, and class action litigation across the country.

14. For example, Cohen & Malad, LLP has been awarded fees of one-third or greater in multiple bank fee class actions that resulted in substantial recoveries for class members in courts across the country. *See, e.g., Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Hardin Cnty., Ky.) (33.3% fee); *L&N Federal Credit Union*, No. 19-CI-002873 (Jefferson Cnty., Ky.) (same); *Old Hickory Credit Union*, No. 19-475-II (Davidson Cnty., Tenn.) (same); *Ind. Members Credit Union*, No. 49D02-1804-PL-016174 (Marion Cnty., Ind.) (same); *Wilson Bank and Trust*, No. 19-400-BC (Tenn. Bus. Ct.) (same); *ORNL Fed. Credit Union*, No. B9LA0107 (Anderson Cnty., Tenn.) (same); *Centra Credit Union*, No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.) (same).

15. In addition, in *In re Ready Mixed Concrete Antitrust Litigation*, No. 1:05-cv-00979-SEB-JMS (S.D. Ind.), Cohen & Malad, LLP, along with court-appointed co-lead counsel, secured

settlements of nearly \$60 million on behalf of a class of direct purchasers of concrete in the Indianapolis area who were the victims of a price-fixing conspiracy. In considering lead counsel's request for attorneys' fees, the district court found that a fee award was warranted under the common fund doctrine, and awarded a fee of one-third. Cohen & Malad, LLP has been awarded fees of one-third of a settlement fund in several more recent cases. *See, e.g., Harvey Property Mgmt. Grp. LLC v. HMS Companies, Inc., et al.*, No. 1:16-cv-3164-WTL-TAB (S.D. Ind. 2017) (awarding Cohen & Malad, LLP one-third of TCPA settlement); *Econo-med Pharmacy, Inc. v. Roche Diagnostics Corp.*, No. 1:16-cv-00789 (S.D. Ind. 2017), ECF No. 67 (awarding Cohen & Malad, LLP and co-counsel one-third of a \$17 million settlement fund after deduction of the class representative service award and costs); *Dubinski v. Sentry Ins.*, No. 1:14-cv-00551-TWP-DKL, 2015 WL 13640103 (S.D. Ind. 2015) (awarding Cohen & Malad, LLP and co-counsel one-third of settlement fund); *Selburg v. Virtuoso Sourcing Group, LLC*, No. 1:11-cv-01458-RLY-MJD (S.D. Ind. 2012), ECF No. 61 (awarding Cohen & Malad, LLP and co-counsel one-third of a settlement fund achieved under the Fair Debt Collections Practices Act).

16. Branstetter, Stranch & Jennings, PLLC ("Branstetter") was appointed to the Plaintiffs' Steering Committee in the *In re: Volkswagen "Clean Diesel" Multi-District Litigation*, in which the district court recently approved settlements obligating *Volkswagen* to pay a minimum of \$17 billion (including a buyback fund of over \$10 billion to eligible class members). MDL No. 2672 CRB (N.D. Cal.). This settlement was reported as the largest auto scandal payout in U.S. history. Similarly, in *In re Wellbutrin XL Antitrust Litigation*, in its role as co-lead counsel, Branstetter successfully petitioned for certification of a class of indirect purchasers for a brand and generic version of a pharmaceutical antidepressant, achieved a \$12 million settlement for the that class, and received praise from the presiding district court judge for its work. No. 08-2433 (E.D.

Penn.). Branstetter served on the Plaintiffs' Executive Committee in *Dahl v. Bain Capital Partners, LLC*, a federal antitrust case challenging bid rigging and market allocation in the private equity/leveraged-buyout industry, which reached a \$590.5 million settlement approximately two months before trial and was finally approved in 2015. No. 07-cv-1238 (D. Mass.). Branstetter also currently serves on the Plaintiffs' Steering Committee in the *In re New England Compounding Pharmacy, Inc. Products Liability Litigation*, a mass-tort MDL proceeding stemming from the 2012 fungal meningitis catastrophe caused by tainted pharmaceuticals that resulted in the deaths of over 100 people and 700 fungal infections across the country. 1:13-md-02419 (D. Mass.). Although the compounding pharmacy ultimately filed for Chapter 11 bankruptcy protection, Branstetter (along with the rest of the Plaintiffs' Steering Committee) secured over \$230 million for victims in settlements with the compounding pharmacy, its vendors, and its health-care facility customers. Branstetter also recently obtained final approval of a \$1.6 million class settlement in a TCPA "junk fax" class action in *Davis Neurology, P.A. v. Dental Equities, LLC, et al.* No. 4:16-cv-00371-BSM (E.D. Ark.).

17. Branstetter has also been awarded fees of one-third or greater in multiple bank fee class actions that resulted in substantial recoveries for class members in courts across the country. *See, e.g., Fort Knox Fed. Credit Union*, No. 19-CI-01281 (Hardin Cnty., Ky.) (33.3% fee); *L&N Federal Credit Union*, No. 19-CI-002873 (Jefferson Cnty., Ky.) (same); *Old Hickory Credit Union*, No. 19-475-II (Davidson Cnty., Tenn.) (same); *Wilson Bank and Trust*, No. 19-400-BC (Tenn. Bus. Ct.) (same); *ORNL Fed. Credit Union*, No. B9LA0107 (Anderson Cnty., Tenn.) (same).

18. Kalief PLLC has been appointed lead counsel or co-lead counsel in numerous class action and putative class action lawsuits in state and federal courts nationwide including most recently in *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Walters v. Target Corp.*, No.

3:16-cv-00492 (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st Cir. Haw.); *Liggio v. Apple Federal Credit Union*, No. 18-cv-01059 (E.D. Va.); *Morris et al. v. Bank of America, N.A.*, No. 3:18-cv-00157-RJC-DSC (W.D.N.C.); *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cty., Colo.); *White v. Members 1st Credit Union*, No. 1:19-cv-00556-JEJ (M.D. Pa.); *L&N Federal Credit Union*, No. 19-CI-002873 (Jefferson Cnty., Ky.).

19. These are just a few recent and noteworthy examples from a track of excellence by Class Counsel that spans decades. Attached as **Exs. A-1, A-2, and A-3** are true and accurate copies of the firm resumes for Class Counsel, which identifies their notable accomplishments.

20. Class Counsel's records also reflect expenses of \$12,286.08 that were reasonably incurred in prosecuting this case. A categorized list of these expenses is attached as **Ex. B** hereto. Class Counsel also reasonably anticipates incurring additional costs and expenses in an unspecified amount until this case is concluded.

## **II. The Settlement Administrator's Contributions**

21. An award of the costs for settlement administration to KCC Class Action Services, LLC (the "Settlement Administrator") in an amount up to \$62,500 is reasonable. This award is reasonable in light of the Settlement Administrator's ongoing diligent efforts in administering notice by sending more than 14,000 postcards and over 20,000 e-mails to Class Members, administering the settlement website, handling the significant communications with interested Class Members, and administering the Settlement Fund and payments from that fund.

## **III. The Class Representative's Contributions**

22. The Class Representative made significant contributions in prosecuting this action for the benefit of the Classes. Plaintiff actively prosecuted the Class's interests by filing this

lawsuit on behalf of the Classes, and the Class Representative undertook all of the responsibilities associated with being a class representative. Those responsibilities included working with Class Counsel to investigate the case, reviewing pleadings, keeping abreast of proceedings and remaining in frequent contact with Class Counsel, participating in an in-person mediation during the coronavirus pandemic, and reviewing and ultimately agreeing to all terms of the Settlement before it was executed. The Class Representative's efforts were instrumental to the prosecution and resolution of this lawsuit on highly favorable terms for the Class.

I declare, under the penalties for perjury, that the foregoing representations are true.

Dated: October 15, 2020

/s/Lynn A. Toops  
Lynn A. Toops