

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO  Court Address: 1437 Bannock Street Denver, CO 80202	DATE FILED: September 8, 2022 4:19 PM CASE NUMBER: 2020CV32226  <p style="text-align: center;">▲ COURT USE ONLY ▲</p> Consolidated Case No.: 2020CV32226  Division: 409
SABA RAEL, individually and on behalf of all similarly situated persons,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> RED ROCKS CREDIT UNION,  <p style="text-align: center;">Defendant.</p>	
<b>ORDER APPROVING ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES,          AND SERVICE AWARD</b>	

Plaintiff Saba Rael, having made an unopposed motion for approval of attorneys' fees, expenses, and service award in this class action settlement, and the Court having read and considered the Settlement Agreement,

IT IS ORDERED that:

1. Class Counsel's request for attorneys' fees and expenses is approved. The Court hereby awards Class Counsel attorneys' fees in the amount of \$68,031.82, and expenses in the amount of \$3,722.44, which awards shall be paid out of the Settlement Fund, as provided in the Settlement Agreement, which is incorporated herein by reference.

2. Class Counsel's request for a service award to Plaintiff is also approved. Plaintiff Rael shall be paid a service award in the amount of \$500. The service award shall be paid out of the Settlement Fund, as provided in the Settlement Agreement.

3. The Court finds that Class Counsel's request for attorneys' fees in the amount of \$68,031.82 is reasonable. Class Counsel vigorously prosecuted this case, received a laudable outcome for Class Members, and devoted substantial attorney time on a wholly contingent basis with no guarantee of any recovery. The attorneys' fees amount reflects a significant discount from the actual reasonable value of the legal services rendered, and the expenses incurred, by Class Counsel in this class action. Class Counsel devoted no fewer than 208.5 billable hours to the legal work performed on behalf of Plaintiff and the Settlement Class, for an actual lodestar amount of \$141,615. The attorneys' fees amount therefore represents approximately 48% of the actual lodestar attendant to this case—a discount of 52% from the usual "reasonable" amount.

4. Colorado courts use the common fund doctrine in awarding attorneys' fees in class actions. *Brody v. Hellman*, 167 P.3d 192, 198 (Colo. App. 2007). "In class actions lawsuits where a fund is created for the benefit of the class, either through settlement or judgment on the merits, the doctrine is widely adhered to as a method for proportionately spreading attorney fees among the class members." *Id.* (citing *Kuhn v. State*, 924 P.2d 1053, 1060 (Colo. 1996) (citing 7B Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice & Procedure* § 1803 (1986)).

5. In common fund cases, there is a preference towards "awarding attorneys' fees...on a percentage of the fund, rather than lodestar, basis." *Aragon v. Clear Water Prods. LLC*, No. 15-cvb-02821-PAB-STV, 2018 WL 6620724, at \*4 & n.2 (D. Colo. Dec. 18, 2018). "The percentage of the fund method rewards efficiency [whereas] the lodestar method encourages attorneys to bill

as many hours as possible.” *Brody*, 167 P.3d at 204 (citing *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1411 (D. Wyo. 1998)). The Court finds that use of the percentage of the fund method is appropriate in this case. In most cases an additional multiplier is added to the initial lodestar number in order to fully reward counsel for the risks inherent in taking on this type of litigation. *See Brody*, 167 P.3d at 203 (approving lodestar multiplier of 2.3 as “well within the range of fees customarily awarded in complex litigation” and citing with approval cases that awarded multipliers from 2.0 to 5.0, one case noting that the average multiplier was 3.0); *Shaw v. Interthinx, Inc.*, 2015 U.S. Dist. LEXIS 52783, at \*23 (D. Colo. Apr. 21, 2015) (approving lodestar multiplier of 1.37 as being “significantly lower than lodestar multipliers that Colorado federal courts and other courts consistently have approved in other class action cases”). Here, Class Counsel is not requesting an additional multiplier, and instead has agreed to a substantial discount from the lodestar amount—a *negative* multiplier.

6. In evaluating the reasonableness of Class Counsel’s request for attorneys’ fees under the percentage of fund method in this case, this Court applies the following *Johnson* factors: “(1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.” *Brody*, 167 P.3d at 200 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d

714, 717-19 (5th Cir.1974)). Not all of these factors apply to each case, and the Court will only analyze those factors that apply here.

7. With respect to the first factor, *viz.*, time and labor involved, the Court finds that Class Counsel has spent over 200 hours litigating this case, expending significant resources researching and developing the legal claims at issue, drafting pleadings and motions, and negotiating, drafting, and executing the Settlement. In sum, the attorneys' fees request is more than justified by the substantial amount of time and labor invested in this case by Class Counsel, and this factor supports the requested fee award. Class Counsel then drafted and filed Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. In sum, given the substantial amount of time and labor invested in this case by Class Counsel, the Court finds that this factor supports the requested fee award.

8. The court finds that the next two factors, *viz.*, difficulty of the case and skills of the attorney, also support the requested fee award. Class Counsel's expertise is important because this was a difficult and complex case. Success in this case was not assured and the risk of nonpayment was substantial.

9. The next factor, *viz.*, the degree of success obtain, is the most critical factor in determining the reasonableness of a fee award. *Aragon*, 2018 WL 6620724, at \*6 (quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)). The Settlement provides a "complete win" for Plaintiff and the Settlement Class. RRCU has paid and will pay the maximum damages that each Class Member could have obtained had they prevailed at trial—full payment of all GAP refunds due, plus accrued interest. The Settlement further secures an important Business Practice Change that ensures that

future RRCU customers in Colorado will also receive timely and full refunds for unearned GAP fees.

10. The attorneys' fees request is well below the lodestar value of the time and resources expended by Class Counsel in this litigation, and below the average percentage fee award of one-third of the benefit to the aggrieved Class members. Courts approving fee requests in other bank fee settlements, generally following the guideline average of 33% fee awards, have approved fees at much higher percentages of the recovered benefit than the 17% requested here. For example, since 2010, numerous courts have awarded percentage-of-the-fund fees in overdraft fee class actions (based on different—and arguably less difficult—theories of liability). The requested fee in this case is unquestionably reasonable in comparison with the fee awards approved in other bank-fee-class-action cases.

11. The Court further finds that class counsel's expenses in the amount of \$3,722.44 are reasonable and comprise charges which would normally be billed to the client.

12. Finally, the Court finds that the service award of \$500 to Plaintiff is justified and reasonable considering the substantial time and energy they devoted to this litigation.

IT IS SO ORDERED.

Dated: September 8, 2022



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Honorable Marie Avery Moses  
Denver District Court Judge