

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

TRACY FRY, individually and on behalf of all
other similarly situated,

Plaintiff,

v.

MIDFLORIDA CREDIT UNION,

Defendant.

Case No. 8:15-CV-2743 RAL TGW

Judge Assigned: Hon. Richard A. Lazzara

**DECLARATION OF RICHARD D. McCUNE IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Richard McCune, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and a shareholder with McCune Wright Arevalo, LLP (“McCune Wright Arevalo”). I am admitted via *Pro Hac Vice* in this action. The following is based on my personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. I am a partner with McCune Wright Arevalo. My firm is a thirteen-attorney firm located in Ontario, California that represents plaintiffs in consumer fraud class actions, product liability and other complex class action litigations in California and across the United States. I obtained my J.D. from the University of Southern California in June of 1987 and became a member of the California Bar in November of 1987. I have more than twenty-nine years of litigation and trial experience and am AV rated. Over the last decade, I have focused my practice on representing consumers in class action litigation. Prior to that, I represented plaintiffs in a variety of complex litigation matters, with particular emphasis in product liability actions.

3. I have been appointed class counsel in numerous state and federal class actions. A significant part of my practice since 2004 has been litigating the overdraft practices of financial institutions. In 2007, I was class counsel against Bank of America in an overdraft class case that settled for \$35 million. In 2010, I served as co-class counsel and co-trial counsel in a consumer fraud class action against Wells Fargo Bank, N.A., on behalf of over one million customers who had been improperly assessed overdraft fees. That trial resulted in a \$203 million bench trial verdict, and a permanent injunction issued forbidding Wells Fargo Bank, N.A. from continuing to misrepresent their overdraft practices. From 2009 to the 2013, I was heavily involved in litigation against over 33 banks in an overdraft MDL in the Southern District of Florida (*In re: Checking Account Overdraft Litigation*, MDL No. 2036), that has generated over \$1 billion in settlements. I was appointed class counsel in a \$5 million settlement with Citibank, N.A. relating to their overdraft practices. I have been appointed class counsel in class action settlements with Orange County's Credit Union, Point Loma Credit Union, Golden 1 Credit Union, and Los Angeles Federal Credit Union relating to their overdraft practices. I am currently appointed co-lead counsel in an overdraft MDL against TD Bank, N.A. (*In re: TD Bank, N.A., Debit Card Overdraft Litigation*, MDL No. 2613). I am also currently involved in a number of active cases against state and national financial institutions related to their overdraft practices.

4. In 2011, I was class and trial class counsel in a consumer class action trial that resulted in a plaintiffs' verdict on behalf of a class of California Correct Craft, Inc. boat owners. My firm and I have been appointed class counsel in certified class actions in a number of other consumer fraud class actions, including cases against Correct Craft, Gateway Computers, Kaiser Steel Retirees Benefit Trust, Bank of America, N.A., Hewlett-Packard, American Honda Motor Co., Mazda Motors of America, Inc., and JP Morgan Chase Bank, N.A.

5. I currently have been appointed co-lead counsel in one MDL, serve on two MDL

executive committees, and have been appointed as one of two settlement class counsel in a fourth MDL. I am appointed by Central District of California Judge James V. Selna to the Plaintiffs Personal Injury and Wrongful Death Committee in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation* (MDL #2151). I am appointed by Southern District of New York Judge Kenneth M. Karas to the Plaintiffs' Executive Committee in *In re: Ford Fusion and C-Max Fuel Economy Litigation* (MDL#2450). Central District of California Judge George H. Wu appointed me to serve as settlement class counsel in *In re: Hyundai and Kia Fuel Economy Litigation* (MDL #2424). I am currently appointed by South Carolina District Judge Bruce H. Henricks to serve as co-lead counsel in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation*.

6. In addition to my work on the case, (Eddie) Jae K. Kim (partner) performed significant work on the case. Jae K. Kim obtained his B.A. from University of California, Berkeley in 2001 before attending and graduating from Cornell Law School in 2004. Since 2005, Mr. Kim has worked at McCune Wright Arevalo (or its predecessor firm Welebir & McCune). His practice has been exclusively representing Plaintiffs in complex litigation matters, with primary emphasis in consumer class action cases. Mr. Kim has had extensive experience in all aspects of financial consumer class cases ranging from drafting pleadings to trial work to appellate work.

7. The case was staffed in my office by Ann M. Smith, who is a long-term paralegal with McCune Wright Arevalo as well as Lisa Dunham and Nichole Myles, both very experienced paralegals.

8. McCune Wright Arevalo has been active in all aspects of the case. I had principal responsibility to review documents, take the Defendant's witness depositions, including the Rule 30(b)(6) witness designated the persons most knowledgeable on the issues of the practice and

database, and attend and negotiate the mediation. I also anticipate attending the final approval hearing. Mr. Kim had principal responsibility for investigation, legal research and court filings, including drafting and editing the complaint, status conference statements, and case management conference statements. Ms. Smith, Ms. Dunham and Ms. Myles had responsibility for reviewing documents produced in discovery, preparing Rule 26 disclosures, filing preparation, filing, and filing oversight.

9. McCune Wright Arevalo also worked extensively and effectively with co-counsel The Kick Law Firm, APC. The firms made every reasonable effort to prevent the duplication of work or inefficiencies that might have resulted from having multiple firms working on this litigation. Assignments have been made for specific tasks and activities so that it was clear which firm and personnel had primary responsibility for each task. Moreover, while Plaintiff's counsel held periodic group conferences throughout the course of the litigation, these conferences were kept to a minimum, were generally based on agendas prepared in advance, and were focused primarily on strategy issues, case updates, and the assignment of future work. By allowing counsel to coordinate their efforts and assign tasks in this manner, these periodic conferences contributed to the efficiency of plaintiffs' litigation efforts and helped to avoid duplicative work.

10. With respect to the responsibilities and tasks assigned to McCune Wright Arevalo in this litigation, McCune Wright Arevalo took every reasonable effort to avoid inefficiencies or duplication of work. Appropriate attorneys and staff were assigned to specific tasks based on their respective experience levels and skills, and clear instruction was provided regarding who was responsible for each task. Moreover, where feasible, work was assigned to the lowest-billing timekeepers appropriate for the task in question.

11. During the time that this litigation has been pending, McCune Wright Arevalo has spent considerable time working on this litigation that could have been spent on other matters.

Throughout the litigation, the active prosecution of this matter has consumed a significant amount of my billable time, as well as Mr. Kim's time that could otherwise have been spent on other fee-generating work.

12. The time that McCune Wright Arevalo has spent on this litigation has been completely contingent on the outcome. McCune Wright Arevalo has not been paid for any of its time spent on this litigation.

17. The following is breakdown of the expenses for which McCune Wright Arevalo seeks reimbursement in this matter:

McCune Wright Arevalo Costs - Mid Florida Credit Union

Category	Amount
Deposition - Court Reporter	\$ 2,100.74
Experts	\$ 69,133.85
Mediation	\$ 1,530.00
Travel	\$ 7,095.42
Total	\$ 79,860.01

18. The vast majority of the costs incurred were the costs of Plaintiff expert Arthur Olsen, who spent considerable time analyzing the data in order to generate damage numbers, and to insure that the settlement proceeds could be accurately provided to the class members. That effort included Mr. Olsen flying from his office location in Seattle to the bank's headquarters in Florida to go over the data with the bank IT personnel. The foregoing expenses were incurred solely in connection with this litigation and are reflected in McCune Wright Arevalo's books and records as maintained in the ordinary course of business. These books and records are prepared from invoices, receipts, expense vouchers, check records and other records, and are an accurate

record of the expenses incurred in this case.

19. The above expense numbers do not include significant internal and other costs that McCune Wright Arevalo has incurred, but for which McCune Wright Arevalo does not seek reimbursement, including costs for printing, in-house copying, telephone expenses and legal research program subscription expenses.

20. Based on my experience and my knowledge regarding the factual and legal issues in this matter, it is my opinion that the proposed settlement in this matter is fair, reasonable and adequate, and is in the best interests of the class.

21. I am a supporter of Public Citizen, but I am not on the Board of Directors or involved in the governance of the organization.

22. I have been personally involved in all aspects of the investigation, pleadings, law and motion, discovery and settlement negotiations in this case, and it is my belief that this settlement is in the best interest of the class taking into account both the risks and benefits of proceeding to trial and verdict in this case.

I declare under penalty of perjury under the laws of the United States of America and the State of Florida that the foregoing is true and correct. Executed this 12th day of January 2018, at Ontario, California.

/s/ Richard McCune
Richard McCune

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2018 I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Middle District of Florida by using the CM/ECF system, which sent notification of such filing to all CM/ECF participants.

/s/ Taras Kick
Taras Kick