

Julie Almon v. Independence Bank

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

**READ THIS NOTICE FULLY AND CAREFULLY;
THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!**

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH INDEPENDENCE BANK (“DEFENDANT”) AND YOU WERE CHARGED CERTAIN RETURNED ITEM FEES BETWEEN SEPTEMBER 15, 2004 AND JUNE 24, 2020, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The McCracken County Circuit Court for the Commonwealth of Kentucky has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING	Unless you exclude yourself from the settlement (see the next paragraph), then you may receive a check or a credit to your account (depending on whether you are still a customer of Defendant).
EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against Defendant but you will not receive a payment. If you exclude yourself from the settlement but want to recover against Defendant, you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you may receive a payment and you will not be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

These rights and options—*and the deadlines to exercise them*—along with the material terms of the settlement are explained in this Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Julie Almon v. Independence Bank* in the McCracken County Circuit Court for the Commonwealth of Kentucky, Case No. 19-CI-00817. The case is a “class action.” That means that the “Named Plaintiff,” Julie Walker Massey, f/k/a Julie Almon, is an individual who is acting on behalf of one group of “Class Members.” The “Class” consists of current or former customers of Defendant who were assessed returned item fees for items returned when an account had insufficient funds on ACH and check transactions that were resubmitted by a merchant after being returned by Defendant (“Retry Fees”).

The Named Plaintiff claims Defendant improperly charged Retry Fees. The operative Amended Complaint alleges claims for breach of contract, including the covenant of good faith and fair dealing, and violations of the Kentucky’s Consumer Protection Act. Defendant does not deny it charged overdraft fees but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant maintains that its practices were and now are proper and properly disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member.

2. Why did I receive Notice of this lawsuit?

You received Notice because Defendant's records indicate that you were charged one or more Retry Fees. The Court directed that Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

3. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiff's lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interest of the Class as a whole and, in this case, it is her belief, as well as Class Counsel's opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find for the Named Plaintiff and Class, and there is uncertainty about whether the claims are subject to defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am part of the settlement?

If you received Notice, then Defendant's records indicate that you are a Class Member who may be entitled to receive a payment or credit to your account.

YOUR OPTIONS

5. What options do I have with respect to the settlement?

You have three options: (1) do nothing and you will receive a payment and/or forgiveness of Uncollected Fees according to the terms of this settlement; (2) exclude yourself from the settlement ("opt out" of it); or (3) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

To participate in the settlement, you need not do anything; so long as you do not opt out or exclude yourself (described in Questions 16-21, below), a payment will be made to you, either by crediting your account if you are still a customer of Defendant or by mailing a check to you at the last address on file with Defendant (or any other address you provide), and/or you may be forgiven Uncollected Fees.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is May 19, 2021.

The deadline to file an objection with the Court is also May 19, 2021.

7. How do I decide which option to choose?

If you do not like the settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate and the Court should reject the settlement, you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

8. What has to happen for the settlement to be approved?

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received Notice. The Court will make a final decision regarding the settlement at a “Fairness Hearing” or “Final Approval Hearing,” which is currently scheduled for June 18, 2021 at 8:45 a.m.

THE SETTLEMENT PAYMENT

9. How much is the settlement?

Defendant has agreed to create a Settlement Fund of \$539,849.75. In addition, Defendant has agreed to forgive certain fees, estimated to amount to \$212,079.00, that were assessed between September 15, 2004 and June 24, 2020 but were not paid.

As discussed separately below, attorneys’ fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third-party Settlement Administrator to administer the settlement (including mailing and emailing Notice) will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among all Class Members based on the amount of Retry Fees they paid. The formula for distributing the settlement is described in the settlement agreement.

10. How much of the Settlement Fund will be used to pay for attorneys’ fees and costs?

Class Counsel will request attorneys’ fees and costs be awarded by the Court of not more than one-third of the Value of the Settlement. Class Counsel has also requested that it be reimbursed approximately \$13,000 in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys’ fees and costs.

11. How much of the Settlement Fund will be used to pay the Named Plaintiff a Service Award?

Class Counsel on behalf of the Named Plaintiff will request that the Court award her up to \$5,000.00 for her role in securing this settlement on behalf of the Class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

12. How much of the Settlement Fund will be used to pay the Settlement Administrator’s expenses?

The Settlement Administrator has agreed to cap its expenses as \$54,000.00.

13. How much will my payment be?

The balance of the Settlement Fund will be divided among all Class Members on a pro rata basis. Class Members who are current customers of Defendant with a checking or savings account at Defendant in their individual name will receive a credit to their account for the amount they are entitled to receive. All other Class Members shall receive a check from the Settlement Administrator. Forgiveness of Uncollected Fees will be automatic.

14. Do I have to do anything if I want to participate in the settlement?

No. Any amount you are entitled to under the terms of the settlement will be distributed to you unless you choose to exclude yourself from the settlement, or “opt out.” Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against Defendant, but you will not receive a payment. In that case, if you choose to seek recovery against Defendant, then you will have to file a separate lawsuit or claim.

15. When will I receive my payment?

The Court will hold a Final Approval Hearing (explained below in Questions 22-24) on June 18, 2021 at 8:45 a.m. to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I exclude myself from the settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit, then you must exclude yourself, or “opt out.”

To opt out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply state “I hereby elect to be excluded from the settlement in the *Julie Almon v. Independence Bank* class action.” Be sure to include your name, the last four digits of your account number or former account number, address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by May 19, 2021, and sent to:

Almon v. Independence Bank Settlement Administrator
P.O. Box 43434
Providence, RI 02940-3434

17. What happens if I opt out of the settlement?

If you opt out of the settlement, you will preserve and not give up any of your rights to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

18. If I exclude myself, can I obtain a payment?

No. If you exclude yourself, you will not be entitled to a payment.

OBJECTING TO THE SETTLEMENT

19. How do I notify the Court that I do not like the settlement?

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you **must** send a written document to the Settlement Administrator at the address below. Your objection should state that you are a Class Member, that you object to the settlement, and the factual and legal reasons why you object, and whether you intend to appear at the hearing. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature.

All objections must be postmarked no later than May 19, 2021, and must be mailed to the Settlement Administrator as follows:

Almon v. Independence Bank Settlement Administrator
P.O. Box 43434
Providence, RI 02940-3434

20. What is the difference between objecting and requesting exclusion from the settlement?

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the Class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment if the settlement is approved, but you will release claims you might have against

Defendant. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against Defendant for the claims alleged in this lawsuit.

21. What happens if I object to the settlement?

If the Court sustains your objection, or the objection of any other Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement.

THE COURT'S FAIRNESS HEARING

22. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval or Fairness Hearing at 8:45 a.m. on June 18, 2021 at the McCracken County Circuit Court for the Commonwealth of Kentucky, located at 300 Clarence Gaines Street, Paducah, Kentucky 42001. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a "Service Award" for acting as the class representative.

23. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, the Court will consider it regardless of whether or not you attend.

24. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 19 above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

IF YOU DO NOTHING

25. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you may receive a payment that represents your share of the Settlement Fund net of attorneys' fees, Settlement Administrator expenses, and the Named Plaintiff's Service Award, and/or receive forgiveness of Uncollected Fees. You will be considered a part of the Class, and you will give up claims against Defendant for the conduct alleged in this lawsuit. You will not give up any other claims you might have against Defendant that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

26. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this Notice as "Class Counsel" will represent you and the other Class Members.

27. Do I have to pay the lawyers for accomplishing this result?

No. Class Counsel will be paid directly from the Settlement Fund.

28. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Settlement Administrator, or by reviewing it at the Records Department of the McCracken County Circuit Court for the Commonwealth of Kentucky, located at 300 Clarence Gaines Street, Paducah, Kentucky 42001.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at www.independencebanksettlement.com or at the Office of the Clerk of the McCracken County Circuit Court for the Commonwealth of Kentucky, located at 300 Clarence Gaines Street, Paducah, Kentucky 42001, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion).

For additional information about the settlement and/or to obtain copies of the settlement agreement, or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Almon v. Independence Bank Settlement Administrator
P.O. Box 43434
Providence, RI 02940-3434

For more information you also can contact Class Counsel as follows:

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***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF
DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***

QUESTIONS? VISIT WWW.INDEPENDENCEBANKSETTLEMENT.COM OR CALL 1-866-753-8729