

# NOTIFY

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## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO.: SUCV 2020-01178-BLS1

<p>DONALD HOLT, on behalf of himself and all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p>v.</p> <p>THE COOPERATIVE BANK OF CAPE COD,</p> <p style="text-align: right;">Defendant.</p>
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Notice sent  
06.17.21 (NJ)  
-MSP/B.C.D.  
-HRS/AMR., K.E.S.

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT,  
APPOINTING CLASS COUNSEL, DIRECTING NOTICE, AND  
SETTING DATE FOR FINAL APPROVAL HEARING**

WHEREAS, Plaintiff Donald Holt, individually and on behalf of a proposed Settlement Class, and Defendant, The Cooperative Bank of Cape Cod, all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this Action upon the terms and conditions stated in the Settlement Agreement and Release (the "Agreement") that is now before the Court for preliminary approval:

NOW, THEREFORE, based upon the Agreement, upon all of the files, records, and proceedings herein, statements of counsel, and it appearing to the Court that a hearing should be held to determine whether the proposed settlement described in the Agreement should be finally approved as fair, reasonable, and consistent with precedent concerning class settlements in Massachusetts.

IT IS HEREBY ORDERED THAT:

1. All capitalized terms herein shall have the same meanings as those in the

Agreement.

2. This Court has personal jurisdiction over the subject matter of this Action and the Parties, including the Named Plaintiff and all Potential Settlement Class Members.

3. The Court preliminarily approves of the Agreement, including the Notice to be sent to the Potential Settlement Class Members, finding that the proposed Agreement is sufficiently fair, reasonable, and consistent with precedent concerning class settlements in Massachusetts to warrant providing Notice to the Settlement Class, but such finding is not to be deemed as an admission of fault or liability by Defendant or a finding of the validity of any claims asserted in the Action or of any wrongdoing or of any violation of law by Defendant. Defendant shall maintain all rights to assert that but for settlement purposes, the Action should not be certified as a class.

4. For purposes of determining whether the terms of the proposed Agreement should be finally approved as fair, reasonable, and consistent with precedent concerning class settlements in Massachusetts, the following Settlement Class is preliminarily certified for settlement purposes only:

Those customers of Defendant who were charged Retry NSF/Overdraft Fees between June, 4 2014 and March 29, 2021, which is the date on which Defendant updated its account agreement and disclosures to clarify when Retry NSF/Overdraft Fees can be assessed.

Excluded from the Settlement Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, all Potential Settlement Class Members who make a timely election to be excluded, and all judges assigned to this litigation and their immediate family members.

5. The Court preliminarily finds that the terms of the Agreement are fair, adequate, and consistent with precedent concerning class settlements in Massachusetts. In so finding, the Court finds the Agreement presumptively fair because it was the product of arm's-length bargaining with the benefit of discovery, and the amount of the settlement is objectively fair and

reasonable.

6. Consistent with Mass. R. Civ. P. 23(a) and (b), the Court finds that, for purposes of settlement: (a) the number of members of the Settlement Class Members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the members of the Settlement Class Members; (c) the claims of the Named Plaintiff are typical of the claims of the members of the Settlement Class; (d) the Named Plaintiff is an adequate representative for the Settlement Class, and has retained experienced and adequate Class Counsel; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual members of the Class; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

7. For purposes of settlement only, the Court finds and determines that Plaintiff will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the action, and appoints her class representative, and the following attorneys are preliminarily appointed as Class Counsel for the Settlement Class:

Jeffrey D. Kaniel, Esq.  
Sophia G. Gold, Esq.  
KALIEL GOLD PLLC  
1100 15<sup>th</sup> Street, NW, 4<sup>th</sup> Floor  
Washington, DC 20005  
jkaniel@kaliellpc.com  
sgold@kaliellpc.com

Jeff Ostrow  
KOPELOWITZ OSTROW P.A.  
1 West Las Olas Blvd., Suite 500  
Fort Lauderdale, Florida 33301  
[ostrow@kolawyers.com](mailto:ostrow@kolawyers.com)

Brian Davis  
MELICK & PORTER  
1 Liberty Square, 7<sup>th</sup> Floor  
Boston, MA 02109

bdavis@melicklaw.com

8. The Parties have selected JND Legal Administration to serve as the Settlement Administrator. The Court hereby approves of and appoints JND Legal Administration as the Settlement Administer and directs it to commence sending Notice to the Potential Settlement Class Members and to otherwise comply with all obligations of the Settlement Administrator as outlined in the Agreement.

9. The Parties have prepared the Post Card Notice and Long Form Notice, which are attached to the Agreement as Exhibits 1-2. The Court preliminarily finds that the notice provided to Potential Settlement Class Members (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise Potential Settlement Class Members of the pendency of the Action and of their right to object or to exclude themselves from the Agreement; and (iii) is reasonable and constitutes due, adequate, and sufficient notice to all Potential Settlement Class Members entitled to receive notice.

10. The Court has carefully reviewed and hereby approves the Notice as to form and content and directs that they be sent to Potential Settlement Class Members without material alteration unless otherwise modified by agreement of the Parties and approved by the Court. The Court directs that Notice be sent to the Potential Settlement Class Members in the manner outlined in the Agreement.

11. Potential Settlement Class Members who wish to opt-out of the Agreement and exclude themselves from participation may do so by submitting timely and valid requests at any time before the Bar Date to Opt-Out. The process to opt-out is set forth in the Agreement and in the Notice. Potential Settlement Class Members who opt-out shall have no rights under the Agreement, shall not share in any of the benefits of the Agreement, and shall not be bound by the

Agreement or by any Final Approval Order and judgment approving the Agreement.

12. All Settlement Class Members who do not submit a timely, written request for exclusion in the manner set forth in the Notice and Agreement shall be bound by any Final Approval Order and judgment entered, even if such Settlement Class Members never received actual notice of this Action or the Settlement. If the Court enters a Final Approval Order, they shall be barred, now and in the future, from asserting any of the Released Claims, as defined in the Agreement, against any Released Parties, as defined in the Agreement.

13. Settlement Class Members who wish to object to the Agreement and/or to Class Counsel's application for attorneys' fees and costs and/or a Service Award to the Named Plaintiff shall file any objections pursuant to the requirements of this paragraph. To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Court, and Settlement Administrator, and Class Counsel, and Defendant's Counsel. The objection must be postmarked on or before the Bar Date to Object, and must include the following information: (a) a heading referring to the *Holt v. The Cooperative Bank of Cape Cod* Action; (b) the objector's name, address, telephone number, the last four digits of his or his 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; (c) 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 (d) 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. Class Counsel and/or Defendant's Counsel shall file any responses to objections at least seven (7) days prior to the Final Approval Hearing Date. Any objector who retains counsel shall be solely

responsible for paying his or his own attorney's fees and costs. Any objector who fails to comply with the provisions herein shall waive and forfeit any and all rights to appear and/or object separately and shall be bound by the terms of the Agreement and the orders and judgments of the Court.

14. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the Settlement on October 15, 2021 at 2:00 ~~4:00~~ PM. The Court will advise the Parties in advance of the Final Approval Hearing whether the hearing will be held in person at the Massachusetts Superior Court, Suffolk County, 3 Pemberton Square, Boston, Massachusetts 02108 or by video conference. The date and time of the Final Approval Hearing will be set forth in the Notice and published on the Settlement Website. During the Final Approval Hearing, the Court will consider whether the settlement should be approved as fair, reasonable, and consistent with precedent concerning class settlements in Massachusetts, and whether the Court should grant Final Approval of the settlement and dismiss this Action on the merits, with prejudice. The Court will also consider the amount of any attorneys' fees and costs to be awarded to Class Counsel, whether to approve the amount of any Service Award to the Named Plaintiff. The Final Approval Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice to Potential Settlement Class Members other than on the Settlement Website and the Court's docket.


15. The Court confirms the following schedule (which the court, upon showing of good cause by the Parties, may extend any of the deadlines):

Deadline to Complete Notice	60 days after Preliminary Approval
Deadline for Motion for Final Approval of the Settlement, including application for attorneys' fees, costs, and for a Service Award	60 days after Notice

Bar Date to Opt-Out	60 days after Notice
Bar Date to Object	60 days after Notice
Final Approval Hearing	<u>October 15</u> , 2021 at <u>2:00</u> <del>AM</del> <sup>PM</sup> [at least 150 days after preliminary approval]

16. The Court stays all proceedings in this Action until further Order of the Court, except that the Parties may conduct such limited proceedings as may be necessary to implement the proposed Agreement or to effectuate the terms of the Agreement.

**DONE AND ORDERED** in chambers in Suffolk County, Massachusetts this 14<sup>th</sup> day of June, 2021.

  
 SUPERIOR COURT JUDGE

Copies finished to:  
 Counsels of Record