

Donald Holt v. The Cooperative Bank of Cape Cod

**NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT**

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

**IF YOU HAD AN ACCOUNT WITH THE COOPERATIVE BANK OF CAPE COD (“DEFENDANT”) AND YOU WERE CHARGED A NONSUFFICIENT FUNDS (“NSF”) FEE AND/OR OVERDRAFT FEE BETWEEN JUNE 4, 2014, AND MARCH 29, 2021, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The Superior Court for the County of Suffolk, Massachusetts has authorized this Notice; it is not a solicitation from a lawyer.

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING</b>	If you have been assessed the type of NSF fee and/or Overdraft Fee that is being challenged in this case, then you will receive a payment from the Settlement Fund so long as you do not exclude yourself (described in the next box).
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	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 want to recover against Defendant, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	You can file an objection with the Settlement Administrator explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, you <u>will</u> receive a payment and you <u>will not</u> 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.

Questions? Visit [www.RetryNSFOverdraftFeeSettlement.com](http://www.RetryNSFOverdraftFeeSettlement.com) or call **1-833-358-1843**

## **BASIC INFORMATION**

### **1. What is this lawsuit about?**

The lawsuit that is being settled is entitled *Holt v. The Cooperative Bank of Cape Cod*. The case is a “class action.” That means that the “Named Plaintiff,” Donald Holt, is an individual who is acting on behalf of a group that includes all customers of Defendant who were charged an NSF fee on their accounts for a single payment submitted to Defendant for collection from June 4, 2014 through March 29, 2021, which request for collection initially was rejected for insufficient funds, but subsequently was re-presented to Defendant for collection on one or more additional occasions resulting in additional NSF and/or Overdraft Fees. The persons in this group are collectively called the “Class Members.”

The Named Plaintiff claims he was improperly charged NSF and/or Overdraft fees. Defendant does not deny that it assessed the Named Plaintiff NSF and/or Overdraft fees, but denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member. Defendant specifically maintains that it properly and lawfully assessed all fees in accordance with the terms of its agreements, disclosure, and applicable law.

### **2. 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 interests of the class as a whole and, in this case, it is his 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 that Defendant breached its agreements with customers or otherwise acted improperly by assessing the NSF and/or Overdraft fees that are the subject of this case. There also is uncertainty about whether the Named Plaintiff’s claims are subject to other defenses that might result in no recovery 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.

Although Defendant disputes Plaintiff’s claims, it has agreed to settle to avoid the costs, distractions and risks of litigation. Thus, even though Defendant denies that it did anything improper, it believes settlement is in its best interest and in the best interests of all of its customers.

## WHO IS IN THE SETTLEMENT

### **3. How do I know if I am part of the Settlement?**

If you received a notice, then Defendant's records indicate that you are a Class Member who is entitled to receive a payment.

## YOUR OPTIONS

### **4. What options do I have with respect to the Settlement?**

You have three options: (1) do nothing and you will receive a payment 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.

### **5. What are the critical deadlines?**

If you do nothing, you will receive settlement funds via check mailed to your residence of record when the settlement is paid at the close of the claims period.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is **September 21, 2021**.

The deadline to file an objection with the Court is also **September 21, 2021**.

### **6. 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.

### **7. 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 authorized this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for **October 15, 2021**.

## THE SETTLEMENT PAYMENT

### **8. How much is the Settlement?**

Defendant has agreed to create a Settlement Fund of \$110,000.00. As discussed separately below, attorneys' fees, litigation costs, and a service award to the Named Plaintiff, will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members proportionally. Additionally, as a result of this lawsuit, Defendant has implemented changes to its disclosures that clarify Defendant's NSF and Overdraft fee practices.

### **9. How much of the settlement fund will be used to pay for attorney fees and costs?**

Class Counsel will request that the Court award up to one-third (33-1/3%) of the value of the settlement as attorneys' fees plus reimbursement litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees based on a number of factors, including the risk associated with bringing the case, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

### **10. 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 him up to \$2,000 a piece for their 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.

### **11. How much will my payment be?**

The balance of the Settlement Fund will be divided among all Class Members proportionally. Class Members will receive a check for the amount they are entitled to receive from the Settlement Administrator.

### **12. 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.

### **13. When will I receive my payment?**

The Court will hold a Fairness Hearing (explained below in Questions 20-22) on **October 15, 2021** to consider whether the settlement should be approved. If there are no objections and the Court approves the settlement, then the Settlement Administrator should begin paying claims within approximately forty days of the Court's approval. 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.

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## EXCLUDING YOURSELF FROM THE SETTLEMENT

### **14. 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 say “I hereby elect to be excluded from the settlement in the *Holt v. The Cooperative Bank of Cape Cod* class action. Be sure to include your name, the last four digits of your account number (current or former) or Social Security Number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by **September 21, 2021** and sent to:

Retry NSF Overdraft Fee Settlement Administrator  
c/o JND Legal Administration  
P.O. Box 91398  
Seattle, WA 98111

### **15. 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.

### **16. 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

### **17. 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, the Court, Class Counsel, and Defendant’s counsel, at the addresses below. Your objection must include the following:

- A heading referring to the *Donald Holt v. The Cooperative Bank of Cape Cod* Class Action;
- Your name, address, telephone number, the last four digits of your account number (current or former) or Social Security Number, and the contact information for any attorney you have retained in connection with this case;
- A statement of the factual and legal basis for each objection and any exhibits you wish the Court to consider in connection with the objection;

- A statement as to whether you intend to appear at the Final Approval Hearing, either in person or through an attorney, and, if through an attorney, identifying the attorney by name, address, and telephone number; and
- Your signature.

Class Counsel and/or Defendant’s Counsel will file any objections and responsive pleadings at least seven days before the Final Approval Hearing Date.

Be advised that if you object to the settlement and retain an attorney for purposes of objecting, you are solely responsible for paying that attorney’s fees and costs.

If you fail to comply with the provisions herein, you will waive and forfeit any and all rights to appear and/or object separately, and will be bound by the terms of this Agreement and the orders and judgments of the Court.

All objections must be post-marked no later than **September 21, 2021** and must be mailed to the above-identified recipients as follows:

<b>CLAIMS ADMINISTRATOR</b>	<b>CLASS COUNSEL</b>
Retry NSF Overdraft Fee Settlement Administrator c/o JND Legal Administration P.O. Box 91398 Seattle, WA 98111	Jeffrey D. Kaliel, Esq. and Sophia Gold, Esq. Kaliel, PLLC 1875 Connecticut Ave. NW, 10 <sup>th</sup> Floor Washington, D.C. 20009
<b>MASSACHUSETTS SUPERIOR COURT            SUFFOLK COUNTY</b>	Jeff Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Blvd., Ste. 500 Fort Lauderdale, FL 33301
Attn: Clerk 3 Pemberton Square Boston, MA 02108	Brian C. Davis, Esq. Melick & Porter, LLP One Liberty Square, 7 <sup>th</sup> Floor Boston, MA 02109
<b>DEFENDANT’S COUNSEL</b>	
Adam Ramos, Esq. and Katherine Savage, Esq. Hinckley, Allen, & Snyder, LLP 100 Westminster Street, #1500 Providence, RI 02903	

**18. 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.

**19. 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**

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

The Court will hold a Final Approval or Fairness Hearing at **October 15, 2021** at the Superior Court for the County of Suffolk, Massachusetts. 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 representatives.

**21. 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, then you may want to attend.

**22. 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 18, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

**IF YOU DO NOTHING**

**23. 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. You will be considered a part of the class, and you will give up claims against Defendant for the conduct identified in the settlement. You will not give up any other claims you might have against Defendant that are not released in this settlement.

## THE LAWYERS REPRESENTING YOU

### **24. 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.

### **25. Do I have to pay the lawyer for accomplishing this result?**

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

### **26. Who determines what the attorneys’ fees will be?**

The Court will be asked to approve the amount of attorneys’ fees at the Fairness 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, at [www.RetryNSFOverdraftFeeSettlement.com](http://www.RetryNSFOverdraftFeeSettlement.com)

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

Retry NSF Overdraft Fee Settlement Administrator  
c/o JND Legal Administration  
P.O. Box 91398  
Seattle, WA 98111

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