

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 BANK OF HAWAII
("DEFENDANT") AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN
SEPTEMBER 9, 2010, AND SEPTEMBER 30, 2017, THEN YOU MAY BE ENTITLED
TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The District Court for the District of Hawaii has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
MAKE A CLAIM	You may make a claim for up to potentially as many as twenty (20) overdraft fees which were paid by you on a debit card or ATM transaction if there was no refund of the overdraft fee regardless of the funds in your account. The number of such overdraft fees you may have incurred are shown on the Claim Form attached to this Notice. If you did not receive a Claim Form, then you have no eligible ATM or debit card fees of this type and therefore need not make a claim. You may still be entitled to payment for other Overdraft Fees which do not require a claim to be made. If you are eligible to make a claim for ATM and debit card fees, you should fill out and submit the Claim Form within thirty (30) days after receipt of this Notice, or you might not receive any funds.
DO NOTHING	Even if you do not make a claim, if you have incurred an Overdraft Fee on a debit card or ATM transaction, while your balance was sufficient to pay for the transaction, you will receive a payment from the Settlement Fund if you do not Opt Out. However, you may receive more if you receive a Claim Form and make a claim.
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 Bank of Hawaii but you will not receive a payment. If you exclude yourself from the Settlement but want to recover against Bank of Hawaii, 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 or Opt Out as discussed above. If you object and the objection is overruled by the Court, then you will receive a payment and you will not be able to sue Bank of Hawaii for the claims asserted in this litigation. If the Court agrees with your objection, then the Settlement may not be approved and the case will go forward. If you Opt Out, you will not recover anything through this Settlement and you will have to file a separate lawsuit if you want to recover damages from Bank of Hawaii.

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

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.

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BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Rodney Smith v. Bank of Hawaii* in the United States District Court for the District of Hawaii, Case No. 16-00513 JMS-WRP. The case is a “class action.” That means that the “Named Plaintiff,” Rodney Smith, is an individual who is acting on behalf of three groups. The first is all customers of Bank of Hawaii who were charged an overdraft fee for any payment transaction from September 9, 2015 through August 1, 2017, and at the time such fee was imposed, that person had sufficient funds in the balance in his or her account to complete the transaction, but not if holds which had been placed on pending debit card transactions and deposits were deducted from the balance. The second group is all customers of Bank of Hawaii who were charged an overdraft fee for any payment transaction from September 9, 2010 through September 8, 2015, and at the time such fee was imposed, that person had sufficient funds in the balance in his or her account to complete the transaction, but not if holds which had been placed on pending debit card transactions and deposits were deducted from the balance. The third group is all customers of Bank of Hawaii who opted in to overdraft protection under Regulation E prior to March 1, 2017, and who were charged an overdraft fee for a nonrecurring debit card or ATM transaction from September 9, 2015 through September 30, 2017. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims Bank of Hawaii improperly charged overdraft fees when customers had enough money in the ledger balances but not the available balances of their checking accounts to cover a transaction, and also alleges Bank of Hawaii did not properly opt customers into its overdraft program for debit card payment transactions. The operative Amended Complaint alleges claims for violations of Hawaii’s Unfair and Deceptive Practices Act, breach of contract, including the covenant of good faith and fair dealing, unjust enrichment/restitution, money had and received, and violations of the Electronic Fund Transfer Act. The Named Plaintiff is seeking a refund of alleged improper overdraft fees charged to Class Member accounts. Bank of Hawaii 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. Bank of Hawaii 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 this Notice of this lawsuit?

You received this Notice because Bank of Hawaii’s records indicate that you were charged with one or more Eligible Overdraft Fees. The Court directed that this 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 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 Bank of Hawaii was contractually and otherwise legally obligated not to assess overdraft fees when the ledger balance was sufficient to pay for a transaction, and even if it was, there is uncertainty about whether the claims are subject to other 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 Bank of Hawaii 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.

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.

WHO IS IN THE SETTLEMENT

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

If you received this Notice, then Bank of Hawaii's records indicate that you are a Class Member who is 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 four options:

- (1) File a claim with the Claims Administrator on the Claim Form attached to this Notice to recover for the Overdraft Fees you were charged for ATM and debit card transactions pertaining to the Claim Form (if you did not receive a Claim Form then you were not assessed any eligible ATM and debit card fees);
- (2) Do nothing and you will receive a payment according to the terms of this Settlement;
- (3) Exclude yourself from the settlement ("Opt Out" of it); or
- (4) 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?

The deadline for sending a Claim Form to the Claims Administrator is **May 18, 2020**. If you do nothing, so long as you do not Opt Out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you are still a customer of Bank of Hawaii or by mailing a check to you at the last address on file with Bank of Hawaii (or any other address you provide).

The deadline for sending a letter to exclude yourself from or Opt Out of the settlement is **May 11, 2020**.

The deadline to file an objection with the Court is **May 31, 2020**.

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 under the existing Settlement, and the case will go forward as if there was not a Settlement. If your objection (and any other objection) is overruled, and the Settlement is approved, then you will still get a payment.

If you want to participate in the Settlement, and the Claim Form attached to this Notice indicates you were assessed Overdraft Fees which are eligible to make a claim, then you should fill out the Claim Form and return it as this might mean more money to you than if you do not make a claim. See Question 25, below. If you did not receive a Claim Form with this Notice, then Bank of Hawaii's records indicate you were not assessed the type of Overdraft Fees for ATM withdrawals or debit card payments that are reimbursable under the claims portion of the Settlement. In that case, you need not do anything and you will still receive a payment for other Overdraft Fees assessed if you do not Opt Out.

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.

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 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 **July 6, 2020 at 10 AM**.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Bank of Hawaii has agreed to create a Settlement Fund of \$8,000,000.00. In addition, Bank of Hawaii has agreed to forgive overdraft fees that were assessed from September 9, 2010, to September 30, 2017, but were not paid. Together these two are the Value of the Settlement.

As discussed separately below, attorneys’ fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third-party Claims Administrator to administer the Settlement (including mailing and emailing this 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 Eligible Overdraft 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 attorney fees and costs?

Class Counsel will request attorneys’ fees of \$3,719,255 be awarded by the Court, which is thirty percent (30%) of the Value of the Settlement. Class Counsel has also requested that it be reimbursed approximately \$175,000 in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys’ fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, 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. You may review the motion for attorney fees at www.BankofHawaiiOverdraft.com once it becomes available.

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 him up to \$15,000 for his 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 Claims Administrator has agreed to cap its expenses as \$149,575.

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 according to an allocation in the Settlement Agreement. Current customers of Bank of Hawaii will receive a credit to their accounts for the amount they are entitled to receive. Former customers of Bank of Hawaii shall receive a check from the Claims Administrator.

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

No. But if you received a Claim Form with this Notice and fill out the Claim Form and send it to the Administrator as provided in Question 25, below, you may receive a greater payment than if you do not make a claim. If you received this Notice but there is no Claim Form attached, then you will still be entitled to receive a payment without having to make a claim. 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 Bank of Hawaii, but you will not receive a payment. In that case, if you choose to seek recovery against Bank of Hawaii, then you will have to file a separate lawsuit or claim.

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.

15. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on **Monday, July 6, 2020 at 10 AM** 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 a substantial amount of time 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 Bank of Hawaii 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 Claims Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Rodney Smith v. Bank of Hawaii* 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 11, 2020**, and sent to:

Smith v Bank of Hawaii Claims Administrator
P.O. Box 4349
Portland, OR 97208-4349

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 Bank of Hawaii 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 Court at the address below. Your objection should say 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 31, 2020**, and must be mailed and/or emailed to the Court as follows:

By Email:

ClerkofCourt@hid.uscourts.gov
Subject Line: Rodney Smith v. Bank of Hawaii Class Action, Case No. 16-00513

By Mail:

U.S. District Court, District of Hawaii
Attn: Rodney Smith v. Bank of Hawaii Class Action, Case No. 16-00513
300 Ala Moana Blvd. Rm C338
Honolulu, HI 96850

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.

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 Bank of Hawaii. 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 Bank of Hawaii 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 and the case will go forward as if there was not a 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 **10 AM on Monday, July 6, 2020** at the District Court for the District of Hawaii, located at 300 Ala Moana Blvd. #C338, Honolulu, Hawaii 96850. 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, then you may want to 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."

SUBMIT A CLAIM

25. How do I make a claim if I received a Claim Form?

If you received a Claim Form, then you should use it to make a claim. It should be filled out, signed, and sent to the Claims Administrator.

All claims must be postmarked no later than **May 18, 2020**, and must be mailed as follows:

Smith v Bank of Hawaii Claims Administrator
P.O. Box 4349
Portland, OR 97208-4349

IF YOU DO NOTHING

26. 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, Claims Administrator expenses, and the Named Plaintiff's Service Award. You will be considered a part of the class, and you will give up claims against Bank of Hawaii for the conduct alleged in this lawsuit. You will not give up any other claims you might have against Bank of Hawaii that are not part of this lawsuit.

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.

THE LAWYERS REPRESENTING YOU

27. 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.

28. Do I have to pay the lawyer for accomplishing this result?

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

29. 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 Claims Administrator, or by reviewing it at the Records Department of the District Court for the District of Hawaii, which is located at 300 Ala Moana Blvd. #C338, Honolulu, Hawaii 96850.

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.BankofHawaiiOverdraft.com or at the Office of the Clerk of the United States District Court for the District of Hawaii, located at 300 Ala Moana Blvd. #C338, Honolulu, Hawaii 96850, 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 Claims Administrator as follows:

Smith v. Bank of Hawaii Claims Administrator
P.O. Box 4349
Portland, OR 97208-4349

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

Margery S. Bronster
Robert M Hatch
Bronster Fujichaku Robbins
1003 Bishop Street, Suite 2300
Honolulu, HI 96813
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PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF THE DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.

Questions? Call 1-855-940-0846 or visit www.BankofHawaiiOverdraft.com.