

Tiffany Coleman-Weathersbee
v.
Michigan State University Federal Credit Union,
Case No. 19-cv-11674 (E.D. Mich.)

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 MICHIGAN STATE UNIVERSITY
FEDERAL CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED AN OVERDRAFT OR
NON-SUFFICIENT FUNDS FEE BETWEEN JUNE 6, 2013 AND DECEMBER 11, 2019, THEN YOU
MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

The District Court for the Eastern District of Michigan 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	<p>You may make a claim for up to 25 overdraft fees which were paid by you on a debit card or ATM transaction between June 6, 2013 and June 5, 2019, 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 is shown on the Claim Form attached to this Notice.</p> <p>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. As stated in the box below, you may still be entitled to a payment for other Overdraft Fees that do not require a claim to be made. If you are eligible to make a claim for ATM and debit card fees, then you should fill out and mail the Claim Form by June 13, 2020.</p>
DO NOTHING	<p>Even if you do not make a claim, if you have incurred an Overdraft Fee on a debit card or ATM transaction between June 6, 2019 and December 11, 2019; or, on any debit card, ATM, check, ACH or other payment transaction while your ledger balance was sufficient to pay for the transaction or, more than one NSF fee for the same item between June 6, 2013 and December 11, 2019, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the settlement (described in the next box). However, you may receive more if you receive a Claim Form and make a claim.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	<p>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.</p>
OBJECT TO THE SETTLEMENT	<p>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 will 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.</p>

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 855-958-3604 (Recorded Information Only) or
visit www.MSUFUOverdraft.com.**

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Tiffany Coleman-Weathersbee v. Michigan State University Federal Credit Union* in the United States District Court for the Eastern District of Michigan, Case No. 19-cv-11674. The case is a “class action.” That means that the “Named Plaintiff,” Tiffany Coleman-Weathersbee, is an individual who is acting on behalf of four groups.

The first group is all members of Defendant who were charged an overdraft fee for any payment transaction from June 6, 2013 through December 9, 2019, and at the time such fee was imposed, that person had sufficient funds in the ledger balance but not the available balance in his or her account to complete the transaction. The second group is all members of Defendant who were charged an overdraft fee on a debit card or ATM transaction from and including June 6, 2013 through June 5, 2019. The third group is all members of Defendant who were charged an overdraft fee on a debit card or ATM transaction from and including June 6, 2019 through December 11, 2019. The fourth group is all members of Defendant who were assessed more than one NSF fee on a single item, from and including June 6, 2013 through December 9, 2019. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims Defendant improperly charged overdraft fees when members had enough money in the ledger balances but not the available balances of their checking accounts to cover a transaction, and also alleges Defendant did not properly opt members into its overdraft program for debit card payment transactions. The Complaint alleges claims for breach of the opt-in contract, breach of the Account Agreement, breach of the implied covenant of good faith and fair dealing, unjust enrichment/restitution, money had and received, and violation of the Electronic Fund Transfers Act and implementing regulations. The Named Plaintiff is seeking a refund of alleged improper overdraft fees charged to Class Member accounts. 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 members, 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 Defendant’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 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 that Defendant 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 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.

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visit www.MSUFCUOverdraft.com.**

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Defendant'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 if there is a Claim Form attached to this Notice to recover for the Overdraft Fees you were charged for ATM and debit card transactions as listed on the Claim Form; (2) do nothing and if entitled 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 **June 13, 2020**. If you do nothing, you may nonetheless receive settlement funds; 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 member of Defendant or by mailing a check to you at the last address on file with Defendant (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is **June 8, 2020**.

The deadline to file an objection with the Court is **June 26, 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. 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 there is a Claim Form attached to this Notice indicating you were assessed Overdraft Fees for ATM withdrawals or one-time (non-recurring) debit card signature payments, then you should fill out the Claim Form and return it. See Question 25 below. If you did not receive a Claim Form with this Notice, then Defendant's records indicated 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 when you had sufficient ledger balance in your account (so long as you do not opt out).

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 28, 2020 at 10:00 AM EDT**.

Questions? Call 855-958-3604 (Recorded Information Only) or visit www.MSUCUOverdraft.com.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$5,201,096. In addition, Defendant has agreed to forgive certain overdraft fees that were assessed from June 6, 2013 to December 11, 2019, for those accounts that were closed with a negative balance. Further, Defendant has agreed to refund all Regulation E overdraft charges assessed on or after December 12, 2019, until such time as the credit union member has opted in to that overdraft program pursuant to the revised Opt-In form sent in December 2019.

As discussed separately below, attorneys' fees, litigation costs, 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 an attorney fee be awarded by the Court of not more than one third of the Value of the Settlement. Value of the Settlement includes the Settlement Fund, refunded Regulation E fees assessed on or after December 12, 2019, and the forgiven overdraft fees. Class Counsel has also requested that it be reimbursed not more than \$100,000 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.

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, has requested a service award in this case equal in value to approximately \$14,674.

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

The Claims Administrator has agreed to cap its expenses at \$107,829.

13. How much will my payment be?

If you received a Claim Form with this Notice, you may make a claim for up to 25 of the debit card overdraft fees listed on the attached Claim Form, which will be paid from 27.9% of the Settlement Fund. The remaining funds from the Net Settlement Fund will be distributed to Class Members who were assessed Overdraft Fees for payments made when they had a positive ledger balance in their checking accounts, Class Members who were assessed Regulation E overdraft fees between June 6, 2019 and December 11, 2019, and Class Members who were assessed Regulation E overdraft fees after December 11, 2019 until such time as they opted-in under the revised Opt-In form, and Class Members who were assessed more than one NSF fee on a *pro rata* basis. Current members of Defendant will receive a credit to their accounts for the amount they are entitled to receive. Former members of Defendant shall receive a check from the Claims Administrator.

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

If you received a Claim Form with this Notice, which indicates you had Overdraft Fees from ATM and debit card transactions, then you must fill out the Claim Form and timely send it to the Administrator as provided in Question 25, below. 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. If you are eligible to make a claim, then you may receive more if you fill out and timely submit the Claim Form.

Any payment 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.

**Questions? Call 855-958-3604 (Recorded Information Only) or
visit www.MSUCUOverdraft.com.**

15. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on **July 28, 2020** at **10:00 AM EDT** 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 Claims Administrator requesting to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Tiffany Coleman-Weathersbee v. Michigan State University Federal Credit Union* class action.” Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address.

Your exclusion or opt out request must be postmarked by **June 8, 2020** and mailed to the Claims Administrator as follows:

MSUFCU Overdraft Claims Administrator
P.O. Box 2838
Portland, OR 97208-2838

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 Claims Administrator 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 **June 26, 2020** and mailed to the Claims Administrator as follows:

MSUFCU Overdraft Claims Administrator
P.O. Box 2838
Portland, OR 97208-2838

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 **10:00 AM EDT on July 28, 2020** at the District Court for the Eastern District of Michigan, Southern Division, which is located at 200 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104. 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.

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 **June 13, 2020**, and must be mailed as follows:

MSUFCU Overdraft Claims Administrator
P.O. Box 2838
Portland, OR 97208-2838

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 and expenses and Claims Administrator expenses. 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.

Questions? Call 855-958-3604 (Recorded Information Only) or visit www.MSUFCUOverdraft.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.

Richard D. McCune McCune Wright Arevalo, LLP 3281 E. Guasti Road, Suite 100 Ontario, CA 91761 Telephone: (909) 557-1250 rdm@mccunewright.com	Taras Kick The Kick Law Firm, APC 815 Moraga Drive Los Angeles, CA 90049 Telephone: (310) 395-2988 Taras@kicklawfirm.com
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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 Eastern District of Michigan, Southern Division, which is located at 200 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104.

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.MSUFUCUOverdraft.com or at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, which is located at 200 E. Liberty Street, Suite 300, Ann Arbor, Michigan 48104, 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:

MSUFUCU Overdraft Claims Administrator
P.O. Box 2838
Portland, OR 97208-2838

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

Richard D. McCune McCune Wright Arevalo, LLP 3281 E. Guasti Road, Suite 100 Ontario, CA 91761 Telephone: (909) 557-1250 rdm@mccunewright.com	Taras Kick The Kick Law Firm, APC 815 Moraga Drive Los Angeles, CA 90049 Telephone: (310) 395-2988 Taras@kicklawfirm.com
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PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF THE DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.

**Questions? Call 855-958-3604 (Recorded Information Only) or
visit www.MSUFUCUOverdraft.com.**