

James Smiley, et al. v. First National 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 FIRST NATIONAL BANK (“DEFENDANT”) AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES BETWEEN AUGUST 11, 2015 AND FEBRUARY 4, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The Circuit Court of Lonoke County, Arkansas, has authorized this Notice;
it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION

DO NOTHING	If you are a Class Member (defined below) who no longer has an open account with Defendant and you don't do anything, 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). If you are a Class Member (defined below) who still has an open account with Defendant and you don't do anything, you will receive a credit to your account from the Settlement Fund, so long as you do not opt out of or exclude yourself from the settlement (described in the next box). If you are a Class Member (defined below), regardless of whether you still have an open account with Defendant and you don't do anything, you may also be eligible to have up to \$500.00 of all amounts you may owe Defendant from qualifying deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022 forgiven, so long as you do not opt out of or exclude yourself from the settlement (described in the next box). Under all of these scenarios, you will also release all claims you have against Defendant related to the assessment of fees on transactions previously authorized on a positive balance that later settled into a negative balance.
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 any individual claims you may have against Defendant, but you will not receive a payment or a credit to your account. You will also be ineligible for the debt forgiveness described in this Notice and the settlement. 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 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.

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 *James Smiley, et al. v. First National Bank* in the Circuit Court of Lonoke County, Arkansas, Case No. 43CV-20-531. The case is a "class action." That means that the "Named Plaintiffs," James Smiley and Toni Dawn Smiley, are individuals who are acting on behalf of a group. That group is all customers of Defendant who are Arkansas citizens and were assessed an overdraft fee on a transaction authorized on a positive balance and that settled into a negative balance between August 11, 2015 and February 4, 2022. The persons in this group are individually called a "Class Member" and are collectively called the "Class Members."

The Named Plaintiffs filed a Complaint and an Amended Complaint challenging the assessment of these fees. The Named Plaintiffs sought a refund of these alleged improper fees charged to Class Member accounts. Defendant does not deny it charged these 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 accountholders, and therefore denies that its practices give rise to claims for damages by the Named Plaintiffs 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 of the fees that are the subject of this action. 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 and her 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, the Named Plaintiff's lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. 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.

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees that are being challenged in this case. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Named Plaintiff's claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiffs 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 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 three options: (1) do nothing and you will receive a payment or credit to your account according to the terms of the settlement, and you may be eligible for the debt forgiveness described in this Notice and the 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?

There is no deadline to receive a payment or credit to your account, whichever the case may be, or to be eligible for the debt forgiveness described in this Notice and the settlement. If you do nothing, then you will get a payment or a credit to your account and up to \$500.00 of all amounts you may owe Defendant from qualifying deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022 will be forgiven (see Section 9 below).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is September 15, 2022.

The deadline to file an objection with the Court is also September 15, 2022.

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 or a credit to your account and up to \$500.00 of all amounts you may owe Defendant from qualifying deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022 will be forgiven (see Section 9 below).

If you want to participate in the settlement, then you don't have to do anything; if the settlement is approved by the Court, you will automatically receive a payment or a credit to your account and up to \$500.00 of all amounts you may owe Defendant from qualifying deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022 will be forgiven (see Section 9 below).

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 October 20, 2022 at 10:00 a.m.

THE SETTLEMENT PAYMENT

9. How much is the settlement?

Defendant has agreed to create a Settlement Fund of \$1,250,000.00. In addition, Defendant has agreed to forgive up to \$500.00 of all amounts any Class Member owes Defendant from deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022, provided that the account is one that was charged one or more insufficient funds or overdraft fees on an item that had previously been charged one or more insufficient funds fees between August 11, 2015 and February 4, 2022. In no event shall the aggregate amount to be forgiven exceed \$500.00 per Class Member. In the event that you have more than one account that is eligible for the forgiveness described in this Section, Defendant will have the sole discretion to determine how to allocate the forgiveness described in this Section between or among your accounts. The total amount Defendant has agreed to forgive is estimated to be approximately \$3 million.

As discussed separately below, attorneys' fees, litigation costs, and the costs and fees 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 a methodology described in the settlement agreement, which is available on the settlement website (identified below).

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

Class Counsel will request an attorneys' fee to be awarded by the Court. Class Counsel will also request reimbursement of 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 Service Awards to the Named Plaintiffs?

Class Counsel will request that the Named Plaintiffs be paid Service Awards of \$2,500.00 each for their work in connection with this case. The Service Award must be approved by the Court.

12. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the Service Award, and the Settlement Administrator's fees and costs will be divided among all Class Members in accordance with the methodology outlined in the settlement agreement, which is available on the settlement website (identified below). Class Members who still have an open account with Defendant will receive a credit to their accounts for the amount they are entitled to receive. Class Members who no longer have an open account with Defendant will receive a check from the Settlement Administrator for the amount they are entitled to receive. Additionally, all Class Members, regardless of whether they still have an open account with Defendant, will have up to \$500.00 of all amounts they owe Defendant from qualifying deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022 forgiven (see Section 9 above).

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

No. If you received Notice, then you will be entitled to receive a payment or a credit to your account without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

14. When will I receive my payment or account credit and my debt forgiveness?

The Court will hold a Fairness Hearing on October 20, 2022, at 10:00 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. Defendant will also forgive up to \$500.00 of all amounts Class Members owe Defendant from qualifying deposit accounts that were charged off by Defendant between August 11, 2015 and February 4, 2022 (see Section 9 above) 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 and debt forgiveness.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. 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 by first class mail to the Settlement Administrator indicating that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *James Smiley v. First National Bank* class action.” Your letter must also include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address (if applicable). Your exclusion letter or opt-out request must also be dated and signed by you. Your exclusion or opt-out request must be postmarked on or before September 15, 2022, and sent to:

Smiley v. First National Bank Settlement Administrator
P.O. Box 5100
Larkspur, CA 94977-5100

16. 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.

17. If I exclude myself, can I obtain a payment or account credit and debt forgiveness?

No. If you exclude yourself, you will not be entitled to a payment or a credit to your account. You will also no longer be eligible for the debt forgiveness described in this Notice and the settlement.

OBJECTING TO THE SETTLEMENT

18. 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 be valid and considered by the Court, your objection **must** be in writing and (1) sent by first class mail to the Settlement Administrator at the address below, and (2) filed with the Court, with service upon Class Counsel and Defendant’s counsel. Your objection should say that you are a Class Member, that you object to the settlement, the factual and legal reasons why you object (including any exhibits you want the Court to consider in connection with your objection), and whether you intend to appear at the hearing. In your objection, you must include your name, address, telephone number, last four digits of your account number(s) or former account numbers(s), and email address (if applicable). You must also sign and date your objection. If you retain an attorney in connection with your objection, you must also provide the contact information for your attorney.

All objections must be (1) mailed to the Settlement Administrator and showing a postmark date on or before September 15, 2022 **and** (2) filed with the Court and served upon Class Counsel and Defendant's counsel on or before September 15, 2022. Objections should be mailed to the Settlement Administrator as follows:

SETTLEMENT ADMINISTRATOR

Smiley v. First National Bank Settlement Administrator
P.O. Box 5100
Larkspur, CA 94977-5100

After being filed with the Court, objections should also be served on Class Counsel and Defendant's counsel as follows:

CLASS COUNSEL

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Cohen & Malad, LLP
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Indianapolis, IN 46204
Telephone: 317-636-6481
Fax: 317-636-2593
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DEFENDANT'S COUNSEL

Anton L. Janik, Jr.
Graham Talley
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
425 West Capitol Avenue
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Little Rock, AR 72201
(501) 688-8800
ajanik@mwlaw.com
gtalley@mwlaw.com

19. 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 credit to your account, debt forgiveness, or release claims you might have against Defendant.

20. 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 Class Member's objection(s), then you will be part of the settlement.

THE COURT'S FAIRNESS HEARING

21. 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 a.m. on October 20, 2022 at the Circuit Court of Lonoke County, Arkansas, which is located at 301 N. Center St, Lonoke, AR 72086. 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.

22. 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.

23. 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 intend to appear at the Final Approval Hearing through counsel, you must also identify your counsel by name, address, and telephone number.

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 Final Approval or 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 copy of the fee application at the settlement website established by the Settlement Administrator (identified below), or by reviewing it at the Circuit Court of Lonoke County, Arkansas, which is located at 301 N. Center St., Lonoke, AR 72201.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online via the settlement website at www.SmileyBankSettlement.com or at the Circuit Court of Lonoke County, Arkansas, which is located at 301 N. Center St., Lonoke, AR 72201, 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:

Smiley v. First National Bank Settlement Administrator
P.O. Box 301130
Los Angeles, CA 90030-1130

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

Lynn A. Toops
Cohen & Malad, LLP
One Indiana Square
Suite 1400
Indianapolis, IN 46204
Telephone: 317-636-6481
Fax: 317-636-2593
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***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE
OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***