

Brandi Salls
v.
Digital Federal Credit Union

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAD A CHECKING ACCOUNT WITH DIGITAL FEDERAL CREDIT UNION
("DIGITAL") AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN
JUNE 15, 2012 AND JUNE 15, 2019, THEN YOU MAY BE ENTITLED
TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

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

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING	Unless you exclude yourself from the settlement (see the next paragraph), then you will receive a check or a credit to your account (depending on whether you are still a member of Digital).
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 Digital but you will not receive a payment. If you exclude yourself from the settlement but want to recover against Digital, 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 <u>will</u> receive a payment and you <u>will not</u> be able to sue Digital 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 *Brandi Salls v. Digital Federal Credit Union* in the United States District Court for the District of Massachusetts, Case No. 4:18-cv-11262-TSH. The case is a “class action.” That means that the “Named Plaintiff,” Brandi Salls, is an individual who is acting on behalf of two groups. The first is all members of Digital who were charged an overdraft fee for any payment transaction between June 15, 2012 and June 15, 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 Digital who were charged an overdraft fee for an ATM or debit card transaction between June 15, 2017 and September 1, 2018. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims Digital 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 Digital did not properly opt members into its overdraft program for ATM and debit card payment transactions. The complaint in the action alleged Breach of Opt-In Contract, Breach of 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 Transfer Act. The Named Plaintiff is seeking a refund of alleged improper overdraft fees charged to Class Member accounts. Digital 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. Digital maintains that its practice was proper and was 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 Digital’s records indicate that you were charged one or more eligible overdraft fees between June 15, 2012 and June 15, 2019. 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 Digital 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 Digital 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 this Notice, then Digital’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 automatically participate in 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?

To participate in the settlement, you need not do anything; so long as you do not opt out or exclude yourself (described in Questions 15 through 18, below), a payment will be made to you, either by crediting your account if you are still a member of Digital or by mailing a check to you at the last address on file with Digital (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is November 5, 2019.

The deadline to file an objection with the Court is November 26, 2019.

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, then 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.

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 December 19, 2019 at 3:00 p.m..

THE SETTLEMENT PAYMENT

9. How much is the settlement?

Digital has agreed to create a Settlement Fund of \$1,800,000. In addition, Digital has agreed to forgive approximately \$766,000 of allegedly improper overdraft fees that could be but have not yet been collected from Class Members. Further, Digital stopped collecting overdraft fees on Regulation E transactions as of September 1, 2018, and Digital has agreed that when it resumes collecting such overdraft fees it will do so by calculating them on a ledger balance basis for at least three years, representing an approximate savings of \$467,000 in overdraft fees per year.

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.

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

Class Counsel will request attorneys' fees be awarded by the Court of not more than one-third of the value of the settlement. Class Counsel has also requested that it be reimbursed approximately \$75,000 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 that the Court award her \$10,000 for her role in acting as the Named Plaintiff and 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 Claims Administrator's expenses?

The Claims Administrator has agreed to cap its expenses at \$73,000.

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

No. As long as you do not opt out, a credit will be applied to your checking account if you are an existing member, or a check will be mailed to you at the last known address Digital has for you if you are not an existing credit union member. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth in Question 15, below.

14. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 21-23) on December 19, 2019 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

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 Digital 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 *Salls v. Digital Federal Credit Union* class action." Be sure to include your name, last four digits of your member number, address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by November 5th, 2019, and sent to:

Salls v. Digital Federal Credit Union
Claims Administrator
P.O. Box 43501
Providence, RI 02940-3501

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 Digital 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?

No. If you exclude yourself, you will not be entitled to a payment.

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 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, 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 November 26, 2019 and must be mailed to the Claims Administrator as follows:

Salls v. Digital Federal Credit Union
Claims Administrator
P.O. Box 43501
Providence, RI 02940-3501

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 Digital. 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 Digital for the claims alleged in this lawsuit.

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 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 the United States District Court for the District of Massachusetts, 595 Main Street, Worcester, Massachusetts 01608. 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.

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 DO NOTHING

24. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you will 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 Digital for the conduct alleged in this lawsuit. You will not give up any other claims you might have against Digital that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

25. 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.

26. Do I have to pay the lawyers for accomplishing this result?

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

27. 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 the fee application at www.digitalfcuoverdraftclassaction.com or view a physical copy at the Office of the Clerk for the United States District Court for the District of Massachusetts, 595 Main Street, Worcester, Massachusetts 01608.

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.digitalfcuoverdraftclassaction.com or at the Office of the Clerk of the United States District Court for the District of Massachusetts, located at 595 Main Street, Worcester, Massachusetts 01608, 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:

Salls v. Digital Federal Credit Union
Claims Administrator
P.O. Box 43501
Providence, RI 02940-3501
Telephone: 1-888-683-1091

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

Richard D. McCune
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3281 E. Guasti Road, Ste. 100
Ontario, CA 91761
Telephone: (909) 557-1250
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815 Moraga Drive
Los Angeles, CA 90049
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Taras@kicklawfirm.com

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