

Fairchild-Cathey et al.
v.
AmeriCU 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 HAVE OR HAD A CHECKING ACCOUNT WITH AMERICU
CREDIT UNION (“DEFENDANT”) AND YOU WERE CHARGED
CERTAIN OVERDRAFT, NSF OR ATM FEES BETWEEN OCTOBER 27,
2015, AND JANUARY 31, 2023, THEN YOU MAY BE ENTITLED TO A
PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court for the Northern District of New York 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 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). |
| 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 Defendant but you will not receive a payment for Relevant Fees. 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 may 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 *Fairchild-Cathey et al. v. AmeriCU Credit Union*. It is pending in the United States District Court for the Northern District of New York, Case No. 6:21-CV-01173. The case is a “class action.” That means that the “Named Plaintiffs” are individuals who are acting on behalf of current and former customers who were assessed certain assessed certain Overdraft, NSF and ATM fees (the “Relevant Fees”) between October 27, 2015 and January 31, 2023. The Named Plaintiffs have asserted a claim for breach of the account agreement and violation of consumer protection laws.

Defendant does not deny it charged the fees the Named Plaintiffs are complaining about, but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Named Plaintiffs or any Settlement Class Members.

2. Why did I receive this Notice of this lawsuit?

You received this Notice because Defendant’s records indicate that you were charged one or more Relevant Fees that are the subject of this action. The Court directed that this Notice be sent to all Settlement Class Members because each such 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 Plaintiffs’ and their 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 Plaintiffs’ lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. The Named Plaintiffs have the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsel’s opinion, that this settlement is in the best interest of all Settlement 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 at issue. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Named Plaintiffs’ claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Named Plaintiffs were to win at trial, there is no assurance that the Settlement 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 Settlement 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 this Notice, then Defendant's records indicate that you are a member of one or more of the Settlement Classes 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 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.

6. What are the critical deadlines?

There is no deadline to receive a payment. If you do nothing, then you will get a payment.

The Bar Date (deadline) to Opt Out for sending a letter to exclude yourself from or opt-out of the settlement is March 4th, 2024.

The Bar Date (deadline) to Object to file an objection with the Court is also March 4th, 2024.

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 may not be approved and no payments will be made to you or any other member of the Classes. If your objection (and any other objection) is overruled, and the settlement is approved, then you may still get a payment, and will be bound by the settlement.

If you want to participate in the settlement, then you don't have to do anything; you will receive a payment if the settlement is approved by the Court.

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 a Notice. The Court will make a final decision regarding the settlement at a "Final Approval Hearing," which is currently scheduled for May 8th, 2024 at 11:30 A.M.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$1,500,000 and change its practices regarding the Relevant Fees going forward.

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 notice) will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments based on formulas 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 the Court to approve attorneys' fees of not more than 33.33% of the Settlement Fund, and will request that it be reimbursed for 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 Plaintiffs a service award?

Class Counsel will request that the Named Plaintiffs be paid a service award in the amount of \$5,000 each for their work in connection with this case. The service awards 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 awards and the Claims Administrator's fees, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement. Current customers of Defendant will receive a credit to their accounts for the amount they are entitled to receive. Former customers of Defendant shall receive a mailed check from the Claims Administrator.

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

No. If you received this Notice, then you may be entitled to receive a payment for a Relevant Fee 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?

The Court will hold a Final Approval Hearing on May 8th, 2024, at 11:30 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 approximately 90 days later. 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 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 that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Fairchild-Cathey et al. v. AmeriCU 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 March 4th, 2024, and sent to:

Fairchild-Cathey v. AmeriCU Credit Union
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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 the settlement.

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. (Settlement Class Members who exclude themselves from the settlement have no right to object to how other Settlement Class Members are treated.) To object, you **must** send a written document by mail or private courier (e.g., Federal Express) to the Claims Administrator at the address below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector’s full name, address and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the trial and appellate courts in each listed case;

- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- f. the number of times in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel’s or the counsel’s law firm’s prior objections that were issued by the trial and appellate courts in each listed case in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the preceding five years;
- g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity;
- h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- k. the objector’s signature (an attorney’s signature is not sufficient).

All objections must be post-marked no later than March 4th, 2024, and must be mailed to the Claims Administrator as follows:

Fairchild-Cathey v. AmeriCU Credit Union
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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 Settlement 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 for a Relevant Fee 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 for a Relevant Fee, 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 member of the Settlement Classes, 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 FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing at 11:30 A.M. on May 8th, 2024 at the United States District Court for the Northern District of New York, Federal Building and U.S. Courthouse, which is located at 445 Broadway, Albany, NY 12207. 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 litigation costs and the amount of the service awards to the Named Plaintiffs. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at www.FeeSettlementNY.com.

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."

THE LAWYERS REPRESENTING YOU

23. 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 Settlement Class Members.

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

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

25. Who determines what the attorneys' fees will be?

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for attorneys' 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 requesting the court record online from the United States District Court for the Northern District of New York at <https://eservices.archives.gov/orderonline>.

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.FeeSettlementNY.com or at the Office of the Clerk of the United States District Court for the Northern District of New York, which is located at 445 Broadway, Albany, NY 12207-2926, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion) or obtaining a copy online at <https://eservices.archives.gov/orderonline>.

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:

Fairchild-Cathey v. AmeriCU Credit Union
c/o Kroll Settlement Administration
PO Box 5324
New York, NY 10150-5324

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

David Berger
Gibbs Law Group
1111 Broadway, Suite 2100
Oakland, CA 94607
510-350-9700
dmb@classlawgroup.com

Jeffrey Kaliel
KalielGold PLLC
1100 15th St. NW
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Washington, DC 20005
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jkaliel@kalielpllc.com

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