

Danell Behrens
v.
Landmark 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 LANDMARK CREDIT UNION (“LANDMARK”) AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN FEBRUARY 9, 2011 AND FEBRUARY 28, 2017, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

The United States District Court for the District of Western Wisconsin 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 ten (10) 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 is 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. As stated in the box below, you may still be entitled to a payment for other Overdraft Fees. If you are eligible to make a claim for ATM and debit card fees, then you should fill out and submit the Claim Form within thirty (30) days after receipt of this notice.
DO NOTHING	Even if you do not make a claim, if you have incurred an Overdraft Fee on a debit card or ATM transaction, or any check, ACH or other payment transaction while your ledger balance was sufficient to pay for the transaction, 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.
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 Landmark but you will not receive a payment. If you want to recover against Landmark, then 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, you <u>will</u> receive a payment and you <u>will not</u> be able to sue Landmark 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 *Danell Behrens v. Landmark Credit Union*, United States District Court for the Western District of Wisconsin, Case No. 3:17-cv-00101. The case is a “class action.” That means that the “Named Plaintiff,” Danell Behrens is an individual who is acting on behalf of two groups. The first is all members of Landmark who were charged an Overdraft Fee for any payment transaction from February 9, 2011 to February 28, 2017, 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 Landmark who were charged Overdraft Fees for ATM and debit card transaction for the first time from February 9, 2016 to February 28, 2017. The persons in these groups are collectively called the “Class Members.”

The Named Plaintiff claims Landmark did not properly opt members into its overdraft program for ATM and debit card payment transactions. Plaintiff also alleges Landmark improperly charged overdraft fees when members had money in the ledger balances but not the available balances of their checking accounts. The Named Plaintiff is seeking a refund of alleged improper Overdraft Fees charged to Class Member accounts. Landmark 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. Landmark assessed Overdraft Fees based on the available balance in a member’s account. Landmark maintains that this practice is 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. Landmark also alleges that it properly gave notice and opted members into its overdraft program for ATM and debit card transactions.

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

You received this Notice because Landmark’s records indicate that you are in one or both of the groups that was alleged to have been charged improper overdraft fee(s). 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 Landmark was contractually and otherwise legally obligated not to assess Overdraft Fees when the ledger balance was sufficient to pay for a transaction even though the available balance was not, and whether Landmark properly opted members into its overdraft program for ATM and debit card transactions. There is also 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 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 Landmark disputes Plaintiff’s claims, it has agreed to settle to avoid the costs, distractions and risks of litigation. Thus, even though Landmark denies that it did anything improper, it believes settlement is in its best interest and in the best interests of all of its members.

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Landmark'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 as listed on 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 for other Overdraft Fees you may have been charged when your ledger balance was sufficient but your available balance was not sufficient to pay the transaction that resulted in the fee; (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 August 15, 2018. If you do nothing, you may nonetheless receive settlement funds by credit to your account if you are still a member of Landmark when the settlement is paid or via check mailed to your residence of record if you are not a member of Landmark when the settlement is paid at the close of the claims period but only if you were assessed Overdraft Fees while you had sufficient funds in your account to cover the transaction.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is August 15, 2018.

The deadline to file an objection with the Court is August 24, 2018.

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 the Claim Form attached to this Notice indicates 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 Landmark'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 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 August 30, 2018.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Landmark has agreed to create a Settlement Fund of \$950,000. 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 this amount. The balance of the Settlement Fund will be divided among all Class Members based on the amount of Eligible Overdraft Fees they paid, and if eligible to make a claim, whether they make a claim.

Additionally, the settlement also includes an agreement by Landmark to change the way it assesses overdraft fees, such that going forward Landmark will calculate overdrafts based on the ledger balance in an account and not the available balance. Based on overdraft fees from prior years, this is estimated to reduce overdraft fees charged to members by about 10.1% per year. Landmark also has agreed to waive collection of approximately \$10,000 in overdraft charges it assessed against Class Members but has not yet collected.

10. How much of the settlement fund will be used to pay for attorney fees and costs?

Class Counsel will request that the Court award up to one-third (33-1/3%) of the value of the settlement as attorneys’ fees. The value of the settlement for purposes of this request is limited to the Settlement Fund plus one year of future savings and the waived charges identified in Question 9, above. Class Counsel will also request reimbursement of not more than \$75,000 in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys’ fees based on a number of factors, including the risk associated with bringing the case, 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 will request that the Court award her \$10,000 for her 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 Class Administrator’s expenses?

The Claims Administrator has estimated its total costs at \$43,500-\$45,375, and agreed to cap them at \$54,450.

13. How much will my payment be?

You may make a claim for up to ten of the ATM and debit card overdraft fees listed on the attached Claim Form, which will be paid from one-half of the Net Settlement Fund on a *pro rata* basis. The remaining funds from the Net Settlement Fund will be disbursed on a *pro rata* basis to Class Members who were assessed Overdraft Fees for payments made when they had enough ledger balance in their checking accounts to cover the transaction that caused the fee.

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

If you received a Claim Form with this Notice and it indicates you had Overdraft Fees from ATM and debit card transactions, then you should fill out the Claim Form and 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, for Overdraft Fees assessed when you had a positive ledger balance in your account that was sufficient to pay the transaction that resulted in the fee (so long as you do not opt out). However, if you are eligible to make a claim, then you may receive more if you fill out and submit the Claim Form.

15. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on August 30, 2018 at 9:00 am to consider whether the settlement should be approved. If the Court approves the settlement, then the claims administrator should begin processing and paying claims within about 10 days. 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 Landmark 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 *Danell Behrens v. Landmark 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 August 15, 2018, and sent to:

Behrens v. Landmark Credit Union Claims Administrator
C/O GCG
P.O. Box 10600
Dublin, Ohio 43017-9202

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 Landmark 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 post-marked no later than August 24, 2018, and must be mailed to the Court as follows: United States District Court for the Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703.

And to the Claims Administrator as follows:

CLAIMS ADMINISTRATOR

Behrens v. Landmark Credit Union Claims Administrator
C/O GCG
P.O. Box 10600
Dublin, Ohio 43017-9202

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 Landmark. 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 Landmark 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 9:00 am on August 30, 2018 at the United States District Court for the Western District of Wisconsin, located at 120 North Henry Street, Madison, Wisconsin 53703. 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 and sent to the Claims Administrator.

All claims must be post-marked no later than August 15, 2018, and must be mailed as follows:

CLAIMS ADMINISTRATOR

Behrens v. Landmark Credit Union Claims Administrator
C/O GCG
P.O. Box 10600
Dublin, Ohio 43017-9202

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 Landmark for the conduct alleged in this lawsuit. You will not give up any other claims you might have against Landmark that are not part of this lawsuit.

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 the fee application at landmarkcreditunionoverdrafftfeessettlement.com or view a physical copy at the Office of the Clerk of the United States District Court for the Western District of Wisconsin, which is located at 120 North Henry Street, Madison, Wisconsin 53703.

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 landmarkcreditunionoverdrafftfeessettlement.com or at the Office of the Clerk of the United States District Court for the Western District of Wisconsin, which is located at 120 North Henry Street, Madison, Wisconsin 53703, 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:

Behrens v Landmark Credit Union
C/O GCG
P.O. Box 10600
Dublin, Ohio 43017-9202

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

Behrens v. Landmark Credit Union Claims Administrator
C/O GCG
P.O. Box 10600
Dublin, Ohio 43017-9202

Richard D. McCune
Jae (Eddie) K. Kim
McCune Wright Alevaero LLP
3281 E. Guasti Road, Ste. 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

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