

**JDB**

«Barcode»

Postal Service: Please do not mark barcode

Claim#: JDB-«Claim8»-«CkDig»

«FirstName» «LastName»

«Addr1» «Addr2»

«City», «St»«FProv» «Zip»«FZip»

«Country»

Mark Bettencourt

v.

Jeanne D'Arc 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 JEANNE D'ARC CREDIT UNION  
("DEFENDANT") AND YOU WERE CHARGED AN OVERDRAFT FEE BETWEEN  
DECEMBER 22, 2011 AND JUNE 29, 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**

<b>DO NOTHING</b>	If you have incurred an overdraft fee on your checking account which was paid by you 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).
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	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 want to recover against Defendant, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	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 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 *Mark Bettencourt v. Jeanne D'Arc Credit Union*, United States District Court for the District of Massachusetts, Case No. 1:17-cv-12548-NMG. The case is a "class action." That means that the "Named Plaintiff," Mark Bettencourt, is an individual who is acting on behalf of a group. The group is made up of all members of Defendant who had a checking account with Defendant prior to February 15, 2016, and were assessed an Overdraft Fee on any type of payment transaction between December 22, 2011 to June 29, 2019, against their checking account if, at the time such fee was assessed, the member had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee. The persons in this group are collectively called the "Class Members."

The Named Plaintiff claims Defendant improperly charged overdraft fees in checking accounts when members had enough money in the balance to cover the transaction if holds placed on pending transactions or deposits were not deducted from the balance. 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 contends it assessed overdraft fees based on the available balance in a member's account. Defendant 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.

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

You received this Notice because Defendant's records indicate that you are in the group 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 his 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 on checking accounts when the ledger balance was sufficient to pay for a transaction even though the available balance was not. 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 Defendant disputes Plaintiff's claims, it has agreed to settle to avoid the costs, distractions and risks of litigation. Thus, even though Defendant 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 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 according to the terms of this settlement for overdraft fees you may have been charged on your checking account when your ledger balance was sufficient but your available balance was not sufficient to pay the transaction that resulted in the fee; (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?**

If you do nothing, you will receive settlement funds by credit to your account if you are still a member of Defendant when the settlement is paid or via check mailed to your residence of record if you are not a member of Defendant when the settlement is paid at the close of the claims period.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is postmarked by May 15, 2020.

The deadline to file an objection with the Court is June 4, 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.

### **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 June 24, 2020.

## THE SETTLEMENT PAYMENT

### **9. How much is the settlement?**

Defendant has agreed to create a Settlement Fund of \$1,197,000.00. 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 on a *pro rata* basis to members who incurred an overdraft fee on checking accounts which was assessed while the ledger balance was sufficient to pay for the transaction.

### **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 thirty percent (30%) of the value of the settlement as attorneys’ fees plus reimbursement of not more than \$70,000.00 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 him \$10,000.00 for his 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 Claims Administrator's expenses?**

The Claims Administrator has estimated its total costs at \$44,830.00, and agreed to cap them at \$52,500.00.

**13. How much will my payment be?**

The balance of the Settlement Fund will be divided among all Class Members on a *pro rata* basis to members who incurred an overdraft fee on checking accounts which was assessed while the ledger balance was sufficient to pay for the transaction.

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

No. Any amount 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." 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. In that case, if you choose to seek recovery against Defendant, then you will have to file a separate lawsuit or claim.

**15. When will I receive my payment?**

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on June 24, 2020 to consider whether the settlement should be approved. If the Court approves the settlement, then the Claims Administrator should begin paying claims within approximately 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 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 *Mark Bettencourt v. Jeanne D'Arc 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 May 15, 2020, and sent to:

*Bettencourt v. Jeanne D'Arc Credit Union* Claims Administrator  
P.O. Box 43501  
Providence, RI 02940-3501

**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 by June 4, 2020, and must be mailed to the Court as follows: United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. Objections must also be mailed to the Claims Administrator as follows:

#### **CLAIMS ADMINISTRATOR**

*Bettencourt v. Jeanne D'Arc Credit Union* Claims Administrator  
P.O. Box 43501  
Providence, RI 02940-3501

### **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 on June 24, 2020 at the United States District Court for the District of Massachusetts, located at 1 Courthouse Way, Boston, MA 02210. 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."

## IF YOU DO NOTHING

### **25. 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's expenses, and the Named Plaintiff's Service Award. 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.

## THE LAWYERS REPRESENTING YOU

### **26. 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.

### **27. Do I have to pay the lawyer for accomplishing this result?**

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

### **28. 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 view a physical copy of the fee application at the Office of the Clerk of the United States District Court for the District of Massachusetts, which is located at 1 Courthouse Way, Boston, MA 02210.

## 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.JeanneDarcSettlement.com](http://www.JeanneDarcSettlement.com) or at the Office of the Clerk of the United States District Court for the District of Massachusetts, which is located at 1 Courthouse Way, Boston, MA 02210, 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:

*Bettencourt v. Jeanne D'Arc Credit Union* Claims Administrator  
P.O. Box 43501  
Providence, RI 02940-3501

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

Richard D. McCune  
McCune Wright Arevalo, 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 DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***