

**LONG FORM NOTICE**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

A settlement has been reached in a class action lawsuit pending in the United States District Court for the District of New Jersey titled *Burns v. TD Bank, N.A.*, Case No. 1:21-cv-18194-KMW-AMD (D.N.J.) (the “Action”). In the Action, Plaintiffs were challenging TD Bank’s practice of assessing Overdraft Fees on transactions that were authorized at a time when the Account’s Available Balance was positive but later paid by TD Bank when the Account’s Available Balance was insufficient to cover the transaction (“APSN Fee”). The lawsuit contends, among other things, that TD Bank’s assessment of such fees in these circumstances was not authorized by the terms of the Personal Deposit Account Agreement. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right. The Court has tentatively approved the proposed settlement agreement (available at [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com)) to which the parties have agreed (the “Settlement”).

Current and former holders of a TD Bank personal checking account who were assessed an APSN Fee between June 27, 2019 and September 30, 2022 (“Class Period”), may be eligible to receive a payment.

Read this notice carefully. This notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Settlement Class Member.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING AND RECEIVE A CHECK OR ACCOUNT CREDIT</b>	If you do nothing, 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</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 any individual claims you may have against Defendant, but you will not receive a payment or other settlement benefits. If you exclude yourself from the Settlement but want to seek recovery from Defendant, you will have to file a separate lawsuit or claim.
<b>OBJECT</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, then you will receive a payment, and you will not be able to sue Defendant for the claims asserted in this litigation.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement. You may speak at a hearing about the fairness of the Settlement if you submit an objection that complies with the requirements in Question 16 (below) and a letter saying that you intend to appear and wish to be heard that complies with the requirements in Question 20 (below).

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court still has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to members of the Settlement Class who do not exclude themselves from the Settlement.

**QUESTIONS? CALL 888-695-6078 OR VISIT [WWW.TDBANKAPSNFEECLASSACTION.COM](http://WWW.TDBANKAPSNFEECLASSACTION.COM)**

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## **BASIC INFORMATION**

### **1. Why is there a notice?**

A court ordered that this notice be provided because you have a right to know about the proposed Settlement of this class action lawsuit and its effect on you. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Karen M. Williams, of the United States District Court for the District of New Jersey, is overseeing this case, *Burns v. TD Bank, N.A.*, Case No. 1:21-cv-18194-KMW-AMD (D.N.J.). The persons who sued— Kyle Burns, Ruby Hayes, Jasmine Norville, and Lisa Rodriguez —are the Plaintiffs. TD Bank, N.A. (“TD Bank”) is the Defendant.

### **2. What is this litigation about?**

The lawsuit claims that TD Bank breached its contracts with personal checking accountholders by assessing and collecting certain Overdraft Fees not authorized by Defendant’s account agreement.

You can review the complaint in this lawsuit on the website [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com). TD Bank denies that it engaged in any wrongdoing.

### **3. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case, Plaintiffs) sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims are members of a Class.

### **4. Why is there a Settlement?**

The Court has not decided in favor of either Plaintiffs or TD Bank (together, the “Parties”). Instead, the two sides have agreed to a Settlement. In doing so, the Parties avoid the costs and uncertainty of litigation and a trial, and Settlement Class Members (except those who exclude themselves) receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that TD Bank did anything wrong. TD Bank denies all claims in this case. The Class Representatives and their lawyers believe the proposed Settlement is in the best interests of Settlement Class Members.

## **WHO IS PART OF THE SETTLEMENT?**

If you received notice of the Settlement from a postcard or email addressed to you, then the Parties believe you are in the Settlement Class. But even if you did not receive a postcard or email with notice of the Settlement, you may still be a member of the Settlement Class, as described below.

If you did not receive a postcard or email addressed to you but you believe you are in the Settlement Class, as defined below, you may contact the Settlement Administrator.

### **5. Who is included in the Settlement?**

You are a member of the Settlement Class if you held a TD Bank personal checking account, and between June 27, 2019 to and including September 30, 2022, incurred one or more Overdraft Fees for a debit card transaction that was authorized at a time when the Account’s Available Balance was positive, but later paid by TD Bank when the Account’s Available Balance was insufficient to cover the transaction.

### **6. What if I am not sure whether I am included in the Settlement?**

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement website at [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com) or call the toll-free number, 888-695-6078. You may also send questions to the Settlement Administrator at Burns v TD Bank Settlement Administrator, PO Box 5826, Portland, OR 97228-5826.

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## THE SETTLEMENT BENEFITS

### **7. What does the Settlement provide?**

If the Court approves the Settlement and it becomes final, TD Bank will provide Thirty-Two Million Two Hundred Twenty-Five Thousand Dollars (\$32,225,000.00) in total relief, consisting of Twenty-One Million Nine Hundred Seventy-Five Thousand Dollars (\$21,975,000.00) in monetary payments (“Settlement Payment Amount”) and Ten Million Two-Hundred Fifty Thousand Dollars (\$10,250,000.00) in reductions to the outstanding balances of Participating Class Members’ accounts closed with amounts owed to TD Bank (“Overdraft Forgiveness”). After paying attorneys’ fees to Class Counsel of up to 33% of the Value of the Settlement and Court-approved Service Awards of up to \$5,000.00 to the Plaintiffs for their participation in the lawsuit, the remaining cash relief (the “Net Settlement Fund”) will be distributed among the Settlement Class. Settlement Class Members’ cash awards will be distributed by account credit to current customers and by check to former customers

### **8. How much will my payment be?**

The balance of the Net Settlement Fund after attorneys’ fees and costs, the service awards, and the Settlement Administrator’s fees will be divided among all Class Members as outlined in the Settlement Agreement. Current customers of TD Bank will receive a credit to their accounts for the amount they are entitled to receive. Former customers of TD Bank will receive a check from the Settlement Administrator.

### **9. When will I receive my payment?**

The Court will hold a Final Approval Hearing on **October 10, 2024 at 1:00 P.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 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. Please be patient.

### **10. What am I giving up if I do not exclude myself from the Settlement?**

If the Settlement receives Final Approval from the Court, every Settlement Class Member who has not excluded himself or herself from the Settlement Class, each on behalf of himself, herself, or itself, and on behalf of his, her, or its respective past, present and future heirs, executors, administrators, assigns, beneficiaries, directors, officers, managers, employees, general partners, limited partners, principals, employees, insurers, reinsurers, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives (collectively, “Releasing Parties”), shall automatically be deemed to have fully and irrevocably released and forever discharged TD Bank and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents (alleged, apparent, or actual), insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, “Releasees”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that constitute, result from, arise out of, are based upon, or relate to any of the claims that were asserted in the Action, and any of the conduct, allegations, acts, transactions, facts, events, representations, statements, omissions, duties, or matters up to and including the date of Preliminary Approval that were or could have been alleged in this Action by Plaintiffs or by any other Settlement Class Members relating in any way to the assessment of APSN Fees, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of Defendant’s practices, policies and procedures related to the authorization, processing, payment, return and/or rejection of an item or any failure to adequately or clearly disclose, in one or more contracts, agreements, disclosures, or other written materials, through oral communications, or in any other manner overdraft fee practices, whether assertable in the form of a cause of action or as a private motion, petition for relief or claim for contempt, or otherwise, and in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, and whether based on any federal, state, local, statutory or common law (including, without limitation, breach of contract, breach of the implied covenant of good faith and fair dealing, the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*, and the New York General Business Law § 349) or any other law, rule,

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regulation, ordinance, code, contract, common law, or any other source, including the law of any jurisdiction outside the United States (including both direct and derivative claims), including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (“Released Claims”). Each Settlement Class Member who does not exclude himself or herself from the Settlement Class will also be bound by all of the decisions by the Court.

Section XII of the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com).

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don’t want benefits from the Settlement, and you want to keep the right to sue TD Bank on your own about the claims in this case or any other Released Claims, then you must take steps to opt out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

#### **11. How do I exclude myself from the Settlement?**

To exclude yourself from the Settlement, you must submit a statement with the following information:

- The name of this Action (*Burns v. TD Bank, N.A.*, Case No. 1:21-cv-18194-KMW-AMD (D.N.J.));
- Your full name, address, and the last four digits of your TD Bank personal deposit checking account number;
- The identity of the counsel representing you in this Action, if any;
- A statement that you want to be excluded from the Settlement in this Action, and that you understand you will receive no money or other benefits from the Settlement; and
- Your signature and date of execution.

You must mail your exclusion request, postmarked no later than **September 14, 2024**, to Burns v TD Bank Settlement Administrator, PO Box 5826, Portland, OR 97228-5826

#### **12. If I do not exclude myself, can I sue TD Bank for the same thing later?**

No. If you do not exclude yourself, you will give up the right to sue TD Bank for the claims that the Settlement resolves. You must exclude yourself from the Settlement Class if you want to pursue your own lawsuit.

#### **13. If I exclude myself, can I still get a payment?**

No. You will not receive a payment if you exclude yourself from the Settlement.

### **THE LAWYERS REPRESENTING THE ENTIRE SETTLEMENT CLASS**

#### **14. Do I have a lawyer in the case?**

The Court has appointed lawyers to represent you and others in the Settlement Class as “Class Counsel”:

E. Adam Webb  
G. Franklin Lemond, Jr.  
WEBB, KLASE & LEMON, LLC  
1900 The Exchange, SE, Suite 480  
Atlanta, GA 30339

Jeffrey Kaliel  
KALIEL GOLD, PLLC  
1100 15<sup>th</sup> Street NW, 4<sup>th</sup> Floor  
Washington, DC 20005

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **15. How will the lawyers be paid?**

Class Counsel intend to request up to 33% of the Value of the Settlement for their attorneys’ fees and reasonable costs and expenses in connection with this case. The attorneys’ fees and expenses awarded by the Court will be paid out of the Settlement Fund Account. Class Counsel will file their motion seeking attorneys’ fees and expenses by August 15, 2024. That motion will be available at [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com). The Court will review Class Counsel’s request and determine the amount of fees and expenses to award.

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Class Counsel will also request that Service Awards of up to \$5,000.00 to each of the Class Representatives, to be paid out of the Settlement Payment Amount for their service as representatives of the entire Settlement Class.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel’s request for attorneys’ fees and expenses, and/or Class Counsel’s request for Service Awards for the Class Representatives. To object, you must submit a letter to each of the following addresses:

<u>The Court</u>	<u>Counsel for TD Bank</u>	<u>Class Counsel</u>
Clerk of the Court U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Mitchell H. Cohen Building & U.S. Courthouse 4 <sup>th</sup> & Cooper Streets Camden, NJ 08101	Lucus A. Ritchie Joshua Dunlap PIERCE ATWOOD LLP 254 Commercial Street Portland, ME 04101	E. Adam Webb G. Franklin Lemond, Jr. WEBB, KLAKE & LEMON, LLC 1900 The Exchange, SE Suite 480 Atlanta, GA 30339

Your objection must be postmarked on or before **September 14, 2024** and must include:

- The name of this Action (*Burns v. TD Bank, N.A.*, Case No. 1:21-cv-18194-KMW-AMD (D.N.J.));
- Your full name, address, email address, telephone number, and the last four digits of your TD Bank personal deposit checking account;
- All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- A list of all documents that you ask the Court to consider;
- A statement of whether your objection applies only to you, to a specific part of the class, or to the entire class;
- The identity of all counsel who represent you in this matter, 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;
- The number of times you have objected to a class action settlement in the past five (5) years, including the caption of each case in which you made such objection and a copy of any orders related to or ruling on your prior objections in each case;
- If applicable, the number of times your counsel or your counsel’s law firm have objected to a class action settlement in the past five (5) years, including the caption of each case in which they made such objection and a copy of any orders related to or ruling on their prior objections in each case;
- Whether you intend to appear and/or testify, or counsel representing you intends to appear, at the hearing that the Court has scheduled to determine whether to grant final approval of the Settlement and Class Counsel’s request for attorneys’ fees and Service Awards to the Class Representatives (the “Final Approval Hearing”);
- The identity of all counsel representing you who will appear at the Final Approval Hearing;
- A list of all persons who you or your counsel will call to testify at the Final Approval Hearing in support of the objection; and
- Your signature (an attorney’s signature is not sufficient).

**17. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement *only if you do not exclude yourself*. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, then you cannot object to the Settlement because it no longer affects you.

**THE FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to approve Class Counsel’s request for attorneys’ fees and expenses and for Service Awards for the Class Representatives. You may attend and you may ask to speak, but you don’t have to do so.

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## 18. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing on **October 10, 2024 at 1:00 P.M.** at the United States District Court for the District of New Jersey, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4<sup>th</sup> & Cooper Streets, Courtroom 4A, Camden, New Jersey 08101. The hearing may be virtual or moved to a different date or time without additional notice, so it is a good idea to check [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider any requests by Class Counsel for attorneys' fees and expenses and for Service Awards for the Class Representatives. If there are objections, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the Settlement, the request for attorneys' fees and expenses, and the request for Service Awards. We do not know how long these decisions will take.

## 19. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. But you may attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submit your written objection on time, to the proper addresses, and it complies with the requirements set forth in Question 16 above and in Section VII of the Settlement Agreement, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## 20. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must submit an objection that complies with the requirements set forth in Question 16 above and send a letter saying that you intend to appear and wish to be heard. Your notice of intention to appear must include the following:

- Your full name, address, and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for Settlement in *Burns v. TD Bank, N.A.*, Case No. 1:21-cv-18194-KMW-AMD (D.N.J.);
- The reasons you wish to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

You must submit your Notice of Intention to Appear so that it is received no later than **September 26, 2024**, to the addresses in Question 16 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

### **IF YOU DO NOTHING**

## 21. What happens if I do nothing at all?

If you do nothing, you will receive the benefits to which you are entitled under this Settlement.

### **GETTING MORE INFORMATION**

## 22. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can obtain the complete Settlement Agreement at [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com). You also may write with questions to the Settlement Administrator at Burns v TD Bank Settlement Administrator, PO Box 5826, Portland, OR 97228-5826, or call the toll-free number, **888-695-6078**. **Please do not contact TD Bank or the Court for information.**