

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

If you have or had a consumer checking account with Popular Bank and you were charged an overdraft fee on certain debit card or ATM transactions on or after May 13, 2016, you may be eligible for a cash payment from a class action Settlement.

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

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web:
LipsettOverdraftSettlement.com.*

A \$1,500,000 settlement has been reached in a class action lawsuit filed against Popular Bank (“Defendant”). The Plaintiff filed this lawsuit against the Defendant alleging a breach of contract when the Defendant assessed overdraft fees on what are sometimes called “Authorize Positive, Settle Negative Transactions” (“APSN Transactions”). This is where a bank assesses an overdraft fee on a transaction that overdraws the account when it clears, although the transaction was previously authorized against sufficient available funds. The Defendant denies these legal claims. The Court has not decided who is right.

You are a “Settlement Class Member” if you come under the following Settlement Class definition:

All holders of Popular Bank consumer checking accounts who, during the Class Period, were assessed and not refunded an overdraft (“OD”) fee in connection with (1) a debit card or other ATM transaction on their account that was the subject of an authorization made on or before April 15, 2020; and/or (2) a debit card or other ATM transaction that was authorized against positive funds on or after April 16, 2020. Provided, however, that OD Fees assessed on or before August 6, 2018, against members of the Settlement Class in *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup. Ct.), are not included in these two categories of OD Fees.

If you are a Settlement Class Member, you do not need to do anything to receive your cash payment. If the Settlement receives final approval from the Court, you will get your payment automatically. Current Accountholders will receive an account credit. Past Accountholders will receive a check.

This Notice may affect your rights. Please read it carefully.

YOUR LEGAL RIGHTS AND OPTIONS		DEADLINE
Exclude Yourself	Get no cash payment and keep any right to file your own lawsuit against the Released Parties about the legal claims in this lawsuit that are released by the Settlement.	December 9, 2024
Object	Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it, and you will still receive a cash payment if you are a Settlement Class Member.	December 9, 2024
Do Nothing	If you do nothing, you may be eligible to receive a cash payment. If you are eligible and do not exclude yourself from the Settlement, you will receive this benefit automatically if the Settlement is approved by the Court. By doing nothing, you will also release your legal claims against the Released Parties, and you will be bound by the Settlement.	

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

If you have any questions about this Notice, the Settlement, or your eligibility to participate in the Settlement, please visit LipsettOverdraftSettlement.com or call toll-free at 1-877-701-2656.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.

BASIC INFORMATION

1. Why is this Notice being provided?

A federal court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

The Honorable Judge Margaret M. Garnett of the United States District Court for the Southern District of New York is overseeing this class action. The lawsuit is known as *Lipsett v. Banco Popular North America*, Case No. 22-cv-3901 (S.D.N.Y.). The person who filed the lawsuit is called the “Plaintiff” and the company sued, Popular Bank (formerly known as Banco Popular North America), is called the “Defendant.”

2. What is this lawsuit about?

The Plaintiff filed this lawsuit against the Defendant alleging a breach of contract when the Defendant assessed overdraft fees on what are sometimes called “Authorize Positive, Settle Negative Transactions” (“APSN Transactions”). This is where a bank assesses an overdraft fee on a transaction that overdraws the account when it clears, although the transaction was previously authorized against sufficient available funds. The Defendant acknowledges it assessed overdraft fees on these types of transactions in some instances but maintains the account agreement permitted it to do so. Defendant denies any liability. The Court has not decided who is right.

3. What is a class action?

In a class action lawsuit, one or more persons called Plaintiffs sue on behalf of other persons that have similar legal claims. The people are a “Class” or “Settlement Class Members.” In this lawsuit, the person who sued is called the “Plaintiff.” The company and people they are suing, Popular Bank, is called the “Defendant.” One court resolves the issues for everyone in the Class, except for those people who choose to exclude themselves (opt out) from the Class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiff or the Defendant. Instead, both sides agreed to a Settlement to avoid the cost and risk of a trial. The Plaintiff and Class Counsel believe the Settlement is best for the Settlement Class and represents a fair, reasonable, and adequate resolution of the lawsuit.

The Defendant denies the legal claims in the lawsuit; denies all allegations of wrongdoing, fault, liability or damage to the Plaintiff and the Settlement Class; and denies they acted improperly or wrongfully in any way. The Defendant nevertheless recognizes the expense and time that would be required to defend the lawsuit through trial and has taken this into account in agreeing to the Settlement.

WHO IS IN THE SETTLEMENT?

To see if you are eligible for a cash payment, you first have to determine if you are a Settlement Class Member.

5. Am I part of the Settlement?

The Settlement Class includes all Accountholders of Popular Bank consumer checking accounts who during the Class Period (May 13, 2016, to July 26, 2024) were assessed, and not refunded, an overdraft fee in connection with (1) a debit card or other ATM transaction on their account on or before April 15, 2020, (regardless of whether the authorization was against positive funds); and/or (2) a debit card or other ATM transaction that was authorized against positive funds on or after April 16, 2020. If you were a member of the Settlement Class in the *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup. Ct.) lawsuit, then overdraft fees which you were assessed on or before August 6, 2018, are not included in these two categories of overdraft fees.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.

The formal definition of the Settlement Class is as follows.

All holders of Popular Bank consumer checking accounts who, during the Class Period, were assessed and not refunded an overdraft (“OD”) fee in connection with (1) a debit card or other ATM transaction on their account that was the subject of an authorization made on or before April 15, 2020; and/or (2) a debit card or other ATM transaction that was authorized against positive funds on or after April 16, 2020. Provided, however, that OD Fees assessed on or before August 6, 2018, against members of the Settlement Class in *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup. Ct.), are not included in these two categories of OD Fees.

You are excluded from being a Settlement Class Member if you are (a) the Defendant, its parents, subsidiaries, affiliates, officers, and directors; (b) all Settlement Class Members who make a timely election to opt out; and (c) all judges assigned to this litigation and their immediate family members.

6. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement Website at LipsettOverdraftSettlement.com or call 1-877-701-2656.

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET

7. What does the Settlement provide?

As a result of the Settlement, a \$1,500,000 Settlement Fund will be established for the Settlement and will be used to pay for (1) Settlement Administration Costs; (2) the Service Award to the Class Representative; (3) the attorneys’ Fee and Cost Award. The amount remaining after these items are paid, if any, is the “Net Settlement Fund.” The Net Settlement Fund will then be used to make automatic Settlement Class Member Payments (an account credit or payment by check) to all Settlement Class Members who do not request exclusion from the Settlement Class.

8. How will the amount of the cash payments be determined?

Payments to each Settlement Class Member will be distributed on a pro rata (a legal term meaning equal) basis and calculated as follows:

(Net Settlement Fund divided by the Total Dollar Amount of Class Fees of Settlement Class Members) x (Total Dollar Amount of Class Fees [meaning overdraft fees covered by the Settlement that were assessed to your Account and not refunded] you as an individual Settlement Class Member were charged and paid in connection with the transactions at issue) = Settlement Class Member Payment.

HOW TO GET BENEFITS FROM THE SETTLEMENT

9. Do I have to file a claim to receive a cash payment?

No. If the Settlement is approved, a cash payment will be made automatically to you as a Settlement Class Member unless you request exclusion from the Settlement Class. Current Accountholders with Popular Bank at the time cash payments are made will automatically receive a deposit to their account. Past Accountholders will automatically receive a check for their cash payment. You do not need to file a claim to receive a cash payment.

For a jointly held Account of one or more Current Accountholders, payment will deposit into an account of the primary Accountholder whether or not such account is jointly held. For a jointly held Account of a Past Accountholder, a check payable to the primary Accountholder named on the Account will be sent to the last-known address for the primary Accountholder.

10. When will I receive my cash payment?

The Court will hold a Final Approval Hearing on **January 7, 2025**, (which is subject to change), to decide whether to finally approve the Settlement. Even if the Court finally approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. You will not receive a cash payment until any appeals are resolved. Please be patient and check LipsettOverdraftSettlement.com for updates.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.

11. What am I giving up to receive a cash payment from the Settlement?

Unless you exclude yourself (opt out) from being a Settlement Class Member by timely submitting a request for exclusion, you will remain a Settlement Class Member. This means as a Settlement Class Member you cannot sue, continue to sue, or be part of any other lawsuit against the Released Parties about the legal issues in this lawsuit. It also means the Court's orders and any judgments will apply to you and legally bind you, and you will release the legal claims detailed in the Settlement Agreement. The Release is provided in the Settlement Agreement in Section 13 in necessary legal terminology. The Settlement Agreement is available at LipsettOverdraftSettlement.com.

THE LAWYERS REPRESENTING YOU

12. Do I have lawyers in this case?

Yes, the Court has appointed lawyers Jeffrey Kaliel of KalielGold PLLC and Michael R. Reese of Reese LLP to represent you and the other Settlement Class Members. The lawyers are called Class Counsel. They are experienced in handling class action lawsuits. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense, but you do not need to.

Michael R. Reese Reese LLP 100 West 93 rd Street, 16 th Floor New York, New York 10025	Jeffrey Kaliel KALIELGOLD PLLC 1100 15 th Street, NW, 4 th Floor Washington, D.C. 20005
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13. How will the lawyers be paid?

Class Counsel will request an Attorneys' Fee of one-third of the Settlement Fund and separately seek reimbursement of costs and expenses. In addition, Class Counsel will request the Court approve a Service Award for the Class Representative (Frankie Lipsett) up to \$10,000 for their efforts in pursuing this lawsuit. If awarded by the Court, the Attorneys' Fee and Cost Award and the Service Award will be paid from the Settlement Fund. The Court may award less than these amounts for the Attorneys' Fee and Cost Award and Service Award.

YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue the Released Parties for the legal claims in this lawsuit, and you do not want to receive a cash payment from this Settlement, you must take steps to exclude yourself from the Settlement. This is called “excluding yourself”—or is sometimes referred to as “opting out” of the Class.

14. How do I exclude myself from the Settlement Class?

To exclude yourself from the Settlement, you must mail a written request for exclusion, which includes the following:

- your name and current mailing address;
- your bank account number(s) or sufficient information to identify your bank account(s);
- your physical signature; and
- a clear statement that you want to be excluded from the Settlement Class, such as, “I hereby request to be excluded from the Settlement Class in *Lipsett v. Banco Popular North America*.”

The exclusion request must be mailed to the Settlement Administrator at the following address, and **postmarked by December 9, 2024**:

Popular Bank Fee Class Action
Opt-Out Requests
P.O. Box 2798
Portland, OR 97208-2798

If an Account has more than one Accountholder, and one Accountholder opts out, then all Accountholders on that Account are considered to have opted out and will not receive a cash payment.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.

You cannot opt out (exclude yourself) by telephone or email.

“Mass” or “class” requests for exclusion filed by third parties on behalf of a “mass” or “class” of Settlement Class Members or multiple Settlement Class Members, where an opt out has not been signed by every Settlement Class Member, will not be allowed.

15. If I exclude myself, can I get anything from this Settlement?

If you choose to exclude yourself from the Settlement, you are telling the Court you do not want to be a Settlement Class Member, and you will not be bound by the Settlement or any judgment in this lawsuit.

You can only get a cash payment if you remain a Settlement Class Member. If you remain a Settlement Class Member, you will be bound by the Settlement or any judgment in this lawsuit.

If you choose to exclude yourself from the Settlement, you are not giving up the right to sue the Released Parties for the legal claims this Settlement resolves and releases. You must exclude yourself as a Settlement Class Member to start or continue with your own lawsuit about the legal claims involved in this Settlement.

YOUR RIGHTS – 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 object to the Settlement?

Any Settlement Class Member who does not submit a request for exclusion from the Class may object to the Settlement.

Your objection must contain the following:

- your full name, current address, telephone number, and email address (if any);
- information identifying you as a Settlement Class Member, including evidence you are a Settlement Class Member;
- a written statement of the specific legal and factual bases for the objection, accompanied by any legal support for the objection you believe is applicable;
- the identity of any lawyer representing or assisting you as an objector, if any, and a statement indicating whether they will appear at the Final Approval Hearing;
- a statement indicating whether you intend to appear and/or testify at the Final Approval Hearing;
- a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- your signature as the objector and the signature of your duly authorized lawyer or other duly authorized representative, along with documentation of the representation (if any);
- a list, by case name, court, and docket number, of any cases in which you directly or through a lawyer have filed an objection to any proposed class action settlement within the last three years; and
- a list, by case name, court, and docket number, of all other cases you have been a named plaintiff or served as a class representative in any class action.

If your objection is made by or through a lawyer, the written objection must also include:

- the identity and number of Settlement Class Members represented by the lawyer;
- the identity and number of such represented Settlement Class Members who have opted out of the Settlement Class; and
- the identity and number of such represented Settlement Class Members who remained in the Settlement Class and have not objected.
- If the lawyer intends to seek fees and expenses from anyone other than the objector they represent, the lawyer must also file with the Court and serve upon Class Counsel and Popular Bank’s Counsel, not later than 15 days before the Final Fairness Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the lawyer for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the lawyer’s hourly rate.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.

If you or your lawyer fail to make an objection in the manner specified in this section you will have waived any objections and will be prevented from making any objection to the Settlement (whether by appeal, or otherwise).

Your written objection must be **filed** with the Court by **December 9, 2024**, with copies to Class Counsel and Defendant's Counsel at the following addresses:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court Hon. Margaret M. Garnett United States District Court, Southern District of New York 40 Foley Square New York, NY 10007	Jeffrey Kaliel KALIELGOLD PLLC 1100 15 th Street NW, 4 th Floor Washington, D.C. 20005 Michael R. Reese REESE LLP 100 West 93 rd Street, 16 th Floor New York, NY 10025	Mitchel H. Kider Michael Y. Kieval WEINER BRODSKY KIDER PC 1300 19 th Street NW, 5 th Floor Washington, D.C. 20036

Any objection to the Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own lawyer. If you appear through your own lawyer, you are responsible for hiring and paying your lawyer.

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

Objecting is simply telling the Court you do not like something about the Settlement. You can object only if you remain a Settlement Class Member (meaning you do not exclude yourself). Excluding yourself is telling the Court you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object because the Settlement no longer affects you.

YOUR RIGHTS – THE FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. You may attend, and you may ask to speak if you file an objection and a Notice of Intent to Appear by the deadline. You do not have to attend or speak at the hearing.

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

The Court will hold the Final Approval Hearing at **9:30 am** on **January 7, 2025**, at the United States District Court, Southern District of New York, 40 Foley Square, New York, NY 10007. If you or your lawyer would like to speak at the hearing, you must file an objection and a Notice of Intent to Appear at the Final Fairness Hearing by **December 9, 2024**.

Note: The date and time of the Final Approval Hearing are subject to change without further notice to the Settlement Class. The Court may also decide to hold the hearing electronically or by telephone. You should check the Settlement Website, LipsettOverdraftSettlement.com, to confirm the date and time of the Final Approval Hearing have not changed.

At the hearing, the Court will consider whether the Settlement is final, fair, reasonable, and adequate. If there are objections that were **filed** with the Court by the deadline, the Court will consider them. If you submit a timely objection and Notice of Intent to Appear, and you would like to speak at the hearing, the Court will also listen to you or your lawyer speak at the hearing, if you so request.

If the Court approves the Settlement, cash payments will be provided after any appeals are resolved. Please be patient. The Settlement Website, LipsettOverdraftSettlement.com, will be updated to provide Settlement Class Members with updated information.

19. Am I required to attend the Final Approval Hearing?

You may attend the Final Approval Hearing, but you are not required to do so. If you submit an objection and a Notice of Intent to Appear, you may (but are not required to) speak at the Final Approval Hearing. You may also pay your own lawyer to attend or discuss your objection but that is not necessary.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.

20. May I speak at the Final Approval Hearing?

Yes, as long as you do not exclude yourself, and you submit an objection and a Notice of Intent to Appear, you or your lawyer can (but do not have to) participate and speak in this lawsuit and Settlement. This is called making an appearance. You also may have your own lawyer speak for you at the hearing, but you will have to pay for the lawyer yourself.

If you or your lawyer would like to speak at the hearing, you must deliver to Class Counsel and Defendant's Counsel and have file with the Court, a Notice of Intent to Appear by **December 9, 2024**.

The Notice of Intent to Appear must accomplish the following:

- state how much time you or your lawyer need to present your objection;
- identify by name, address, and telephone number, all witnesses you propose to have testify (if any);
- summarize in detail the testimony of all witnesses (if any);
- identify all exhibits you or your lawyer intend to offer in support of your objection; and
- attach complete copies of all exhibits.

IF YOU DO NOTHING

21. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will automatically receive a cash payment if the Court finally approves the Settlement. You will give up your rights as explained in the "Excluding Yourself from the Settlement" section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Released Parties about the legal claims that are released by the Settlement Agreement. You will be bound by the Settlement and any judgments.

22. How do I get more information about the Settlement?

This Notice summarizes the Settlement. More details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at LipsettOverdraftSettlement.com, by calling 1-877-701-2656, or by writing to:

Popular Bank Fee Class Action
Settlement Administrator
P.O. Box 2798
Portland, OR 97208-2798

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE REGARDING THIS NOTICE OR THE SETTLEMENT.

Questions? Call 1-877-701-2656 or visit LipsettOverdraftSettlement.com.