

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

IN RE: TD BANK, N.A. DEBIT CARD  
OVERDRAFT FEE LITIGATION

MDL No. 2613

Case No. 6:15-mn-02613-BHH

ALL CASES

**ORDER APPROVING SUPPLEMENTAL NOTICE AND SETTLEMENT PAYMENT  
PLAN AND CY PRES PROPOSAL**

1. The Court granted final approval of the Settlement<sup>1</sup> in this matter on January 9, 2020 (ECF No. 233), and entered final judgment dismissing the cases and claims consolidated in this MDL on January 24, 2020 (ECF No. 236). Without affecting the finality of the judgment, the Court retained continuing jurisdiction over all matters relating to the administration of the Settlement. (See ECF No. 233 at 17–18.)

2. Following final approval, the parties and the Settlement Administrator have implemented the terms of the Settlement Agreement, including distribution of settlement payments to eligible Settlement Class Members. After the Settlement Administrator made settlement payments, however, the parties discovered that, because of data processing errors, the holders of roughly 70,000 accounts that fall within the definitions of the Settlement Classes, representing approximately 1.5% percent of the Settlement Classes, were inadvertently omitted from the initial Notice program (the “Omitted Class Members”). These Omitted Class Members therefore were not provided the opportunity to participate in or opt out of the Settlement. The data processing errors, which are described in the Declaration of Kaelan Nagle (ECF No. 245), also resulted in underpayments to roughly

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<sup>1</sup> All capitalized terms not defined in this order shall have the meaning set forth in the Settlement Agreement and Release between the Parties (DE # 217-1).

3,300 Settlement Class Members who were provided Notice and made claims under the Settlement Agreement (the “Underpaid Class Members”).

3. In order to fully implement the Settlement in accordance with its terms, the plan and proposal submitted by Settlement Class Counsel and TD Bank, N.A. (“TD Bank”) requesting: (1) Notice and settlement payments to Omitted Class Members; (2) supplemental settlement payments to Underpaid Class Members; and (3) *cy pres* distribution of any residual funds following the supplemental Notice and settlement payment plan to The Rose Foundation, is **APPROVED** as set forth herein.

4. The Settlement Administrator is authorized and directed to send Notice to the Omitted Class Members who are members of the Regulation E Class (“Omitted Reg. E Class Members”) in the forms attached as Exhibit 1 and Exhibit 2 to the Declaration of Cameron Azari (ECF No. 245). Notice shall be mailed via U.S. Mail to all Omitted Reg. E Class Members and shall be accompanied by a paper check in the amount of \$1.88. The checks shall be valid for 180 days.

5. The Settlement Administrator is authorized and directed to send Notice to Omitted Class Members who are members of the TD Business Available Balance Class (“Omitted Business Class Members”) in the forms attached as Exhibit 1 and Exhibit 3 to the Azari Declaration. Notice shall be mailed via U.S. Mail to all Omitted Business Class Members and shall be accompanied by a paper check in an amount equal to 5.32% of each Omitted Business Class Member’s total amount of Eligible TD Available Balance Business Overdraft Fees. The checks shall be valid for 180 days.

6. The Settlement Administrator shall attempt to resend Notice to any Omitted Class Member whose mailed Notice is returned undeliverable, consistent with the process for resending Notice set forth in the Settlement Agreement.

7. Omitted Class Members shall have forty (40) days from the date Notice is first mailed to opt out of or object to the Settlement (“Opt Out/Objection Deadline”). In order to be valid, opt-out requests and objections must adhere to the requirements for opt outs and objections set forth in the Settlement Agreement (see ¶¶ 128–130) and Notice. Within ten (10) days of the Opt Out/Objection Deadline, the Settlement Administrator shall submit to the Court a report identifying any Omitted Class Members who submitted timely requests to opt out of the Settlement. If one or more Omitted Class Members submit a timely and valid objection, the Court may hold a hearing to address the objection(s). The Court will provide advance notice of any such hearing to Settlement Class Counsel, TD Bank, and any objector or objector’s counsel. Settlement Class Counsel and TD Bank shall be afforded an opportunity to provide a written response to any objection prior to the hearing. If no timely and valid objections are submitted by Omitted Class Members, all Omitted Class Members who do not timely opt out of the Settlement shall automatically be bound by the terms of the Settlement Agreement, including the release of claims.

8. The Settlement Administrator is authorized and directed to distribute supplemental payments to Underpaid Class Members as follows. Each Underpaid Class Member entitled to a Regulation E payment shall be paid an additional \$1.88. Each Underpaid Class Member entitled to an additional TD Available Balance Business payment shall be paid an amount equal to 5.32% of the total Eligible TD Available Balance Business Overdraft Fees that were inadvertently excluded from their initial distribution

calculations. Payments to Underpaid Class Members will be made by mailed paper checks accompanied by notice in the form attached as Exhibit 4 to the Azari Declaration. The checks shall be valid for 180 days.

9. The Settlement Administrator is directed to continue to maintain the Settlement Website until at least 180 days after the Notices and checks are first mailed to Omitted Class Members and Underpaid Class Members. The Settlement Website will contain information about the supplemental Notice and settlement payment plan described herein, including instructions for how Omitted Class Members can opt out of or object to the Settlement.

10. All costs associated with the above-described supplemental Notice and settlement payment plan, including without limitation all settlement payments to Omitted Class Members and Underpaid Class Members and all costs of Notice and administration including but not limited to costs incurred by the Settlement Administrator, shall be paid from the Settlement Fund. TD Bank shall not be obligated, under any circumstances, to pay any additional amounts in connection with this Settlement to any Settlement Class Members, the Settlement Administrator, Class Counsel, or any other person or party.

11. Upon expiration of the 180-day validity period for checks mailed to Omitted Class Members and Underpaid Class Members, the Settlement Administrator is authorized and directed to void all uncashed checks and to distribute any residual funds remaining in the Settlement Fund to The Rose Foundation. The Rose Foundation shall use the residual funds to run a grant-making program to benefit organizations promoting consumer financial literacy and education within the geographic footprint of the

Settlement Classes. No amount of the residual *cy pres* funds shall be used to support consumer or other litigation.

**IT SO ORDERED.**

/s/Bruce Howe Hendricks  
United States District Judge

April 20, 2021  
Greenville, South Carolina