

# If you were charged overdraft fees by Bank of Hawai'i from February 15, 2005 through August 15, 2010, you could get a payment from a class action settlement.

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

- A settlement has been reached in a class action lawsuit about the overdraft fees Bank of Hawai'i charged certain customers.
- The settlement will provide payments to eligible customers who were charged more than one overdraft fee on a single day by Bank of Hawaii as a result of the order that transactions were processed in those customers' checking accounts anytime from February 15, 2005 through August 15, 2010.
- Your legal rights are affected whether you act or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING</b>	<b>Automatically get a payment.</b> Give up rights to sue Bank of Hawai'i about the legal claims in this case.
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to ever be part of another lawsuit against Bank of Hawai'i about the legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you don't like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved, if there are any. Please be patient.

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## BASIC INFORMATION

1.

### Why was this notice issued?

A Court authorized this notice because you have a right to know about the proposed settlement of this class action lawsuit, and about all of your options before the Court decides whether to approve the settlement. This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, and who can get them.

Judge Trader of the First Circuit Court of Hawai'i is overseeing this class action. The case is known as *Taulava, et.al. v. Bank of Hawaii, et al.*, Civil No. 11-1-0337-02, filed on February 15, 2011. The person who sued is called "Plaintiff," and the company they sued, Bank of Hawai'i, is called "Defendant."

2.

### What is this lawsuit about?

The lawsuit claims that Bank of Hawai'i didn't post debit card and ATM transactions in the order that they were made, but instead posted transactions in the order of highest dollar amount to lowest dollar amount. It also claims that, as a result, the number of overdraft fees charged to certain accounts increased. Bank of Hawai'i denies all the claims in the lawsuit and denies that it did anything wrong.

3.

### What is a class action?

In a class action, one or more people, called Class Representatives (in this case Lodley and Tehani Taulava), sue for all people who have similar claims. The people included in the class action are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4.

### Why is there a settlement?

The Court did not decide in favor of the Plaintiff or the Defendant. Instead, both sides agreed to a settlement. This way, they avoid the cost and risk of a trial, and the people affected get payments. The proposed settlement does not mean that any law was broken or that Bank of Hawai'i did anything wrong. The Class Representatives and their attorneys think the proposed settlement is best for all Class Members.

## WHO IS INCLUDED IN THE SETTLEMENT

5.

### Am I part of the settlement?

If you received a notice in the mail, Bank of Hawai'i's records show that you are a Class Member and are eligible for a payment. Generally, the Class includes persons and entities who had a personal checking account with Bank of Hawai'i and were charged two or more overdraft fees on debit card or ATM transactions on a single banking day anytime between February 15, 2005 through August 15, 2010.

6.

### What are Qualifying Overdraft Fees?

Overdraft fees are charged when the amount of money to be paid from your account exceeds the amount of money available in your account. Overdraft fees do not include fees charged when a check is return unpaid. For the purposes of this Settlement, a Qualifying Overdraft Fee means overdraft fees incurred by a Class Member on a single banking day on which the Class Member incurred two or more overdraft fees on debit card or ATM transactions.

## **THE SETTLEMENT BENEFITS—WHAT YOU GET**

**8.**

**What does the settlement provide?**

The settlement is for \$9 million. After deductions for costs of settlement administration and notice, class representative awards, and attorneys' fees, the remainder will be distributed to Class Members in amounts proportional to the number of Qualifying Overdraft Fees they incurred between February 15, 2005 and August 15, 2010.

**9.**

**How much money can I get?**

Bank of Hawai'i will use its business records to identify each day during the class period on which a Class Member had two or more overdraft fees on his or her account. Bank of Hawai'i will then determine the total number of overdrafts for the Class Member on these days (the Individual Total). The Individual Totals of all Class Members will then be added to determine the total number of overdrafts for the entire Class during the class period (the Class Total). After deducting the expenses discussed in Section 8, above, the balance of the settlement amount will be divided by the Class Total. The resulting amount will be the reimbursement value for each overdraft. Each Class Member's Individual Total will then be multiplied by the reimbursement value to determine individual payment amounts.

**10.**

**When will I get my payment?**

Payments will be made if the Court approves the settlement. The Court will hold a hearing on Month 00, 0000, to decide whether to approve the settlement. It is possible there could be an appeal after the settlement is approved. Payments will not be sent until any appeal is resolved. This can take time. Please be patient.

**11.**

**How will I get my payment?**

Unless you exclude yourself from the settlement, your benefits will be distributed automatically. If you currently have an account with Bank of Hawai'i, you will probably receive a direct deposit into the account that was charged a Qualifying Overdraft Fee or be sent a check in the mail. If you are no longer a Bank of Hawai'i customer, you will be sent a check in the mail.

**12.**

**What rights am I giving up to get a payment and stay in the Class?**

Unless you exclude yourself, you are staying in the Class. If the settlement is approved and becomes final, all of the Court's orders will apply to you. That means you won't be able to sue, continue to sue, or be part of any other lawsuit against Bank of Hawai'i for the legal issues in this case. The specific rights you are giving up are called released claims. The Released Claims are described in detail in sections 4.01 and 4.02 of the Settlement Agreement.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to keep the right to sue or continue to sue Bank of Hawai'i about the legal claims in this case, and you don't want a payment from this settlement, then you must take steps to get out of the settlement. This is called excluding yourself or is sometimes called opting out of the Settlement Class.

### **13. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from the *Taulava v. Bank of Hawai'i* settlement.

Each request for exclusion must include:

- (a) the Class Member's full name, address, and telephone number;
- (b) the Class Member's personal and original signature or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member;
- (c) state the Class Member's intent to be excluded from the Settlement Class. In those cases where a Class Member includes persons who jointly hold the same account, all persons named as account holders must opt-out.

### **14. If I exclude myself will I still get a payment from this settlement?**

No. If you exclude yourself, you are telling the Court that you don't want to be part of the Class in this settlement. You can only get a payment if you stay in Class.

### **15. If I don't exclude myself, can I still sue Bank of Hawai'i for the same thing later?**

No. Unless you exclude yourself, you are giving up the right to sue Bank of Hawai'i for the claims that this settlement resolves. You must exclude yourself from *this* Class to start or continue with your own lawsuit or be part of any other lawsuit.

## **THE LAWYERS REPRESENTING YOU**

### **16. Do I have a lawyer in this case?**

Yes. The Court appointed the law firms of Perkin & Faria, Kopelowitz Ostrow, Chitwood Harley Harnes, LLP, and Tycko & Zavareei, LLP; to represent you and other Class Members. Together, these lawyers are called Class Counsel. 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.

17.

**How will the lawyers be paid?**

Class Counsel will ask the Court to approve up to 25% of the of the settlement fund (\$2.25 million) in attorneys' fees, plus reimbursement of their costs and expenses. They will also ask the Court to approve that a payment of up to \$7,500 be paid to each Class Representative for their help on behalf of the Class. The Court may award less than these amounts. These amounts will be deducted from the the settlement fund before making payments to Class Members. Bank of Hawai'i does not oppose these fees, expenses and payments.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court if you don't agree with the settlement or any part of it.

18.

**How do I tell the Court if I don't like the settlement?**

If you're a Class Member, you can object to the settlement. You can give reasons why you think the Court should not approve it. The Court will consider your views before making a decision. To object, you must mail or hand-deliver a written objection to the Settlement ("Objection") to Class Counsel and Counsel for the Defendant, at the addresses set forth in the Class Notice, and mail or hand-deliver the Objection simultaneously to the Court. Each Objection must:

- (a) set forth the Class Member's full name, current address, and telephone number;
- (b) contain the last four digits of the account number of each Account as to which the objecting Class Member is a Class Member;
- (c) contain the Class Member's original signature (reproduced, facsimile, or other non-original signatures will not be valid);
- (d) state that the Class Member objects to the Settlement, in whole or in part;
- (e) set forth a statement of the legal and factual basis for the objection; and
- (f) identify any and all other cases in which the Class Member or their counsel have appeared either as settlement objectors or as counsel for objectors in the preceding six years; and
- (g) provide copies of any documents that the Class Member wishes to submit in support of his/her position.

Objections may be filed by counsel for a Class Member. Any Class Member who does not submit a timely Objection in complete accordance with this Agreement, the Class Notice, and otherwise as ordered by the Court shall not be treated as having filed a valid Objection to the Settlement.

Mail your objection so that it is postmarked

Class Counsel	Defense Counsel	Court
John Perkin	Paul Alston	

19.  
and excluding?

What's the difference between objecting

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class (do not exclude yourself). Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you cannot object because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20.  
whether to approve this settlement?

When and where will the Court decide

The Court will hold a Fairness Hearing at \_\_\_ m. on \_\_\_ day, at the First Circuit Court of Hawai'i, \_\_\_\_\_. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Trader will listen to people who have asked to speak at the hearing (see Question 22). The Court may also decide whether to approve Class Counsel's requested fees and expenses. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

21.

Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But, you are welcome to come 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 mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22.

May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Taulava v. Bank of Hawai'i*." Be sure to include your name, address, telephone number, Bank of Hawai'i account number(s) and signature.

## IF YOU DO NOTHING

23.

What happens if I do nothing at all?

If you do nothing, you will automatically receive the benefits of the settlement (Question 9). You will also give up your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Bank of Hawai'i about the legal issues in this case, ever again.

## GETTING MORE INFORMATION

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement.

