

**CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT ROCK ISLAND COUNTY, ILLINOIS**

Case No. 2019-CH-299

**NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT**

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!**

**IF YOU HAVE OR HAD AN ACCOUNT WITH IH MISSISSIPPI VALLEY CREDIT UNION AND YOU WERE CHARGED CERTAIN FEES BETWEEN DECEMBER 1, 2012 AND APRIL 30, 2019, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois has authorized this Notice; it is not a solicitation from a lawyer.

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING</b>	If you don't do anything and the settlement is approved, you may be sent a payment from the Settlement Fund and/or receive forgiveness of Uncollected Fees 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 exclude yourself from the settlement but want to recover against Defendant, you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	You must mail an objection to the Settlement Administrator, explaining why you believe the Court should reject the settlement. If the settlement is approved, then you may be sent a payment and/or forgiveness of Uncollected Fees and you will not be able to sue Defendant for the claims asserted in this litigation.

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 *Deanna Rivera v. IH Mississippi Valley Credit Union*, in the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, Case No. 2019-CH-299. The case is a "class action." That means that the "Named Plaintiff," Deanna Rivera, is an individual who is acting on behalf of current and former members who were assessed certain APPSN Fees between January 1, 2018 and April 30, 2019, or Retry Fees between December 1, 2012 and April 30, 2019. APPSN Fees means overdraft fees that were charged and not refunded on signature Point of Sale debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a member's account. Retry Fees means overdraft and/or returned item fees that were charged and not refunded for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds. The Named Plaintiff claims IH Mississippi Valley Credit Union breached its own member agreement by assessing APPSN and Retry Fees.

Defendant does not deny it charged the fees the Named Plaintiff is complaining about but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Members.

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

You received Email Notice or Postcard Notice because Defendant's records indicate that you were charged one or more APPSN Fees or Retry Fees that are the subject of this action. 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 and her 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, the Named Plaintiff's 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 her belief, as well as Class Counsel's opinion, that this settlement is in the best interests of all Class Members.

In Class Counsel's opinion, there is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess APPSN Fees or Retry Fees. And even if it was contractually wrong to assess these fees, there is 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, and based on Class Counsel's experience, the Class Members will avoid these and other risks and the delays associated with continued litigation.

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

### **WHO IS IN THE SETTLEMENT?**

## **4. How do I know if I am part of the settlement?**

If you received Email Notice or Postcard Notice, then Defendant's records indicate that you are a Class Member who may be entitled to receive a payment or credit to your account and/or forgiveness of Uncollected Fees.

### **YOUR OPTIONS**

## **5. What options do I have with respect to the settlement?**

You have three options: (1) exclude yourself from the settlement ("opt out" of it); or participate in the settlement by (2) doing nothing or (3) objecting to the settlement. Each of these options is described in a separate section below.

## **6. How do I know if I am part of the settlement?**

There is no deadline to receive settlement benefits. If you do nothing and the settlement is approved, then you may receive a payment and/or receive forgiveness of Uncollected Fees after approval.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is November 28, 2022.

The deadline for sending a letter to the Settlement Administrator to object to the settlement is also November 28, 2022.

## **7. How do I decide which option to choose?**

If you do not wish to participate in the settlement and be sent payment from the settlement and/or forgiveness of Uncollected Fees and be bound by the release, then you should opt out. Likewise, if 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, you can object to the settlement terms. The Court will consider timely objections. The Court will decide whether to approve the settlement and the award of attorneys' fees, litigation costs, a Service Award, and administrative costs. If the Court decides not to approve the settlement, then the settlement will be void and no payments will be issued pursuant to its terms. If the Court approves the settlement, whether or not it grants the requests for attorneys' fees, litigation costs, a Service Award, or administrative costs in full, then you may still be sent a payment and/or have your Uncollected Fees forgiven and you will be bound by the settlement, including the release of claims.

If you want to participate in the settlement, then you don't have to do anything; you may be sent a payment and/or receive forgiveness of Uncollected Fees if the settlement is approved by the Court.

## **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 a Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for January 26, 2023, in the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, which is located at 1317 3rd Avenue, Suite 101, Rock Island, IL 61201. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com).

### **THE SETTLEMENT PAYMENT**

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

Defendant has agreed to create a Settlement Fund of \$1,425,000.00 for the class. It will also forgive Uncollected Fees totaling \$264,676.00, as defined in the Settlement Agreement.

As discussed separately below, attorneys' fees of up to one-third of the Value of the Settlement, litigation costs, the Service Award of \$10,000.00, and the costs paid to a third-party Settlement Administrator to administer the settlement (including sending the Postcard Notices and Email Notices) will be paid out of the Settlement Fund. Once the requested disbursements are approved from the Settlement Fund, the Net Settlement Fund will be divided among all Class Members as follows and based on formulas described in the Settlement Agreement.

## **10. How much of the Settlement Fund will be used to pay for attorney fees and costs?**

Class Counsel will request attorney's fees be awarded by the Court of not more than one-third of the Value of the Settlement and will request that it be reimbursed for litigation costs incurred in prosecuting the case. Class Counsel will file the motion to make this request with the Court no later than November 14, 2022. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, 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.

You can access this motion by visiting the civil clerk's office at the Rock Island County Courthouse located at 1317 3<sup>rd</sup> Avenue, Suite 101, Rock Island, IL 61201. The motion will also be posted on the website at [www.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com).

## **11. How much of the Settlement Fund will be used to pay for attorney fees and costs?**

Class Counsel will request that the Named Plaintiff be paid a Service Award in an amount up to \$10,000.00 for her work in connection with this case. The Service Award must be approved by the Court. Class Counsel will file the application for this request with the Court no later than November 14, 2022.

You can access this motion by visiting the civil clerk's office at the Rock Island County Courthouse located at 1317 3<sup>rd</sup> Avenue, Suite 101, Rock Island, IL 61201. The motion will also be posted on the website at [www.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com).

## 12. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the Service Award and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Class Members.

## 13. Do I have to do anything if I want to participate in the settlement?

No. If you received this Notice, then you may be entitled to receive a payment and/or forgiveness of Uncollected Fees without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

## 14. When will I receive my payment?

The Court will hold a Fairness Hearing on January 26, 2023, in the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, which is located at 1317 3rd Avenue, Suite 101, Rock Island, IL 61201, to consider whether the settlement should be approved. If the settlement is approved by the Court and you are eligible for a payment, you may receive either a check or a credit to your account approximately forty-five (45) days after this hearing. However, if there is an appeal, payments may be delayed.

## 15. How will I be sent my payment?

Current members of Defendant will be sent a credit to their accounts for the amount they are entitled to receive.

Former members of Defendant will be sent a check from the Settlement Administrator. The check will be sent to the address used to provide Postcard Notice of the settlement, or at such other address as designated by the Class Member. Checks must be cashed within 180 days.

Class Members entitled to forgiveness of Uncollected Fees shall receive this benefit automatically.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

## 16. How do I exclude myself from the settlement?

If you do not wish to not participate in the settlement and be bound by the release, and you do not want to receive a payment and/or forgiveness of Uncollected Fees, 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 Settlement Administrator that you want to be excluded. Your letter can simply say "I hereby elect to be excluded from the settlement in the *Deanna Rivera v. IH Mississippi Valley Credit Union* class action. Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. Your exclusion or opt out request must be postmarked by November 28, 2022, and sent to:

Deanna Rivera v. IH Mississippi Valley Credit Union Settlement Administrator  
P.O. Box 6719  
Portland, OR 97228-6719

## 17. What does it mean to be bound by the release?

By choosing not to opt out of the Settlement Agreement, you will remain a Class Member, and as such will be bound to a release. That means you will release any claims you may have against Defendant that arise out of and/or relate to the facts and claims alleged in the Complaint filed in this action. Put differently, participating in the settlement means that you will not be able to sue the Defendant in the future for such claims.

Additional details as well as a more extensive list of parties related to the Defendant, who will be released as part of the settlement regarding the scope of the release can be found in Section 15 of the Settlement Agreement.

## 18. 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 released in this case if the settlement is approved. However, you will not be entitled to receive a payment from this settlement for paid APPSN Fees, paid Retry Fees, and/or forgiveness of Uncollected Fees.

## 19. 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

## 20. How do I notify the Court if 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 by mail or private courier (e.g., Federal Express) to the Settlement Administrator and Class Counsel at the addresses below. Your objection must include the following:

- The name of this case, which is *Deanna Rivera v. IH Mississippi Valley Credit Union*, the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, Case No. 2019-CH-299;
- The objector's name, address, telephone number, the last four digits of his or her member number or former member number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case who may be entitled to compensation for any reason related to the objection;
- A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection;
- A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- The objector's signature or the signature of the objector's legally authorized representative.

All objections must be postmarked no later than November 28, 2022, and must be mailed to the Settlement Administrator and Class Counsel as follows:

SETTLEMENT ADMINSTRATOR	CLASS COUNSEL
Deanna Rivera v. IH Mississippi Valley Credit Union Settlement Administrator P.O. Box 6719 Portland, OR 97228-6719	Katrina Carroll Kyle A. Shamberg Nicholas R. Lange <b>CARLSON LYNCH LLP</b> 111 W. Washington Street Suite 1240 Chicago, IL 60602 Telephone: (312) 750-1265 kcarroll@carlsonlynch.com kshamberg@carlsonlynch.com nlange@carlsonlynch.com  Jeffrey Kaliel Sophia Gold <b>KALIELGOLD PLLC</b> 1100 15th Street NW, 4th Floor Washington, DC 20005 Telephone: (202) 320-4783 jkaliel@kalielpllc.com sgold@kalielgold.com

**21. 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 for paid APPSN Fees, paid Retry Fees, and/or forgiveness of Uncollected Fees if the settlement is approved, but you will be bound by the release of claims you might have against Defendant if the settlement is approved.

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 for paid APPSN Fees, paid Retry Fees, and/or forgiveness of Uncollected Fees, or release claims you might have against Defendant for the claims alleged in this lawsuit.

**22. What happens if I object to the settlement?**

The Court will consider the objection. If the Court sustains your objection, or the objection of any other Class Member, then there may be no settlement; provided, however, that an objection to Class Counsel’s requested attorneys’ fees and costs or to the requested Service Award amount, may result in approval of the settlement but the award of a lower attorneys’ fee and cost amount or lower Service Award. If you object but the Court overrules your objection and any other objection(s), then you will be part of the settlement. If the Court approves the settlement, then the objector will participate in the settlement. If the Court does not approve the settlement, then there is no settlement.

**THE COURT’S FAIRNESS HEARING**

**23. When and where will the Court decide whether to approve the settlement?**

The Court will hold a Final Approval or Fairness Hearing at 9:30 a.m. on January 26, 2023, in the Circuit Court of the Fourteenth Judicial Circuit, Rock Island County, Illinois, which is located at 1317 3rd Avenue, Suite 101, Rock Island, IL 61201. 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 litigation costs and the amount of the Service Award to the Named Plaintiff.

**24. 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. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com).

**25. 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 20, above, a statement, showing that you intend to appear at the Final Approval Hearing. A statement substantively similar to “I intend to appear at the Final Approval Hearing” will be sufficient. The Court will consider your objection even if you do not appear. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com).

**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. However, you may retain a lawyer to represent you at your own expense.

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

No. Class Counsel will request payment directly from the Settlement Fund for the legal services provided to accomplish the settlement for Class Members' benefit. Class Counsel's award of attorneys' fees and costs is deducted from the Settlement Fund, thereby reducing by that amount the Net Settlement Fund from which Class Members will be sent payment.

## **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 no later than November 14, 2022. You can access this application by visiting the civil clerk's office at the Rock Island County Courthouse located at 1317 3rd Avenue, Suite 101, Rock Island, IL 61201. The motion will also be posted on the website at [www.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com).

### **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.RiveraOverdraftSettlement.com](http://www.RiveraOverdraftSettlement.com) or by visiting the civil clerk's office at the Rock Island County Courthouse located at 1317 3rd Avenue, Suite 101, Rock Island, IL 61201. 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 Settlement Administrator as follows:

Deanna Rivera v. IH Mississippi Valley Credit Union  
Settlement Administrator  
P.O. Box 6719  
Portland, OR 97228-6719

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

Katrina Carroll  
Kyle A. Shamberg  
Nicholas R. Lange

**CARLSON LYNCH LLP**  
111 W. Washington Street  
Suite 1240  
Chicago, IL 60602  
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***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***