

LEGAL NOTICE BY ORDER OF COURT

IF YOU WERE ASSESSED OVERDRAFT OR NSF FEES ON A PERSONAL OR BUSINESS CHECKING ACCOUNT MAINTAINED BY TOMPKINS DURING THE CLASS PERIOD, YOU MAY BE ELIGIBLE FOR A CASH PAYMENT OR AN ACCOUNT CREDIT FROM A CLASS ACTION SETTLEMENT.

This Notice describes rights you may have in connection with the settlement of a lawsuit.

The United States District Court for the Northern District of New York authorized this Notice.

*This is not a solicitation from a lawyer. **This is not a legal action against you.***

- Tompkins Community Bank (“Tompkins”) has agreed to pay \$450,000 into a fund from which eligible persons will receive cash payments or account credits. The fund also will be used to pay settlement Administrative Expenses and any Court-awarded Service Awards, attorneys’ fees, and costs.
- The settlement resolves a lawsuit brought against Tompkins’ regarding Overdraft Fees and non-sufficient fund (“NSF”) fees that may be assessed when a checking account transaction is presented multiple times for payment (collectively “Challenged Fees”).
- If you were assessed any Challenged Fees during the Class Period by Tompkins on a business or personal checking account, you fit the description of the Settlement Class (as defined below), and are eligible to receive a payment or an account credit.
- Court-appointed lawyers for the Settlement Class (“Class Counsel”) will ask the Court for a payment of up to \$150,000 from the fund as attorneys’ fees, which is equal to one-third of the Settlement Amount. Class Counsel also will ask the Court to reimburse them for the out-of-pocket expenses they paid to investigate the facts and litigate the case.
- The named Plaintiff will also seek approval of a \$5,000 Service Award from the Court.
- The two sides disagree on whether the named Plaintiff and the Settlement Class could have won at trial.
- Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

The foregoing description of the Settlement Agreement and Release does not purport to be complete and is qualified in its entirety by reference to the full text of the Settlement Agreement and Release, a copy of which is available on the settlement website: **www.MockFeeSettlement.com**. In the event of a conflict between the foregoing description and the provisions of the Settlement Agreement and Release, the provisions of the Settlement Agreement and Release prevail.

FOR ADDITIONAL INFORMATION REGARDING THIS SETTLEMENT, OR FOR INFORMATION ON HOW TO REQUEST EXCLUSION FROM THE SETTLEMENT CLASS OR FILE AN OBJECTION, PLEASE CONTACT THE SETTLEMENT ADMINISTRATOR AT *Mock v. Tompkins* Settlement Administrator, P.O. Box 301132, Los Angeles, CA 90030-1132 . **Please do not** call or write the Court, the Court Clerk’s office, Tompkins, or Tompkins’ Counsel for more information. They will not be able to assist you.

BASIC INFORMATION

The purpose of this Notice is to let you know that a proposed settlement has been reached in a proposed class action case entitled *Mock v. Tompkins Community Bank*, Case No. 3:22-cv-00995, pending in the U.S. District Court for the Northern District of New York. Plaintiff has alleged that: (1) Tompkins breached its customer contracts and implied duty of good faith and fair dealing by assessing more than one Overdraft Fee or NSF Fee when a checking account transaction is presented multiple times for payment; (2) Tompkins was unjustly enriched by its collection of such Overdraft Fees or NSF Fees; and (3) Tompkins violated New York General Business Law § 349 *et seq.* Tompkins denies Plaintiff's allegations, denies that it did anything wrong, and maintains that it assessed Overdraft Fees and NSF Fees consistent with the relevant agreement and industry best practices. The Court has not decided who is right.

You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

YOUR LEGAL RIGHTS AND OPTIONS

DO NOTHING	If you are eligible for a Cash Award, you do not need to submit a claim to receive the settlement benefits. If you are a current Tompkins accountholder and are eligible for a Cash Award, you will receive a direct deposit into your checking account reflecting your share of the settlement; if you are a former Tompkins accountholder and are eligible for a Cash Award, you will receive a check sent to the most recent address that the Settlement Administrator can locate for you.
EXCLUDE YOURSELF BY JANUARY 11, 2024	If you choose to exclude yourself from the settlement, you will get no benefit from the Settlement Fund, but you will keep any rights you have to bring your own suit against Tompkins at your own expense. This is the only option that allows you to ever be part of any other separate lawsuit against Tompkins about the legal claims in this case.
OBJECT BY JANUARY 11, 2024	Write to the Court explaining why you don't like the settlement.
ATTEND A HEARING ON MARCH 1, 2024	Ask to speak in Court about the fairness of the settlement.

The Court in charge of this case still has to decide whether to approve the settlement. If it does and any appeals are resolved, benefits will be distributed to those who qualify and do not exclude themselves. Please be patient.

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1. WHO IS IN THE SETTLEMENT CLASS?

The judge in the case has certified the following Class for settlement purposes only (hereinafter, the “Settlement Class”):

All current and former holders of a Tompkins Community Bank personal or business checking account, regardless of the state of residence or citizenship of its account holder, who, during the Class Period, incurred more than one Overdraft Fee or NSF Fees as the result of a checking account transaction being represented for payment.

The Class excludes all judicial officers presiding over this Litigation and their staff, and any of their immediate family members as well as Plaintiff’s counsel and Tompkins officers and employees.

If you received notice of the settlement directed to you, records indicate that you are a member of the Class.

If you are not sure whether you are in the Settlement Class, or have any other questions about the settlement, you may contact the Settlement Administrator at *Mock v. Tompkins* Settlement Administrator, P.O. Box 301132, Los Angeles, CA 90030-1132.

2. WHAT IS THIS LITIGATION ABOUT?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

Here, the Class Representative alleges that Tompkins improperly assessed Overdraft Fees or NSF Fees as the result of a checking account transaction being represented for payment and, that by so doing, Tompkins purportedly breached the terms of its customer agreements, breached the covenant of good faith and fair dealing, was unjustly enriched, and violated New York General Business Law § 349. This is just a summary of the allegations. The operative complaint in the lawsuit is available online at **www.MockFeeSettlement.com** and contains all of the allegations. Tompkins denies these allegations; however, in order to avoid the expense, inconvenience, and distraction of continued litigation, the Parties have agreed to the settlement described herein in this Notice and the entire Settlement Agreement and Release is available at **www.MockFeeSettlement.com**.

3. WHO IS REPRESENTING ME?

Stacy Mock sued Tompkins, and the Court has appointed her to be the Class Representative for the Settlement Class.

The Court also approved James J. Bilsborrow of Weitz & Luxenberg, P.C.; Tyler B. Ewigleben of Johnson Firm; and Sophia Gold of Kaliel Gold PLLC as Class Counsel. Class Counsel represents the Class of which you are a part, but if you want to be represented by your own individual lawyer, you may hire one at your own expense.

4. WHAT BENEFITS CAN I RECEIVE FROM THE SETTLEMENT?

Tompkins has agreed to pay \$450,000 to be divided among all Settlement Class Members who do not exclude themselves from the settlement after any fees, costs, Service Award to the named Plaintiff, and settlement expenses have been deducted. Your share of the settlement will be calculated as a pro rata proportion of the Net Settlement Fund, based on the number of qualifying Overdraft Fees or NSF Fees you were assessed during the Class Period.

If you do not exclude yourself from the Settlement Class, and are a current Tompkins accountholder, you will receive a direct deposit equivalent to your pro rata share of the settlement; if you are not a current Tompkins accountholder, the Settlement Administrator will mail you a check. You may be required to first provide certain tax-related documentation to the Settlement Administrator in order to be eligible to receive your account credit or check, including an IRS Form W-9.

If you receive a check, you will have 120 days from the date of the check to cash the check. If you do not cash the check within 120 days, your check will be void and the funds will be used as the Court deems appropriate, including redistribution to other Class Members or distribution to a charitable organization.

5. DO I HAVE TO PAY THE LAWYERS REPRESENTING ME?

No. Class Counsel will ask the Court to approve payment of up to one-third of Settlement Amount. Class Counsel also will ask to be reimbursed for any out-of-pocket expenses. These payments would pay Class Counsel for their time investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also request a Service Award of up to \$5,000 for the Class Representative (Plaintiff Stacy Mock) in recognition of her service to the Settlement Class. The amount of any fee or Service Award will be determined by the Court. Class Counsel's contact information is as follows:

Johnson Firm Tyler B. Ewigleben (Bar Roll No. 704117) 610 President Clinton Avenue Suite 300 Little Rock, AR 72201 Tel: (501) 372-1300 tyler@yourattorney.com	Jeffrey D. Kaliel (Bar Roll No. 518372) KalielGold PLLC 1100 15th Street NW, 4th Floor Washington, D.C. 20005 Tel: (202) 350-4783 jkaliel@kalielpllc.com	Sophia G. Gold (Bar Roll No. 701241) KalielGold PLLC 950 Gilman Street, Suite 200 Berkeley, CA 94710 Tel: (202) 350-4783 sgold@kalielgold.com
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6. WHAT AM I AGREEING TO BY REMAINING IN THE SETTLEMENT CLASS IN THIS CASE?

Unless you exclude yourself, you will be part of the Settlement Class, and you will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot sue, continue to sue, or be part of any lawsuit against Tompkins or the other Released Parties asserting a "Released Claim," as defined below. It also means that the Court's Order approving the settlement and the judgment in this case will apply to you and legally bind you.

The "Released Claims" that you will not be able to assert against Tompkins or the Released Parties if you remain a part of the Settlement Class are as follows: "Released Claims" means any and all claims, demands, damages, costs, attorneys' fees, disputes, liabilities, actions, rights, suits or causes of action, losses or remedies of any kind or nature whatsoever, against Released Parties, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any legal or equitable theory, right of action or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of, or relate to, or are based upon or in any manner related or connected with: (i) any Challenged Fee charged by Tompkins in connection with a personal or business checking account, regardless of the state of residence or citizenship of the accountholder; (ii) a claim that Tompkins assessed a Challenged Fee on any Tompkins personal or business checking account transaction based on re-presentment of a checking

account transaction; (iii) any claim that was, or could be, asserted in connection with the Litigation including, but not limited to, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, unjust enrichment, and/or the New York General Business Law § 349 *et seq.*; and (iv) any alleged failure to adequately or clearly disclose Tompkins practices and policies related to assessment of the Challenged Fees. Such release applies regardless of how such claims are pled. This Agreement does not imply that any such claims exist or are valid.

“Released Parties” means Tompkins and each of its respective past, present, and future parents, subsidiaries, acquired and affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, agents, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, assigns, or related entities, and each of their respective executors, successors, and legal representatives.

7. WHAT IF I DO NOT AGREE WITH THE SETTLEMENT

If you are a member of the Settlement Class, and you do not exclude yourself from the settlement, you may object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. To object, you must send your objection to the Court and the Settlement Administrator, providing:

1. the case name and case number of this Litigation (*Mock v. Tompkins Community Bank*, Case No. 3:22-cv-00995 (N.D.N.Y.));
2. your full name, current address, email address, and the last four digits of your Tompkins account number;
3. a statement that you object to the settlement, in whole or in part;
4. the reasons why you object to the settlement along with any supporting materials;
5. the identity of any lawyer who assisted, provided advice, or represents you as to this case or such objection, if any;
6. your signature; and
7. whether you will appear, either on your own or through counsel, at the Final Approval Hearing regarding the settlement and whether you plan on offering testimony at the Final Approval Hearing.

Your objection must be postmarked no later than January 11, 2024. Objections must be mailed to both of the following addresses:

<u>The Settlement Administrator</u>	<u>The Court</u>
<i>Mock v. Tompkins</i> Settlement Administrator P.O. Box 301132 Los Angeles, CA 90030-1132	Clerk of the Court U.S. District Court, Northern District of NY P.O. Box 7367 Syracuse, NY 13261

8. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

If you want to exclude yourself from the Settlement Class, sometimes referred to as “opting out,” you will not be eligible to recover any benefits as a result of this settlement. However, you will keep the right to sue or continue to sue Tompkins or Released Parties on your own and at your own expense about any of the Released Claims.

To exclude yourself from the Settlement Class, you must send a letter to the Settlement Administrator identifying:

1. your name, address, telephone number or email address, and the last four digits of your account number;
2. the name and case number of this lawsuit (*Mock v. Tompkins Community Bank*, Case No. 3:22-cv-00995 (N.D.N.Y.));
3. a statement that you wish to exclude yourself from the Settlement Class; and
4. your signature.

If you wish to exclude yourself, you must submit the above information to the following address so that it is postmarked no later than January 11, 2024:

Mock v. Tompkins Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

REQUESTS FOR EXCLUSION FROM THE CLASS THAT ARE NOT POSTMARKED ON OR BEFORE JANUARY 11, 2024 WILL NOT BE HONORED.

9. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?

Objecting means telling the Court that you do not like something about the settlement. You can object to the settlement only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the settlement. If you exclude yourself, you have no basis to object to the settlement because it no longer affects you.

10. WHAT IF I DO NOTHING AT ALL?

You will remain a member of the Settlement Class and be eligible to receive a cash payment. See Section 4 above.

11. WHAT WILL BE DECIDED AT THE FINAL APPROVAL HEARING?

The Court will hold a hearing to decide whether to approve the settlement and any requests for fees, expenses, and Service Award (the “Final Approval Hearing”). The Final Approval Hearing is currently set for **March 1, 2024 at 10:00 a.m.**, at the United States District Court for the Northern District of New York, James M. Hanley Federal Building & U.S. Courthouse, 100 S. Clinton St., Syracuse, NY 13261. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Court’s docket or the settlement website for updates.

At the Final Approval Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys’ fees and expenses and Service Award for the Class Representative. If there are objections, the Court will consider them at the

Final Approval Hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

You may attend the hearing, at your own expense, but you do not have to do so. You cannot speak at the hearing if you exclude yourself from the settlement.

If you have objected to the settlement and want to attend the hearing, you must state in your objection that you intend to appear at the Final Approval Hearing either personally or through counsel.

12. DOES THIS NOTICE CONTAIN THE ENTIRE SETTLEMENT AGREEMENT?

No. This is only a summary of the settlement. If the settlement is approved and you do not exclude yourself from the Settlement Class, you will be bound by the release contained in the Settlement Agreement, and not just by the terms of this Notice. Capitalized terms in this Notice are defined in the Settlement Agreement. If you wish to view the full Settlement Agreement, you can do so on the settlement website at **www.MockFeeSettlement.com** or write or call the Settlement Administrator at the address above, or phone number below for more information.

13. WHERE CAN I GET MORE INFORMATION?

For more information, you may call the Settlement Administrator at 1-888-663-7191, or you may contact Class Counsel as set forth in Section 5, above. You may also visit the settlement website at **www.MockFeeSettlement.com**.

NOTE: PLEASE DO NOT CALL OR WRITE THE COURT, THE COURT CLERK'S OFFICE, TOMPKINS, OR TOMPKINS' COUNSEL FOR MORE INFORMATION. THEY WILL NOT BE ABLE TO ASSIST YOU.