

Mercer v FDS Bank and Department Stores National Bank
U.S. District Court for the Middle District of Florida, Orlando Division Case No. 6:17-cv-00692-WWB-EJK

If you received calls on your cell phone regarding a Macy's and/or Bloomingdale's credit card, you may be entitled to benefits under a class action settlement.

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

- **A proposed settlement will provide a total of \$1,500,000 (the "Settlement Fund") to fully settle and release claims of the following individuals:**

All persons in the United States whose cellular telephone number Defendants, or their agents or affiliates, placed a call for debt collection purposes at any time on or after July 22, 2015, and through January 31, 2020, in connection with a Macy's and/or Bloomingdale's credit card account, using an artificial or prerecorded voice and/or using substantially the same systems that were used to call Plaintiff's cellular telephone number, where the phone number called belonged to the owner or customary user of that cellphone who did not provide the number to Defendants and/or is not a person who had consented to receiving calls at that cellular telephone number.

- **The Settlement would resolve a lawsuit brought on behalf of a putative class of individuals, alleging FDS Bank and Department Stores National Bank ("FDS" and "DSNB") violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA") by making calls relating to Macy's and/or Bloomingdale's credit card account(s) to cell phones without the prior express consent of Plaintiff or the putative class members.**
- **FDS and DSNB deny these allegations and any wrongdoing. The Court has not ruled on the merits of Plaintiff's claims or Defendants' defenses.**
- **The Settlement Fund shall be used to pay all amounts related to the settlement, including awards to Settlement Class members who submit a valid and timely claim form to receive payment ("Claim Form"), attorneys' fees and costs to attorneys representing Plaintiff and the Settlement Class ("Class Counsel"), any service award for Plaintiff and the costs of notice and administration of the settlement. Class Counsel estimate that Settlement Class members who timely submit a valid Claim Form will receive between \$7.00 and \$50.00 ("Initial Settlement Award Checks"), depending on the number of valid claims received. Any monies remaining in the Settlement Fund after the Initial Settlement Award Checks are distributed and the expiration date has passed will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award Checks (the "Subsequent Distribution"). The Subsequent Distribution shall be made within ninety (90) days after the expiration date of the Initial Settlement Award Checks.**
- **Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or do not act. Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

<p>SUBMIT A CLAIM FORM</p>	<p>If you submit a valid Claim Form postmarked by April 13, 2022, you will receive a payment and will give up any rights you may have to sue FDS and DSNB and any other released parties related to a released claim. Claim Forms may be submitted by mail to Mercer v FDS Bank, c/o Settlement Administrator, PO Box 23680 or through the settlement website by clicking here or by calling 800-843-3150.</p>
<p>EXCLUDE YOURSELF OR “OPT-OUT” OF THE SETTLEMENT</p>	<p>If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue your own claims, if any, against FDS or DSNB or other released parties related to a released claim. The deadline for excluding yourself is April 13, 2022.</p>
<p>OBJECT TO THE SETTLEMENT</p>	<p>If you wish to object to the settlement, you must write to the Court about why you believe the settlement is unfair in any respect. The deadline for objecting is April . To obtain a benefit from this settlement, you must still submit a Claim Form. If you submit only an objection without a Claim Form, you will not receive any benefit from the settlement and you will give up any rights you may have to sue FDS or DSNB or any other released parties related to a released claim.</p>
<p>DO NOTHING</p>	<p>If you do nothing, you will not receive any monetary award and you will give up any rights you may have to sue FDS or DSNB or any other released parties related to a released claim.</p>
<p>GO TO THE FINAL APPROVAL HEARING</p>	<p>You may attend the Final Approval Hearing. At the Final Approval Hearing you may ask to speak in Court about the fairness of the settlement. To speak at the Final Approval Hearing, you must file a document which includes your name, address, telephone number and your signature with the Court, which must also state your intention to appear at the Final Approval Hearing. This must be filed no later than April 13, 2022.</p>

- 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 (*i.e.*, Settlement Award Checks) will be disbursed if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed Settlement has been reached in the putative class action lawsuit entitled *Mercer, as personal representative of The Estate of Deborah Clark v FDS Bank and Department Stores National Bank*, filed in the U.S District Court for the Middle District of Florida, Orlando Division Case No. 6:17-cv-00692-WWB-EJK. 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.

2. What does it mean if I received an email or postcard about this settlement?

If you received an email or postcard describing this settlement, it is because FDS' and DSNB's records indicate that you may be a member of the Settlement Class. You are a class member if your cellular telephone numbers have been identified fitting the below Settlement Class:

All persons in the United States whose cellular telephone number Defendants, or their agents or affiliates, placed a call for debt collection purposes at any time on or after July 22, 2015, and through January 31, 2020, in connection with a Macy's and/or Bloomingdale's credit card account, using an artificial or prerecorded voice and/or using substantially the same systems that were used to call Plaintiff's cellular telephone number, where the phone number called belonged to the owner or customary user of that cellphone who did not provide the number to Defendants and/or is not a person who had consented to receiving calls at that cellular telephone number.

Excluded from the Settlement Class are the Judge to whom the Action is assigned, any member of the Court's staff and immediate family, and all persons who are validly excluded from the Settlement Class.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff Ronda Mercer, as personal representative of the Estate of Deborah Clark) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff claims Defendants violated the TCPA by placing calls using an automatic telephone dialing system to cellular telephones without prior express consent. Defendants deny these allegations and deny any claim of wrongdoing. The Court has conditionally certified a class action for settlement purposes only. The Honorable Wendy Berger is in charge of this action.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendants. Instead, the parties agreed to this settlement. This way, the parties avoid the risk and cost of a trial, and the Settlement Class members will receive compensation. Plaintiff and Class Counsel think the settlement is best for all persons in the Settlement Class.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am a part of the settlement class?

The Court has certified a class action for settlement purposes only. The Settlement Class is defined as:

All persons in the United States whose cellular telephone number Defendants, or their agents or affiliates, placed a call for debt collection purposes at any time on or after July 22, 2015, and through January 31, 2020, in connection with a Macy's and/or Bloomingdale's credit card account, using an artificial or prerecorded voice and/or using substantially the same systems that were used to call Plaintiff's cellular telephone number, where the phone number called belonged to the owner or customary user of that cellphone who did not provide the number to Defendants and/or is not a person who had consented to receiving calls at that cellular telephone number.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed the law firms of Keogh Law, Ltd. and The Consumer Protection Firm as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged by these lawyers.

7. How will Class Counsel be paid?

Class Counsel will ask the Court to approve payment of up to one third of the Settlement Fund, or \$500,000.00, for attorneys' fees plus reasonable expenses. Class Counsel also will ask the Court to approve payment of \$20,000.00 to Plaintiff for her services as Class Representative. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. A total amount of \$1,500,000 will be deposited into a fund (the "Settlement Fund"), which will cover: (1) cash payments to Settlement Class Members who submit timely and valid Claim Forms; (2) an award of attorneys' fees and costs to Class Counsel, in an amount equal to one third of the settlement fund, not to exceed \$500,000.00 plus expenses, as approved by the Court; (3) a service award to the Plaintiff, Ronda Mercer, as personal representative of The Estate of Deborah Clark, in an amount not to exceed \$20,000.00, as approved by the Court; (4) the costs of notice and administration of the Settlement; and (5) under certain circumstances as described below, a charitable contribution.

Cash Payments. All Settlement Class Members are eligible to submit a Claim Form and receive a cash payment. To submit a Claim Form, follow the procedures described under Question 11 below.

No Portion of the Settlement Fund Will Return to Defendants. Any money remaining in the Settlement Fund after paying all valid and timely claims to Settlement Class Members, attorneys' fees and costs to Class Counsel, any service award to Plaintiff, and the costs of notice and administration of the settlement will be distributed on a *pro rata* basis to those Settlement Class Members who cashed their Initial Settlement Award Check. This

subsequent distribution will be made within ninety (90) days after the expiration date of the Initial Settlement Award Check has passed.

9. How much will my payment be?

Your share of the Settlement Fund will depend on the number of valid Claim Forms that Settlement Class Members submit and whether you can submit proof.

If you have any proof that a collection call that was placed on behalf of the Defendants connected to any of the telephone numbers you identified in your claim form, you are eligible for \$50.

Proof of call includes any call records, screen shots or a statement under penalty of perjury including the cellular telephone number that was called and stating that you were not the customer that Defendants were attempting to reach. If you submit the statement described herein, you do not need additional proof such as call records.

If you do not have any proof of these calls, your claim would be eligible for \$7.

If the total amount of Approved Claims submitted is less than the amount of the Settlement Fund (after deducting all Settlement Costs, the Settlement Administrator shall make a pro rata increase to the amount of each Approved Claim, not to exceed \$50.00 per Approved Claim. If the total amount of Approved Claims exceeds the amount of the Settlement Fund (after deducting all Settlement Costs), then each Approved Claim shall be reduced on a pro rata basis such that the total aggregate amount of Approved Claims plus the Settlement Costs does not exceed \$1,500,000.00.

Class Counsel estimates that the amount of the cash award (while dependent upon the number of claims) may be within the range of \$7.00 to \$50.00. **This is an estimate only. The final cash payment amount will depend on the total number of valid and timely claims submitted by Settlement Class Members.**

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot rely on any Released Claim to sue, or continue to sue, Defendants or any other Released Parties, on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the settlement, you will agree to release Defendants and any other Released Parties, as defined in the Settlement Agreement, from any and all claims that arise from the calls to your cellular telephone at issue in this action.

In summary, the Released Claims mean any and all rights, duties, obligations, claims, actions, causes of action or liabilities, whether arising under local, state or federal law, whether by Constitution, statute, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown (including "Unknown Claims"), suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, that have been, could have been, or in the future might be asserted that arise out of, relate to, or are otherwise in connection the actual or alleged use by Released Parties and/or their agents and/or affiliates, of an artificial or prerecorded voice and/or of any automatic telephone dialing system (to the fullest extent that those terms are used, defined or interpreted by the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., relevant regulatory or administrative promulgations and case law) to make collection calls to collect on Macy's-branded and/or

Bloomingdale’s-branded credit card accounts, including, but not limited to, claims under or for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., and any other state or federal statutory or common law claim arising from the use of automatic telephone dialing systems and/or an artificial or prerecorded voice which have accrued at any point from the beginning of time through the date of Preliminary Approval of the Agreement. (“Released Claims”).

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free; or, at your own expense, you may talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

To receive a payment, you must timely submit a properly completed Claim Form. You may get a Claim Form on the Settlement Website: www.departmentstorestcpasettlement.com, or by calling the Toll-Free Settlement Hotline, 800-843-3150. **Read the instructions carefully, fill out the form completely and accurately, sign it and submit by the deadline.** A Claim Form may be submitted by mail to the claims administrator at: Mercer v FDS Bank, c/o Settlement Administrator, PO Box 23680, Jacksonville, FL 32241-3680 or via the Settlement Website www.departmentstorestcpasettlement.com. To be deemed timely, Claim Forms must be submitted via the Settlement Website, 800- number, or postmarked prior to or on the last day of the Claim Filing Deadline, which is April 13, 2022.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a settlement payment?

The Court will hold a hearing on June 13, 2022 at 10:00 a.m. to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the settlement through information posted on the Settlement Website at www.departmentstorestcpasettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?

If you want to keep the right to sue, or continue to sue, Defendants or a Released Party, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting-out of, the Settlement Class.

To exclude yourself from the settlement, you must send an exclusion request to the claims administrator. To be valid, an exclusion request must include the name and address of the person opting-out of the Agreement, his or her cell phone number, the name and number of the Action (*i.e. Ronda Mercer, as personal representative of The Estate of Deborah Clark v. FDS Bank and Department Stores National Bank, Case No. 6:17-cv-00692-WWB-EJK*), the words “Request for Exclusion” or a clear statement that he or she wants to be excluded from the Settlement Class for purposes of the Agreement, and his or her signature.

To be valid, you must mail your exclusion request postmarked no later than April 13, 2022 to the claims administrator at Mercer v FDS Bank, c/o Settlement Administrator, PO Box 23680, Jacksonville, FL 32256.

14. If I do not exclude myself, can I sue Defendants for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) Defendants or any Released Parties for the claims that this settlement resolves.

15. If I exclude myself, can I get a benefit from this settlement?

No. If you ask to be excluded, you will not be able to submit a Claim Form for a settlement payment and you cannot object to the settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement or the award of any attorneys' fees and costs and/or service award.

To object, you must mail a notice of objection and supporting papers signed by the objector (and, if represented, by their counsel) and must include: (1) the objector's name and address; (2) the name and number of the Action (i.e. Ronda Mercer, as personal representative of The Estate of Deborah Clark v. FDS Bank and Department Stores National Bank, Case No. 6:17-cv-00692-WWB-EJK); (3) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including his or her cell phone number; (4) all grounds for objection, including citation to all legal authority and factual evidence supporting objection; (5) name and contact information of any and all attorneys representing, advising, or assisting the objector in any way with respect to the objector's objection to the Agreement; (6) whether the objector intends to appear at the Final Approval Hearing, either personally or through representation and if through representation, the name and contact information of any and all attorneys who will appear on the objector's behalf at the Final Approval Hearing; the identity of all counsel representing the objector who will appear at the final approval hearing; (7) a list of all persons who will be called to testify at the final approval hearing in support of the objection. The writing also must include a statement identifying each case, by full case caption, where an objector or the attorney representing the objector, has objected to any class settlement and asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without modification to the class settlement..

To be considered, you must file your objections via CM/ECF no later than the Opt-Out/Objection Deadline, or if not electronically filed, sent via first class, postage-prepaid United States mail, postmarked no later the Opt-Out/Objection Deadline to: (1) the Clerk of Court, United States District Court, Middle District of Florida – Orlando Division, George C. Young Federal Annex Courthouse, 401 West Central Boulevard, Orlando, Florida 32801; and (2) Class Counsel and Defendant's Counsel at the addresses set forth below **no later than April 13, 2022.**

For Plaintiff:

Keith Keogh
Keogh Law, Ltd.
55 Monroe St., 3390
Chicago, IL 60603

William Peerce Howard
Amanda J. Allen
The Consumer Protection Firm
210 A-South MacDill Ave.
Tampa, Florida 33609

For Defendants:

Frank A. Zacherl
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, FL 33131

Even if you timely and properly object, to obtain a benefit from this settlement, you must submit a Claim Form. If you object but fail to submit a Claim Form, you will not receive any monetary award.

17. What is the difference between objecting and excluding yourself?

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

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will not receive any monetary award and you will give up any rights you may have to sue Defendants or any other Released Parties related to a Released Claim. For information relating to what rights you are giving up, see Question 10.

THE FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing at 10:00 a.m. on June 13, 2022 in Room 3B, at United States Courthouse, 401 West Central Boulevard, Orlando, Florida 32801. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 13 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Final Approval Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, but only in connection with an objection that you have timely submitted to the Court according to the procedure set forth in Question 16 above. To speak at the Final Approval Hearing, you must also file a document with the Court stating your intention to appear. For this document to be considered, it must include your name, address, telephone number and your signature. The document must be filed with the Court no later than April 13, 2022. You cannot speak at the hearing if you exclude yourself from the settlement.

GETTING MORE INFORMATION

22. How do I get more information?

This notice is only a summary of the proposed settlement. You can get a copy of the settlement agreement by visiting the Settlement Website, www.departmentstorestcpasettlement.com, or you can write to the address below or call the Toll-Free Settlement Hotline, 800-843-3150. You can also call Class Counsel with any questions at 866.726.1092.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, DEFENDANTS OR DEFENDANTS' COUNSEL ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.