

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS**

**MILLS V. HEB GROCERY COMPANY, L.P.  
CASE NO.: 4:10-CV-4974**

**NOTICE OF CLASS ACTION SETTLEMENT**

- All Non-Frost Bank and non-HEB Federal Credit Union customers who were charged a transaction fee at the ATM operated by HEB Grocery Company, L.P. between December 14, 2009 and December 16, 2011 may be eligible to receive a Settlement Check of up to \$100.00.
- The settlement resolves a lawsuit alleging that HEB Grocery Company, L.P. (“H-E-B”) violated certain requirements imposed by the Electronic Funds Transfer Act (“EFTA”). It avoids costs and risks to you from continuing the lawsuit; entitles certain persons to Settlement Checks; and releases H-E-B from any liability.
- Your legal rights are affected whether you act, or do not act. Please read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>SUBMIT A CLAIM FORM</b>	The only way to get a Settlement Check.
<b>EXCLUDE YOURSELF</b>	Get no Settlement Check. This is the only option that allows you to ever be part of any other lawsuit against H-E-B about the legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you do not like the settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- 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 any appeals are resolved. Please be patient.

**1. What is this lawsuit about?**

Joe Mills (“Plaintiff”), on behalf of all members of the class, has asserted that HEB Grocery Company, L.P. (“H-E-B”) violated certain requirements imposed by the Electronic Funds Transfer Act (“EFTA”). Specifically, Plaintiff claims that certain ATMs operated by H-E-B did not meet the EFTA’s ATM fee surcharge disclosure rules by failing to post certain external signage disclosing the fee, and that H-E-B therefore was not permitted to charge ATM transaction fees to non-customers at ATMs during the Class Period, as specifically set forth in the Complaint on file and available at the Court at 515 Rusk Avenue, Houston, Texas 77002. H-E-B disclosed the fee on the computer screen, but Plaintiff claims that H-E-B was required to post external notices on the ATMs. H-E-B denies any liability or wrongdoing.

**2. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case Joe Mills), sue on behalf of people who are similarly situated and have similar claims. All these people are Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

**3. Why is there a settlement?**

The Court did not decide in favor of Plaintiff or Defendant. The Plaintiff thinks he could have prevailed at a trial. The Defendant thinks the Plaintiff would not have prevailed at trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and the attorneys think the settlement is best for all Class Members.

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

The Court decided that everyone who fits this description is a Class Member:

All persons who were not banking customers of Frost Bank or HEB Federal Credit Union and who were charged or assessed any transaction fee, including any “terminal owner fee,” surcharge or ATM transaction fee of any kind, in connection with any electronic fund transfer and/or balance inquiry at any ATM owned or operated by HEB Grocery Company, L.P. between December 14, 2009 and December 16, 2011.

**5. I’m still not sure if I am included.**

If you are still not sure whether you are included, you can ask for free help. You can call 1-800-467-5241 or you can fill out and return the claim form to see if you qualify.

**6. What does the settlement provide?**

Class members who send in a valid claim form and one or more receipts issued between December 14, 2009 and December 16, 2011 demonstrating that they were charged an ATM transaction fee by H-E-B, or the relevant portion of a bank statement illustrating that they were

charged an ATM transaction fee by H-E-B will be entitled to receive a *pro rata* share of the settlement fund, with a maximum payment of \$100.00 per Participating Class Member.

The Settlement also imposes certain other requirements, which are set forth in detail in the Settlement Agreement.

The Settlement Agreement also provides that any unclaimed funds will be distributed to charities selected by the parties and approved by the Court.

## **7. How can I get a Settlement Check?**

If you believe you are a member of the class and desire to participate in this settlement, you should completely fill out the “Proof of Claim” form that accompanies this Notice and return it to the following address: Carlson Lynch, Ltd, 231 Melville Lane, P.O. Box 367, Sewickley, PA 15143. The “Proof of Claim” must be postmarked by May 1, 2012.

If you have one or more receipts that show that you were charged an ATM transaction fee by H-E-B, or the relevant party of a bank statement that shows that you were charged an ATM transaction fee by H-E-B, be sure to include them with the claim form.

If you don’t have a receipt of a bank statement, you can still receive a settlement payment if you check the box on the claim form attesting, under penalty of perjury, to the fact that you were charged an ATM transaction fee during the Class Period and providing the last four digits of the credit or debit card that was used in connection with the transaction in connection with which you were charged a fee. If you choose this option, the information that you provide will be used to verify your claim.

Failure to fully follow the procedures will result in a class member receiving no relief under the settlement, but nonetheless being bound by any judgments, orders and releases in this case.

## **8. When would I get my Settlement Check?**

The Court will hold a hearing on March 23, 2012, to decide whether to approve the settlement. If Judge Ellison approves the settlement, after that, there may be appeals. It’s always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

## **9. What am I giving up to get a Settlement check or stay in the Class?**

Unless you exclude yourself, you are staying in the class, and that means that you can’t sue, continue to sue, or be part of any other lawsuit against HEB Grocery Company, L.P. or the other entities released in the settlement agreement about the legal issues in this case. It also means that all of the Court’s orders will apply to you and legally bind you.

## **10. Can I exclude myself from the Class?**

If you do not wish to participate in this settlement, you must notify Class Counsel in writing of your intention to be excluded. Your election to opt-out must contain the following information

and must be signed by the class member opting-out: (1) the name of class member, (2) the current address of class member, and (3) the date signed. You must mail your exclusion request postmarked no later than February 16, 2012 to:

HEB Grocery Company, L.P. Exclusions  
c/o Carlson Lynch Ltd.  
P.O. Box 367  
Sewickley, PA 15143

If you ask to be excluded, you will not get a Settlement Check, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue HEB Grocery Company, L.P. or the other entities released in the settlement agreement in the future regarding the legal issues in this case.

**11. If I don't exclude myself, can I sue H-E-B for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue HEB Grocery Company, L.P. and the other entities released in the settlement agreement for the claims that this settlement resolves. If you have a pending lawsuit, involving the same claims that this settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. If you have a pending lawsuit on matters not addressed in this settlement, you may continue that lawsuit against H-E-B.

**12. If I exclude myself, can I get a Settlement Check from this Settlement?**

No. If you exclude yourself, do not send in a claim form to ask for a Settlement Check.

**13. Do I have a lawyer in this case?**

The law firms of Carlson Lynch Ltd. and Lippe and Associates represent you and other Class Members. 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.

**14. How will these lawyers be paid?**

Class counsel will ask the Court to approve payment of attorneys' fees and expenses of \$87,500.00. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. In addition, class counsel will ask for payment of \$1,000.00 to Joe Mills for his service as a Class Representative. These fees will be deducted from the Settlement. H-E-B has agreed not to oppose the request for these fees and expenses.

**15. How can I object to the Settlement?**

If you are a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter that you object to the class settlement in *Mills v. HEB Grocery Company, L.P.*, No. 4:10-cv-4974. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. You must file the objection

with the Clerk of the Court and serve notice of the objection to plaintiffs' class counsel and defense counsel at the following addresses postmarked no later than February 16, 2012:

R. Bruce Carlson, Esq.  
Carlson Lynch Ltd.  
231 Melville Lane  
P.O. Box 367  
Sewickley, PA 15143

Jason M. Powers, Esq.  
Vinson & Elkins LLP  
1001 Fannin Street, Suite 2500  
Houston, Texas 77002

Objectors who fail to properly or timely file their objections with the Court, or to serve them as provided above, shall not be heard during the Fairness Hearing, nor shall their objections be considered by the Court.

**16. What's the difference between objecting and excluding?**

Objecting is telling the Court that you do not agree with the settlement, in whole or in part. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**17. When and where will the Court decide whether to approve the Settlement?**

The District Court will hold a hearing to decide whether to approve the settlement. The Fairness Hearing will be held on March 23, 2012 at 10:30 a.m. at the Court, 515 Rusk Avenue, Houston, Texas 77002. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections or requests to be heard, the Court may consider them at the hearing. The Court may also decide the amount of attorneys' fees and costs to be paid to plaintiffs' class counsel.

**18. Do I have to come to the Hearing?**

No. Class Counsel will answer questions the Court 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.

**19. May I speak at the hearing?**

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 *Mills v. HEB Grocery Company, L.P.*, No. 4:10-cv-4974. Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than February 16,

2012, and be sent to the Clerk of the Court and Class Counsel at the addresses in question 15. You cannot speak at the hearing if you excluded yourself.

**20. What happens if I do nothing at all?**

If you do nothing, you will not get a Settlement Check from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against H-E-B about the legal issues in this case, ever again.

**21. How do I get more information?**

The foregoing is only a summary of the circumstances surrounding the litigation, the claims asserted, the class, the settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, which may be inspected during regular business hours at the Court, 515 Rusk Avenue, Houston, Texas 77002. If you wish to communicate with class counsel identified above, you may do so by writing to R. Bruce Carlson, Carlson Lynch Ltd., 231 Melville Lane, P.O. Box 367, Sewickley, PA, 15143. Alternatively, you may call the offices of the firm at its toll free number [1-800-467-5241].