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FILED
San Diego Superior Court
Central Division

JUL 18 2024

Clerk of the Superior Court
By: A. Yim, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, HALL OF JUSTICE**

ELAINE WARD-HOWIE, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

FRONTWAVE CREDIT UNION,

Defendant.

Case No. 37-2022-00016328-CU-BC-CTL
Assigned to Hon. Katherine A. Bacal
Dept.: C-69

~~PROPOSED~~ FINAL APPROVAL
ORDER AND JUDGMENT GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARING
ATTORNEYS' FEES, COSTS, AND
SERVICE AWARD

[Notice of Unopposed Motion for Final
Approval of Class Action; Memorandum of
Points and Authorities; Joint Declaration of
Sophia Gold and Jeff Ostrow; and
Declaration of Cameron Azari filed
concurrently herewith]

Date: July 12, 2024
Time: 1:30 p.m.
Dept: C-69

Amended Complaint Filed: January 4, 2023
Complaint Filed: April 29, 2022
Trial Date: None Set

1 On July 12, 2024, this Court heard Plaintiff Elaine Ward-Howie’s Unopposed Motion for
2 Final Approval of Class Action Settlement and Motion for Attorneys’ Fees, Costs, and Incentive
3 Award. No objector appeared at the hearing. The Court granted Preliminary Approval of the
4 Settlement and conditionally certified the Settlement Class on February 21, 2024, and now finds
5 due and adequate Notice was given to the Settlement Class. The Court having considered the
6 Settlement Agreement and Release¹ (“Agreement” or “Settlement”) entered into between Plaintiff
7 and Defendant Frontwave Credit Union (“Defendant”), all papers filed and proceedings had herein,
8 all oral and written comments regarding the Settlement, and having reviewed the record in this
9 Action, and good cause appearing,

10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

11 1. Unless otherwise defined, all terms used herein shall have the same meaning as those
12 provided in the Agreement.

13 2. The Court has jurisdiction over the subject matter of the litigation and over the Parties
14 to this Action, including all Settlement Class Members.

15 3. For settlement purposes only, the Court now finally certifies the Settlement Class
16 consisting of the APPSN Fee Class and Retry Fee Class, defined as follows and subject to the stated
17 exclusions below, for settlement purposes only:

18 “APPSN Fee Class” means those current or former members of Defendant who
19 were assessed APPSN Fees from April 29, 2018 through June 30, 2022.

20 “Retry Fee Class” shall mean those current or former members of Defendant who
21 were assessed Retry Fees from January 4, 2019 through June 30, 2022.

22 4. Excluded from the Settlement Class is Defendant, its parents, subsidiaries, affiliates,
23 officers, and directors; all Settlement Class members who make a timely election to be excluded;
24 and all judges assigned to this litigation and their immediate family members.

25 5. As stated in the Preliminary Approval Order, this Court finds and determines that the
26 proposed Settlement Class, as defined above, meets all of the legal requirements for class
27 certification, for settlement purposes only, in that (a) the number of members of the Settlement Class

28 ¹ A copy of the Agreement is attached to the Memorandum of Points and Authorities as *Exhibit A*.

1 is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the
2 members of the Settlement Class; (c) the claims of the Plaintiff are typical of the claims of the
3 members of the Settlement Class; (d) the Plaintiff is an adequate representative for the Class, and
4 has retained experienced and adequate Class Counsel; (e) the questions of law and fact common to
5 the members of the Settlement Class predominate over any questions affecting any individual
6 members of the Settlement Class; and (f) a class action is superior to the other available methods
7 for the fair and efficient adjudication of the controversy.

8 6. The Court finally appoints Elaine Ward-Howie as the Class Representative.

9 7. The Court finally appoints Sophia Goren Gold and Jeffrey D. Kaliel of KalielGold
10 PLLC and Jeff Ostrow of Kopelowitz Ostrow P.A. as Class Counsel for the Settlement Class.

11 8. The Court finally appoints Epiq Class Action & Claims Solutions, Inc. as the
12 Settlement Administrator. The Settlement Administrator shall be subject to the jurisdiction of the
13 Court with respect to the administration of the Settlement and shall comply with the terms of the
14 Settlement.

15 9. The Court finds that the distribution of the Notice of the Settlement has been
16 completed in conformity with the Court's Preliminary Approval Order. The Court finds that the
17 Notice was the most practicable under the circumstances and provided due and adequate notice of
18 the proceedings and of the terms of the Settlement, and fully satisfied the requirements of California
19 Rules of Court, rules 3.766 and 3.769(f), and Due Process. The Court also finds that all Settlement
20 Class Members were given a full and fair opportunity to participate in the Final Approval Hearing,
21 all Settlement Class Members wishing to be heard have been heard, and all Settlement Class
22 Members have had a full and fair opportunity to exclude themselves from the Settlement Class.

23 10. The Court finds that no Settlement Class members have requested to be excluded
24 from the Settlement Class.

25 11. The Court finds that no Settlement Class Members objected to the Settlement.

26 12. The Court hereby grants Final Approval of the terms of the Settlement and finds that
27 the Settlement is, in all respects, fair, adequate, and reasonable. Plaintiff has satisfied the
28 requirements for Final Approval of the Settlement. The Parties are directed to effectuate the

1 Settlement according to its terms and this Order. The Court finds that the Settlement has been
2 reached as a result of informed and non-collusive arm's-length negotiations. The Court further finds
3 that the Parties have conducted extensive investigation and research, and their attorneys were able
4 to reasonably evaluate their respective positions.

5 13. The Court finds that the Settlement will avoid additional and potentially substantial
6 costs, as well as the delay and risks associated with protracted litigation.

7 14. The Settlement is not an admission by Defendant, nor is this Final Approval Order
8 and Judgment a finding of the validity of any allegations or of any wrongdoing by Defendant.
9 Neither this Final Approval Order and Judgment, the Settlement, nor any document referred to
10 herein, nor any action taken to carry out the Settlement, may be construed as, or may be used as, an
11 admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against
12 Defendant.

13 15. Within 10 days after the Effective Date, Defendant shall deposit the \$1,872,814.00
14 Settlement Fund into an account established with the Settlement Administrator, less the total amount
15 that will be credited to those Settlement Class Members who are Current Accountholders. The
16 Settlement Fund will be used to pay Settlement Class Member Payments, Class Counsel's attorneys'
17 fees and costs, the Class Representative Incentive Award, and Settlement Administration Costs.

18 16. The amount of Settlement Class Member Payments to be paid to each individual
19 Settlement Class Member from the Net Settlement Fund shall be calculated as specified in the
20 Agreement, by the deadline specified in the Agreement, and in accordance with its other terms.

21 17. Defendant shall forgive all Uncollected Relevant Fees totaling \$127,186.00 in the
22 manner described in the Agreement.

23 18. As of the Effective Date, Plaintiff and Settlement Class Members, and each of their
24 respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors,
25 bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents,
26 attorneys, and all those who claim through them or on their behalf ("Releasing Parties") shall
27 automatically be deemed to fully and irrevocably release and forever discharge Defendant and each
28 of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and

1 assigns, and the present and former directors, officers, employees, agents, insurers, members,
2 attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors,
3 wholesalers, resellers, distributors, retailers, predecessors, and successors (“Released Parties”) of
4 and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs,
5 attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected
6 or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or
7 any other theory, that arise from or relate to Defendant’s assessment of APPSN Fees or Retry Fees,
8 and claims that were asserted or could possibly have been asserted in the Action relating to
9 Defendant’s assessment of APPSN Fees or Retry Fees (“Released Claims”).

10 19. Each Settlement Class Member is barred and permanently enjoined from bringing on
11 behalf of themselves, or through any person purporting to act on their behalf or purporting to assert
12 a claim under or through them, any of the Released Claims against the Released Parties in any
13 forum, action, or proceeding of any kind.

14 20. The Releasing Parties further agree to waive any rights they may have under
15 California Civil Code § 1542, which provides:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
17 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
18 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
19 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
20 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
21 DEBTOR OR RELEASED PARTY.

22 21. In the event the Settlement is terminated, the Agreement shall be considered null and
23 void; all of Plaintiff’s, Class Counsel’s, and Defendant’s obligations under the Settlement shall cease
24 to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the
25 Parties had not entered into the Agreement, with all of the Parties’ respective pre-Settlement rights,
26 claims, and defenses retained and preserved.

27 22. The Court finds Class Counsel’s requested attorneys’ fees of \$ _____, representing
28 46% of the Value of the Settlement, is reasonable based on the percentage-of-the-benefit method
and the lodestar cross-check. Class Counsel’s hourly rates are in line with prevailing market rates
and the hours worked are also reasonable. That award shall be paid to Class Counsel from the

6666,666.00

1 Settlement Fund by the deadline specified in the Agreement.

2 23. The Court further finds the request for reimbursement of \$11,736.19 for litigation
3 costs is reasonable based on the work necessary to achieve this favorable class Settlement and is to
4 be paid to Class Counsel from the Settlement Fund by the deadline specified in the Agreement.

5 24. The Court finds that Plaintiff took a reputational risk by initiating and assisted with
6 the prosecution and litigation of the Action to help secure a favorable Settlement for the benefit of
7 the Settlement Class. The Court therefore awards a \$ 5,000.00 Class Representative Incentive
8 Award to be paid to Plaintiff Elaine Ward-Howie as Class Representative by the deadline specified
9 in the Agreement.

10 25. The Court approves payment of the Settlement Administration Costs of up to
11 \$129,450 to be paid to the Settlement Administrator from the Settlement Fund in accordance with
12 the terms in the Agreement.

13 26. Pursuant to Code of Civ. Proc., § 384)(b), the Court determines that \$ ~~_____~~
14 ~~(\$1,872,814.00 less the amount awarded for attorneys' fees and costs, the Incentive Award, and~~
15 ~~\$129,450 available for payment of Settlement Administration Costs, which shall be the maximum~~
16 ~~amount that could be awarded to the Settlement Administrator) will be payable to all Settlement~~
17 ~~Class Members if all of them are paid the amount to which they are entitled pursuant to the judgment~~
18 ~~in this Action.~~

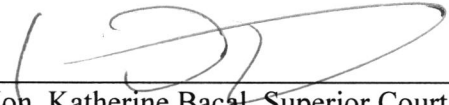
19 27. A status hearing is hereby set for _____, 2025 at ____ a.m./p.m., during
20 which the Court will confer with the Parties' counsel regarding the status of Residual Funds
21 remaining after distributions to the Settlement Class Members. The Court will then evaluate whether
22 it appears economically feasible to pay additional *pro rata* distributions to participating Settlement
23 Class Members who received Settlement Class Member Payments. Alternatively, the Court may
24 determine the Residual Funds should be paid to the *cy pres* recipient in accordance with Code of
25 Civ. Proc. § 384(b) and the Agreement, amending the judgment in this Action accordingly at the
26 appropriate time following the submission of a final report to the Court. The Court will set a deadline
27 for a final report after the hearing on the status of the Settlement's administration, and thereafter
28 amend the judgment to direct payment to the *cy pres* recipient.

1 28. Pursuant to California Rule of Court, Rule 3.769(h), Code of Civ. Proc. § 664.6, and
2 the Agreement, and without affecting the finality of this Judgment, the Court retains jurisdiction of
3 all matters relating to the interpretation, administration, implementation, effectuation, and
4 enforcement of the Settlement and this Judgment to the full extent permitted or required by law.

5 29. This Final Approval Order and Judgment is a judgment on the Settlement only and
6 the Court makes no finding of liability herein, and notice of it shall be proved to the Settlement
7 Class by posting it on the Settlement Website

8 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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10 Dated: 2/19, 2024



Hon. Katherine Bacal, Superior Court Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the District of Columbia. My business address is 950 Gilman Avenue, Suite 200, Berkeley, California 94710.

On May 28, 2024, I served true copies of the following document(s) described as:

[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARDED ATTORNEYS' FEES, COSTS AND SERVICE AWARD

on the interested parties in this action as follows:

Stuart M. Richter	Attorneys for Defendant
Camille A. Brooks	FRONTWAVE CREDIT UNION
Ashley T. Brines	
KATTEN MUCHIN ROSENMAN LLP	
2029 Century Park East, Suite 2600	
Los Angeles, CA 90067-3012	

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with KalielGold PLLC's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address ngarcia@kalielpllc.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 28, 2024, at Los Angeles, California.



NEVA GARCIA