

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

Elaine Ward-Howie v. Frontwave Credit Union

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH FRONTWAVE CREDIT UNION AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES ON DEBIT CARD PAYMENTS BETWEEN APRIL 29, 2018, AND JUNE 30, 2022, AND/OR CERTAIN RETURNED ITEM FEES AND/OR OVERDRAFT FEES ON CHECK AND ACH PAYMENTS BETWEEN JANUARY 4, 2019, AND JUNE 30, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

The San Diego County Superior Court for the State of California has authorized this Notice; it is not a solicitation from a lawyer.

**SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION**

<b>DO NOTHING</b>	If you don't do anything, you will receive a payment or account credit from the Settlement Fund and/or forgiveness of Uncollected Relevant Fees so long as you do not 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. 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 for Relevant Fees and/or forgiveness of Uncollected Relevant Fees. 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 can file an objection with the Court explaining why you believe the Court should reject the Settlement. If your objection is overruled by the Court, then you may receive a payment and/or forgiveness of Uncollected Relevant Fees and you will not be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the Settlement may not be approved.

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 *Elaine Ward-Howie v. Frontwave Credit Union*. It is pending in the San Diego County Superior Court for the State of California, Case No. 37-2022-00016328-CU-BC-CTL. San Diego Superior Court Judge Katherine A. Bacal is overseeing this case.

The case is a “class action.” That means that the “Class Representative,” Elaine Ward-Howie, is an individual who is acting on behalf of current and former members who were purportedly improperly assessed APPSN Fees between April 29, 2018, and June 30, 2022, and Retry Fees between January 4, 2019, and June 30, 2022. “APPSN Fees” mean Overdraft Fees that Defendant charged and did not refund 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 the account. “Retry Fees” mean Returned Item Fees and Overdraft Fees that were charged and not refunded during the Retry Fee Class Period for Automated Clearing House (ACH) and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds. The Class Representative has asserted claims for breach of contract, including breach of the covenant of good faith and fair dealing, and violation of California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*). The Amended Complaint in this lawsuit is posted on the Settlement Website.

Defendant does not deny it charged the fees the Class Representative 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 Class Representative or any Settlement Class Members but is settling to avoid expense and distraction resulting from the litigation.

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

You received this Notice because Defendant’s records indicate that you were charged one or more APPSN Fees and/or Retry Fees that are the subject of this Action. The Court directed that this Notice be sent to all Settlement Class Members because each such 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 Class Representative’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 Class Representative’s lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative 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 interest of all Settlement Class Members.

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees at issue. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Class Representative’s claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Class Representative was to win at trial, there is no assurance that the Settlement 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, the Settlement 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 INCLUDED IN THIS SETTLEMENT?

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

If you received this notice, then Defendant’s records indicate that you are a member of the Settlement Class who is entitled to receive a payment or credit to your account and/or forgiveness of Uncollected Relevant Fees.

## YOUR OPTIONS

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

You have three options: (1) do nothing and you will receive a check payment or account credit and/or forgiveness of Uncollected Relevant Fees according to the terms of this Settlement; (2) exclude yourself from the Settlement; or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

### **6. What are the critical deadlines?**

There is no deadline to receive the Settlement benefits. If you do nothing, then you will get a check payment or account credit and/or forgiveness of Uncollected Relevant Fees.

The deadline for sending a letter to exclude yourself from the Settlement is **June 12, 2024**.

The deadline to file an objection with the Court is also **June 12, 2024**.

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

If you do not like the Settlement and 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 excluding yourself.

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved and no payments and/or forgiveness of Uncollected Relevant Fees will be made to you or any other member of the Settlement Class. If your objection (and any other objection) is overruled, and the Settlement is approved, then you may still get a payment and/or forgiveness of Uncollected Relevant Fees and 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 will receive a payment or account credit and/or forgiveness of Uncollected Relevant 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 "Final Approval Hearing," which is currently scheduled for **July 12, 2024**.

## THE SETTLEMENT PAYMENT

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

Defendant has agreed to create a Settlement Fund of \$1,872,814.00, allocated \$1,470,159.00 to the APPSN Fee Class and \$402,655.00 to the Retry Fee Class. It will also forgive Uncollected Relevant Fees totaling \$127,186.00, as defined in the Settlement Agreement.

As discussed separately below, attorneys' fees, litigation costs, and the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing and emailing Notice) will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments 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 the Court to approve attorneys' fees of not more than \$666,600.00, equal to 33.33% of the Value of the Settlement, and will request that it be reimbursed for litigation costs incurred in prosecuting the case estimated to be \$13,932.00. 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.

**11. How much of the Settlement Fund will be used to pay the Class Representative an Incentive Award?**

Class Counsel will request that the Class Representative be paid an Incentive Award in the amount of up to \$5,000.00 for her work in connection with this case. The Incentive Award must be approved by the Court.

**12. How much of the Settlement Fund will be used to pay the Settlement Administrator's expenses?**

The Settlement Administrator estimates its expenses at \$97,993.00.

**13. How much will my payment be?**

The balance of the Settlement Fund after attorneys' fees and costs, the Incentive Award, and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement. Current Accountholders will receive a credit to their accounts for the amount they are entitled to receive. Past Accountholders shall receive a check from the Settlement Administrator. Settlement Class Members entitled to forgiveness of Uncollected Relevant Fees shall receive this benefit automatically.

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

If you stay in the Settlement Class, all of the decisions by the Court will bind you, and you give Defendant a "release." A release means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues in this case. As of the Effective Date, you shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that arise from or relate to Defendant's assessment of APPSN Fees or Retry Fees, and claims that were asserted or could possibly have been asserted in the Action relating Defendant's assessment of APPSN Fees or Retry Fees. More information about the release may be found in the Settlement Agreement.

**15. 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 check payment or credit for Relevant Fees and/or forgiveness of Uncollected Relevant Fees without having to make a claim, unless you choose to exclude yourself from the Settlement.

**16. When will I receive my check payment or account credit?**

The Court will hold a Final Approval Hearing on **July 12, 2024, at 1:30 p.m.** to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued within 30 days of the Effective Date. However, if someone objects to the Settlement, and the objection is sustained, then there may be no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

Subject to Court approval, any Residual Funds from uncashed checks remaining after the first distribution shall be distributed on a pro rata basis to Settlement Class Members who either cashed their checks or received Account credits, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless

the amounts involved are too small to make individual distributions economically feasible or other specific reasons exist that would make such further distributions impossible or unfair. Should such a second distribution be made, the participating Settlement Class Members will be sent a check by the Settlement Administrator. Any second distribution checks shall be valid for 90 days.

Also subject to Court approval, in the event the costs of preparing, transmitting, and administering such subsequent payments to Settlement Class Members do not make individual distributions economically feasible or practical, or other specific reasons exist that would make such further distributions impossible or unfair, or if such a second distribution is made and Residual Funds still remain, the Residual Funds shall be distributed to a *cy pres* recipient approved by the Court. The Parties agree to propose Frontwave Foundation or Armed Services YMCA (Camp Pendleton, 29 Palms & San Diego) as the *cy pres* recipient.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **17. How do I exclude myself from the Settlement?**

If you do not want to receive a payment 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 from the Settlement.

To do this, you must send a letter to the Settlement Administrator stating that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the Settlement in the *Elaine Ward-Howie v. Frontwave Credit Union* class action.” Be sure to include your name, the last four digits of your current or former member number(s), address, telephone number, and email address (if any). Your exclusion request must be postmarked by **June 12, 2024**, and sent to the following address:

Elaine Ward-Howie v. Frontwave Credit Union

Attn: Settlement Administrator

PO Box 2774, Portland, OR 97208-2774

### **18. What happens if I exclude myself from the Settlement?**

If you exclude yourself from the Settlement, you will preserve and not give up any of your rights to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a check payment or credit and/or forgiveness of Uncollected Relevant Fees from the Settlement.

## **OBJECTING TO THE SETTLEMENT**

### **19. How do I notify the Court that 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 from the Settlement. (Settlement Class Members who exclude themselves from the Settlement have no right to object to how other Settlement Class Members are treated.) To object, you must send a written document by mail or private courier (e.g., FedEx) to the Settlement Administrator at the address below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector’s full name, address, telephone number, and email address (if any);
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the identity of all counsel who represent the objector and whether they will appear at the Final Approval Hearing;
- e. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- f. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing.

All objections must be post-marked no later than **June 12, 2024**, and must be mailed to the Settlement Administrator as follows:

*Elaine Ward-Howie v. Frontwave Credit Union*

Attn: Settlement Administrator

PO Box 2774, Portland, OR 97208-2774

## **20. What is the difference between objecting and excluding yourself from the Settlement?**

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the Settlement Class, and asking the Court to reject it. You can object only if you do not exclude yourself from the Settlement. If you object to the Settlement and do not exclude yourself, then you are entitled to a check payment or credit for Relevant Fees and/or forgiveness of Uncollected Relevant Fees if the Settlement is approved, but you will release claims you might have against Defendant.

Excluding yourself is telling the Court that you do not want to be part of the Settlement, and do not want to receive a check payment or credit for Relevant Fees and/or forgiveness of Uncollected Relevant Fees, or release claims you might have against Defendant for the claims alleged in this lawsuit.

## **21. What happens if I object to the Settlement?**

If the Court sustains your objection, or the objection of any other member of the Settlement Class, then there may be no Settlement. However, an objection to Class Counsel's requested attorneys' fees and costs or to the requested Incentive Award amount may result in approval of the Settlement but the award of a lower attorneys' fee and cost amount or lower Incentive 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 FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval Hearing at **1:30 p.m. on July 12, 2024**, in Department 69 of the San Diego County Superior Court for the State of California, which is located at the Hall of Justice, 330 West Broadway, San Diego, CA 92101. 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 Incentive Award to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the Settlement Website at [FCUFeeSettlement.com](http://FCUFeeSettlement.com). Also, if the date and/or location of the Final Approval Hearing changes, that information will be posted on the same website.

## **23. 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.

## **24. May I speak at the hearing?**

If you wish to object to the Settlement, 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 19 above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing." The Court will consider your objection even if you do not appear.



## **THE LAWYERS REPRESENTING YOU**

### **25. 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 Settlement Class Members. However, you may retain a lawyer to represent you at your own expense.

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

No. Class Counsel will be paid directly from the Settlement Fund for the legal services provided to accomplish the Settlement for Settlement Class Members’ benefit. Class Counsel’s award of attorneys’ fees and costs is deducted from the Settlement Fund, reducing that amount in calculating the Net Settlement Fund from which Settlement Class Members will be paid.

### **27. Who determines what the attorneys’ fees will be?**

The Court will be asked to approve the amount of attorneys’ fees at the Final Approval Hearing. Class Counsel will file an application for attorneys’ fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application on the Settlement Website established by the Settlement Administrator.

## **GETTING MORE INFORMATION**

### **28. Where can I get more information?**

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [FCUFeeSettlement.com](http://FCUFeeSettlement.com) or by contacting the Settlement Administrator (details below) and requesting a copy.

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 at the following address:

*Elaine Ward-Howie v. Frontwave Credit Union*

Attn: Settlement Administrator

PO Box 2774, Portland, OR 97208-2774

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

KALIEL GOLD PLLC  
Sophia Goren Gold  
950 Gilman Street, Suite 200  
Berkeley, California 94710  
Email: [sgold@kalielgold.com](mailto:sgold@kalielgold.com)

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Fort Lauderdale, FL 33301  
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***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***