

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

BRENDA BRISCOE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

FIRST FINANCIAL CREDIT UNION,

Defendant.

Case No. D-202-CV-2022-02974

CLASS ACTION

**ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

The Court, having considered Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement ("Motion for Preliminary Approval"), the Parties' Settlement Agreement, the proposed Postcard Notice (also known as the "Short-Form Notice"), Long-Form Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this Litigation, Plaintiffs Brenda Briscoe and Roberta Keast (collectively, "Plaintiffs" or "Class Representatives"), individually and on behalf of all others similarly situated (the "Settlement Class"), and Defendant First Financial Credit Union ("FFCU" and together with Plaintiffs, the "Parties").

3. The Court finds that the Parties' Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and was entered into after extensive, arm's-length negotiations, such that it is hereby preliminarily approved, and that notice of the Settlement should be provided to the Settlement Class Members.

4. Pending the Final Approval Hearing, all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

Procedural Posture and History of Negotiations

5. This is a putative class action arising out of a data security incident in which Plaintiffs allege that an unauthorized third party or parties accessed FFCU's computer systems and data contained therein, resulting in unauthorized access to personal information belonging to Plaintiffs and members of the Settlement Class between January 17, 2022 and February 6, 2022 ("Data Incident").

6. Plaintiffs assert claims such as: negligence, negligence per se, breach of fiduciary duty, breach of implied contract, breach of express contract, and violation of the New Mexico Unfair Trade Practices Act. FFCU denies all claims asserted against it in the Litigation, all allegations of wrongdoing and liability, and all material allegations of the Class Action Complaint filed on May 31, 2022 ("CAC") against it regarding the Data Incident.

7. Counsel for the Parties, each highly experienced in data breach litigation and class actions, have engaged in extensive arm's-length negotiations, including a full day mediation before a highly experienced data privacy mediator, Bennett G. Picker, Esq. of Stradley Ronon Stevens and Young, LLP, concerning a possible settlement of the claims asserted in the Litigation. The Parties engaged in arm's-length negotiations until they were able to reach an agreement in

principle. Thereafter, the Parties negotiated the details of the Settlement Agreement and its exhibits. The Settlement Agreement was finalized and executed on December 6, 2023.

Settlement Benefits

8. Settlement Class Members may qualify and submit a Claim Form for the following settlement benefits:

a. Compensation For Ordinary Losses: All Settlement Class Members who submit a valid and timely Claim are eligible to recover compensation for up to \$150 of their ordinary out-of-pocket losses incurred as a result of the Data Incident. Ordinary losses can arise from the following categories:

i. *Out-of-pocket expenses incurred* as a direct result of the Data Incident, including documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, and bank fees, all of which must be more likely than not attributable to the Data Incident, must not have been previously reimbursed or subject to reimbursement by insurance or a third party. The Claim Form will require reasonable documentation of the ordinary out-of-pocket losses.

ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between January 17, 2022, and the date of the close of the Claims Period that the claimant attests under penalty of perjury he/she incurred because of the Data Incident and not already paid for or reimbursed by a third party. All such fees must be supported by reasonable documentation substantiating the full extent of the amount claimed.

b. Compensation For Lost Time: All Settlement Class Members may claim up to 4.5 hours of lost time, at \$25 an hour, if at least one-half hour of documented time was spent dealing with the Data Incident. All such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Incident.

c. Compensation for Extraordinary Losses: All Settlement Class Members who submit a valid and timely Claim are also eligible to recover compensation for up to \$5,000 of their documented extraordinary monetary out-of-pocket losses directly arising from identity theft or other fraud perpetrated on or against the Settlement Class Member if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not the result of the Data Incident;
- iii. The loss is not already covered by the “Compensation for Ordinary Losses” category; and
- iv. the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance and other available insurance.

d. Credit Monitoring and Identity Theft Insurance: Twenty-four months of credit monitoring by all three major credit bureaus and identity theft monitoring will be provided to those Settlement Class Members who elect and submit valid and timely claims for such monitoring/insurance. The identity theft monitoring/insurance will have the following features:

- i. Real time monitoring of the credit file at all three major credit bureaus;
- ii. Identity theft insurance (no deductible) of \$1,000,000; and

iii. Access to fraud resolution agents to help resolve identity thefts.

e. Cash Compensation: In lieu of all compensation described in Paragraph 8(a)-(d) above, Settlement Class Members may file a claim for a cash payment to be calculated *pro rata*, as described in Paragraph 37 of the Settlement Agreement.

f. Remedial Measures/Security Enhancements: FFCU will continue to review and enhance data privacy and security measures and its data security and privacy protocols and policies as part of this Settlement, including but not limited to establishing, and maintaining if already in place, a policy that any third-party it allows to access its members' personal data and shall confirm that it has industry acceptable protection and security provisions in place for said information and such other policies and measures as FFCU deems advisable.

CLASS CERTIFICATION

9. For the purposes of settlement only, and pursuant to Rule 1-023 NMRA ("Rule 1-023"), the Court provisionally certifies the class, defined as follows: "all persons who provided their personal data to FFCU and were notified that their personal data may have been impacted because of the Data Incident."

10. The Court provisionally finds, pursuant to Rule 1-023, that, for purposes of this settlement only, the: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representatives' claims are typical of the Settlement Class's claims; (d) the Class Representatives will fairly and adequately protect the Settlement Class's interests; and (e) questions of law or fact in this Litigation predominate over any questions affecting only individual members of the Settlement Class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES

11. Plaintiffs Brenda Briscoe and Roberta Keast are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members, and are typical of the Settlement Class, and, therefore, they will be adequate Class Representatives.

12. The Court finds that Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. and Andrew W. Ferich of Ahdoot & Wolfson, PC are experienced and adequate counsel and are provisionally designated as Class Counsel.

NOTICE TO SETTLEMENT CLASS

13. The forms of the Claim Form, Long Form Notice, and Postcard Notice, attached as **Exhibits A, B, and C**, respectively, to the Settlement Agreement (the “Notice”), are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy New Mexico requirements and Due Process. The Court further finds that the form, content, and method of providing notice to the Settlement Class, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members. The Parties, by agreement, may revise the Notice in ways that are appropriate to update the Notice for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing.

14. The Notice Program set forth in the Settlement Agreement satisfies Rule 1-023, provides the best notice practicable under the circumstances, and is hereby approved.

15. The Settlement Administrator is directed to carry out the Notice Program as set forth in the Settlement Agreement.

16. Within twenty-eight (28) days following entry of this Order (the “Notice Date”), the Settlement Administrator shall mail the Postcard Notice to all Settlement Class Members in the manner set forth in the Settlement Agreement. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Postcard Notice, Long-Form Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement (“Settlement Website”).

CLAIMS, OPT-OUTS, AND OBJECTIONS

17. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to object.

18. Settlement Class Members will have ninety (90) Days after the Notice Date to complete and submit a claim to the Settlement Administrator.

19. Settlement Class Members have the right and ability to exclude themselves from the Settlement Class. In order to validly be excluded from the Settlement, the Settlement Class Member must send a letter to the Claims Administrator no later than sixty (60) days after the Notice Date. For a Settlement Class Member’s Opt-Out Request to be valid, it must (a) state his or her full name, address, and telephone number; (b) contain the Settlement Class Member’s personal and original signature (or the original signature of a person authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right such as those in the Litigation); and (c) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement Class and

from the Settlement. The Settlement Administrator shall promptly inform Class Counsel and FFCU's Counsel of all valid and timely Opt-Out Requests, with all such Settlement Class Members being referred to herein as "Opt-Out Member(s)."

20. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement. A Settlement Class Member who seeks to object to the Settlement must file a timely, written notice of his or her objection. Each Objection must (i) state the case name and number (*Briscoe v. First Financial Credit Union*, Case No. D-202-CV-2022-02974); (ii) set forth the Settlement Class Member's full name, current address, and telephone number; (iii) contain the Settlement Class Member's original signature; (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; and (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

21. In addition to the foregoing, objections should also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative within the last three (3) years.

22. To be timely, Objections must be filed with the Court and served on Class Counsel and FFCU's Counsel no later than sixty (60) days after the Notice Date (the "Objection Deadline").

23. Class Counsel and FFCU's Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

24. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and FFCU's Counsel) by the Objection Deadline.

25. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to the Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

26. Any Settlement Class Member who does not submit a timely Objection in complete accordance with the Settlement Agreement and the Long-Form Notice, or as otherwise ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

ADMINISTRATION OF THE SETTLEMENT

27. Class Counsel and FFCU have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Section VI of the Settlement Agreement.

28. The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

29. The Court directs the Settlement Administrator to effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement should the Settlement be finally approved.

30. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

31. If Final Judgment is entered, all Settlement Class Members who fail to submit a claim or request for exclusion in accordance with the requirements and procedures specified in the Notice shall be forever barred from receiving any Settlement benefit and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the Releases contained therein, and the Final Approval Order and Judgment.

32. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court, an appropriate affidavit or declaration from the Settlement Administrator respecting compliance with the Court-approved Notice Program.

FINAL APPROVAL HEARING

33. A Final Approval Hearing shall be held on **April 29, 2024 at 9:00 a.m.** at the Second Judicial District Court of New Mexico, Courtroom #502 located at 400 Lomas Blvd NW, Albuquerque, NM 87102, or in the manner specified on the Court's docket and noticed on the Settlement Website.

34. The Court may require or allow the Parties and any objectors to appear at the Final Approval Hearing by telephone or videoconference.

35. At the Final Approval Hearing, the Court will determine whether: (1) this Litigation should be finally certified as a class action for settlement purposes pursuant to the New Mexico

Rules of Civil Procedure for the District Courts; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) Class Counsel's application for attorneys' fees, costs, and expenses should be approved; (4) the Class Representatives' requests for service awards should be approved; (5) the Parties, their respective attorneys, and the Settlement Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement; (6) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; and (7) the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement.

36. Plaintiffs' application for attorneys' fees, costs, expenses, and service awards and all supporting papers shall be filed with the Court no later than fourteen (14) days prior to the Objection Deadline.

37. Plaintiffs' Motion for Final Approval of the Class Action Settlement and all supporting papers shall be filed with the Court no later than fourteen (14) days after the Objection Deadline.

RELEASE

38. Upon entry of the Court's Final Approval Order and Judgment, the Class Representatives and all Settlement Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against FFCU and the Released Persons arising from the Released Claims, and the Class Representatives and Settlement Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

TERMINATION

39. In the event that the Effective Date does not occur, class certification shall be

automatically vacated and this Preliminary Approval Order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

SUMMARY OF DEADLINES

40. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

EVENT	DATE
Notice Date	28 Days after entry of Preliminary Approval Order
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives	14 Days prior to Objection Deadline
Opt-Out and Objection Deadlines	60 Days after Notice Date
Deadline for Class Members to Submit Claim Forms	90 Days after Notice Date
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement	14 Days after Objection Deadline
Final Approval Hearing	April 29, 2024 at 9:00 a.m. 400 Lomas Blvd. NW #502

41. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further detail regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing and to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

ORDERED this 5th day of January, 2024.



Elaine P. Lujan, District Court Judge

APPROVED

By: /s/ Ben Barnow

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