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**IN THE CIRCUIT COURT FOR THE FIRST CIRCUIT
STATE OF HAWAI'I**

JOSEPH SMITH AND TONY LEE,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,
Defendant.

Case No.: 1CCV-24-0000154

**ORDER GRANTING UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Karin L. Holma

**ORDER GRANTING UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This matter coming before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"). The Court, having considered the Motion, the supporting memorandum of law, the parties' Class Action Settlement Agreement (the "Agreement"), the proposed forms of notice to the Settlement Class, the pleadings and other papers filed in this Action, and the statements of counsel and the parties, has determined that the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is preliminarily certified, and the proposed Notice Plan is approved. Accordingly, good cause appearing in the record, Plaintiffs' Motion is **GRANTED** as follows:

1. Unless defined herein, all defined terms in this order shall have the respective meanings ascribed to the same terms in the Agreement.

2. The Court has conducted a preliminary evaluation of the settlement set forth in the Agreement. Based on this preliminary evaluation, the Court finds that the Agreement meets all applicable requirements of Hawai'i Rule of Civil Procedure 23 for settlement purposes only, including that the Settlement Class is sufficiently numerous, that there are questions of law and fact common to members of the Settlement Class that predominate, that the representative parties fairly and adequately protect the interests of the class and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

3. The Court further finds that: (i) there is a good cause to believe that the settlement is fair, reasonable, and adequate, (ii) the Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case, and (iii) the settlement warrants notice of its material terms to the Settlement Class for their consideration and reaction. Therefore, the Court grants preliminary approval of the Settlement.

Provisional Certification of the Settlement Class

4. Pursuant to Hawai'i Rule of Civil Procedure 23, and for settlement purposes only, the Court certifies the following Settlement Class:

All persons in the United States to whom HawaiiUSA mailed a notification that their information may have been impacted in the Data Incident.

Excluded from the Settlement Class are (a) Defendant its officers and directors; (b) any entity in which Defendant has a controlling interest; (c) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendant; and (d) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge. Also excluded from the Settlement Classes are members of the judiciary to whom this case is assigned, their families and members of their staff.

5. Subject to final approval of the Settlement, the Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in Hawai'i Rule of Civil Procedure 23(a) and (b), are satisfied in that:

- A. the Settlement Class is so numerous that joinder of all members is impracticable;
- B. there are questions of law or fact common to the Settlement Class;
- C. Plaintiffs and Class Counsel fairly and adequately represent the Settlement Class;
- D. the claims of Plaintiffs are typical of those of Settlement Class Members;
- E. common issues predominate over any individual issues affecting the members of the Settlement Class;
- F. Plaintiffs fairly and adequately protect and represent the interests of all members of the Settlement Class, and Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class; and

G. settlement on a class action basis is superior to other means of resolving this matter.

6. For settlement purposes only, the Court hereby approves the appointment of Plaintiffs Joseph Smith and Tony Lee as Settlement Class Representatives.

7. For settlement purposes only, the Court hereby approves the appointment of Cafferty Clobes Meriwether & Sprengel LLP, Milberg Coleman Bryson Phillips Grossman, PLLC, and Bronster Fujichaku Robbins as Settlement Class Counsel and finds that they are competent and capable of exercising the responsibilities of Settlement Class Counsel.

Preliminary Approval of the Class Action Settlement

8. On **September 17, 2024, at 2:00 p.m.**, this Court will hold a final approval hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether: (a) final approval of the Agreement should be granted and (b) Settlement Class Counsel's application for attorneys' fees and expenses and an incentive award to the Settlement Class Representative should be granted.

9. No later than July 12, 2024 (*i.e.*, 14 days prior the deadline for Settlement Class Members to exclude themselves or object), Plaintiffs must file any papers in support of Settlement Class Counsel's application for attorneys' fees and the Service Award to the Settlement Class Representative, and no later than September 3, 2024 (*i.e.*, 14 days before the Final Approval Hearing) Plaintiffs must file any papers in support of final approval of the Agreement and in response to any objections.

10. Pursuant to the Agreement, Postlethwaite & Netterville, APAC is hereby appointed as the Claims Administrator and shall be required to perform all of the duties of the Claims Administrator as set forth in the Agreement or this Order.

11. Pursuant to the Agreement, should the need arise as set forth therein, the parties shall agree upon and appoint a Claims Referee (the “Claims Referee”). The Claims Referee shall be responsible for deciding certain claims that may be rejected by the Claims Administrator, upon request of the Settlement Class Member submitting such Claims, as described in the Settlement Agreement.

12. The Court approves the proposed notices of settlement attached to the Agreement (Exhibits A, B, and C), and the proposed plan for giving notice to the Settlement Class, via direct Notice in the U.S. Mail and/or by email, as fully described in the Agreement. The plan for giving notice, in form, method and content, fully complies with the requirements of Hawai’i Rule of Civil Procedure 23(e) and due process and is due and sufficient notice to all persons entitled thereto.

13. The Court hereby directs the parties and Claims Administrator to commence the notice plan on or before May 29, 2024 (*i.e.*, 30 days following the entry of the Preliminary Approval Order) (the “Notice Commencement Date”), and to substantially complete all aspects of the notice plan no later than August 27, 2024 (*i.e.*, 90 days after the Notice Commencement Date).

14. All persons who meet the definition of the Settlement Class and who wish to exclude themselves from the Settlement Class must submit their request for exclusion in writing no later than the Opt-Out deadline of July 28, 2024 (*i.e.*, 60 days after the Notice Commencement Date). To be valid, a request for exclusion must be in writing and signed by the Settlement Class Member, and the written request must state the name, address, and phone number of the person seeking exclusion. The written request also must clearly manifest a person’s intent to be excluded from the Settlement Class. The request must be mailed to the Claims Administrator at the address provided in the Class Notice no later than 60 days after the Notice Commencement Date. A request for exclusion that does not include all of the foregoing information, or that is sent to an address

other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Settlement Class Member. A Settlement Class Member who submits a valid Settlement Class Claim Form is not eligible for exclusion, and any subsequent request for exclusion will be invalid. All persons who submit valid, timely notices of their intent to opt out of the Settlement Class shall not receive any benefits of and/or be bound by the terms of the Settlement Agreement. All persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner described in this Paragraph shall be bound by the terms of the Settlement Agreement.

15. Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any relevant evidence or argument. No Settlement Class Member will be heard and no papers submitted by any Settlement Class Member will be considered unless, no later than July 28, 2024 (*i.e.*, no later than 60 days from the Notice Commencement Date), the Settlement Class Member files with the Court and mails to Settlement Class Counsel and Defendant's counsel written objections that include: (i) the objector's full name and address; (ii) the case name and docket number; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vi) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. Should the objector wish to appear at the Final Approval Hearing, he or she must so state, and must identify any documents or witnesses the Settlement Class Member intends to call on his or her behalf.

16. Any Settlement Class Member who fails to object in this manner will be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in this Lawsuit. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Paragraph. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Judgment and Order approving this Settlement Agreement, or the judgment to be entered upon final approval shall be pursuant to appeal under the Hawai'i Rules of Appellate Procedure and not through a collateral attack.

17. Class Members who wish to participate in the settlement and receive their share of the settlement proceeds shall complete and submit a claim form in accordance with the terms and conditions of the Agreement August 27, 2024 (*i.e.*, no later than 90 days after the Notice Commencement Date). The Claims Administrator shall accept and process claim forms in accordance with the Agreement.

18. The certification of the Settlement Class shall be binding only with respect to the Settlement of the Action. In the event that the Agreement fails to become effective, is overturned on appeal or does not become final for any reason whatsoever, the parties shall be restored to their respective positions in the Action as of the date of the signing of the Agreement, and no reference to the Settlement Class, the Agreement or any documents, communications or negotiations related in any way thereto shall be made for any purpose.

19. Pending the final determination of the fairness, reasonableness and adequacy of the Settlement, no Settlement Class Member may prosecute, institute, commence or continue any

lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

20. A “Final Approval Hearing” shall be on **September 17, 2024, at 2:00 p.m.** for the following purposes:

- A. to finally determine whether the applicable prerequisites for settlement class action treatment under Hawai’i Rule of Civil Procedure 23 have been met;
- B. to determine whether the Settlement is fair, reasonable and adequate and should be approved by the Court;
- C. to determine whether the judgment as provided under the Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Agreement;
- D. to consider the application for an award of attorneys’ fees, costs and expenses of Settlement Class Counsel;
- E. to consider the application for a Service Award to the Class Representatives;
- F. to consider the distribution of court-approved attorneys’ fees and any Service Award, as well as any settlement funds to claiming class members pursuant to the Agreement; and
- G. to rule upon such other matters as the Court may deem appropriate.

21. The Final Approval Hearing may be postponed, adjourned, transferred or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Agreement and a Final Approval Order in accordance with the Agreement that adjudicates the rights of all Settlement Class Members.

22. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

23. All discovery and other proceedings in the Action as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Agreement and this Order.

24. For clarity, the deadlines set forth above and in the Agreement are as follows:

Notice Commencement Date: 30 Days after Preliminary Approval – May 29, 2024

Motion for Final Approval: 14 Days before Final Approval Hearing – September 3, 2024

Motion for Service Award, Attorneys’ Fees and Costs: 14 Days before the deadline for Class Members to Opt-Out or Object – July 12, 2024


Opt-Out Deadline: 60 Days after Notice Commencement Date – July 28, 2024

Objection Deadline: 60 Days after Notice Commencement Date – July 28, 2024

Replies in Support of Final Approval, Service Award and Fee Requests: 7 Days before Final Approval Hearing – September 10, 2024

Claim Deadline: 90 Days after Notice Commencement Date – August 27, 2024

DATED: Honolulu, Hawai‘i, _____ May 3, 2024 _____.

/s/Karin L. Holma 

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM

/s/ Abigail M. Holden
ABIGAIL M. HOLDEN, ESQ.
Attorney for Defendant
HAWAIIUSA FEDERAL CREDIT UNION

JOSEPH SMITH and TONY LEE, individually, and on behalf of all others similarly situated, v. HAWAIIUSA FEDERAL CREDIT UNION; CIVIL NO. 1CCV-24-0000154, **ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**