

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

DAVID ULERY, individually and on behalf )  
of a class of other similarly situated )  
individuals, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DFS GROUP, L.P., )  
 )  
Defendant. )

**CASE NO. 2023CH03252**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**AMENDED ORDER CERTIFYING SETTLEMENT CLASS,  
GRANTING PRELIMINARY APPROVAL OF SETTLEMENT,  
AND DIRECTING NOTICE TO THE CLASS**

**THIS CAUSE** came before the Court on September 15, 2023, upon Plaintiff David Ulery's ("Plaintiff" or "Class Representative"), Motion for Preliminary Approval of Class Action Settlement (the "Motion") filed on August 25, 2023. Being fully advised, it is

**ORDERED AND ADJUDGED** as follows:

1. The Motion is **GRANTED** pursuant to Illinois Rules of Civil Procedure, and the terms of the Settlement Agreement (the "Agreement") including all Exhibits thereto, attached to the Motion, are preliminarily **APPROVED**, subject to further consideration at the Fairness Hearing provided for below. This Order incorporates the Agreement, including all Exhibits.

2. The terms of the Agreement including all Exhibits attached to the Motion, are hereby preliminarily approved, subject to further consideration thereof at the Final Approval Hearing provided for below. This Order incorporates herein, and makes a part hereof, the

Agreement. Unless otherwise provided herein, the terms defined in the Agreement shall have the same meanings herein.<sup>1</sup>

3. The Court finds the Agreement was entered into between the Class Representative, on behalf of himself and the Settlement Class and DFS Group, L.P., (hereinafter “DFS”) only after extensive arm’s-length negotiations by experienced counsel for the parties and following mediation efforts presided over by a professional mediator, Rodney Max, Esq.

4. The Court finds that settlement embodied in the Agreement is sufficiently within the range of reasonableness so that notice of the settlement should be given as provided in this Order. In making this determination, the Court has considered the current posture of the litigation and the risks and benefits to the parties involved in both settlement of these claims and continuation of the litigation.

5. The Court has also granted Plaintiff’s Agreed Motion to Extend Due Date to Send Notice of Settlement to Class Members and Reset Fairness Hearing Date, and has adopted the extended deadlines set forth below.

**I. THE CLASS, CLASS REPRESENTATIVES, AND CLASS COUNSEL.**

1. The Settlement Class is defined as follows:

All persons in the United States who, between May 27, 2020 and June 30, 2022, engaged in one or more transactions using a debit card or credit card at one or more of DFS’s retail locations in the United States, and were thereupon provided an electronically printed receipt displaying the first six (6) and last four (4) digits of the credit or debit card account number used in connection with such transaction(s).

Excluded from the Settlement Class are the Judge to whom this case is assigned, any members of the Judge’s immediate family, counsel of record in this action, and any individual who

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<sup>1</sup> All terms not defined herein shall have the same meaning as in the Motion for Preliminary Approval of Class Action Settlement and accompanying Exhibits.

properly opts out of the Settlement Class pursuant to the procedure described herein.

2. The Court makes the following determinations as to certification of the Settlement Class:

- (a) The Court preliminarily certifies the Settlement Class for purposes of settlement only, under 735 ILCS 5/2-801.
- (b) The Settlement Class is so numerous that joinder of all members is impracticable.
- (c) There are questions of law or fact common to the members of the Settlement Class, and those common questions predominate over any questions affecting only individual members.
- (d) Plaintiff are capable of fairly and adequately protecting the interests of the members of the Settlement Class in connection with the Agreement and has no conflict with absent class members.
- (e) This Court recognizes the experience of Class Counsel Scott D. Owens and John R. Habashy. Accordingly, the Settlement Class is adequately represented.
- (f) A class action is an appropriate method for the fair and efficient resolution of this lawsuit through settlement. The Settlement Class Members' claims are based on the same material facts and assert claims under the same sections of the same law. Thus, class certification promotes judicial economy by resolving their common claims in one lawsuit instead of multiple lawsuits, it promotes fairness by ensuring consistent results, and it promotes justice by alerting all class members to the existence of their claims and giving them the ability to resolve their claims without having to find their own counsel, file their own lawsuit, and endure the cost and rigors of litigation on their own.

## II. NOTICE TO CLASS MEMBERS

1. The Court has considered the proposed forms of notice including the Summary Notice and the Full Notice for the Settlement Website, (attached as Exhibits 2 and 3 to the Agreement) and Settlement Claim Form (attached as Exhibit 4 to the Agreement), and finds that the forms, content, and manner of notice proposed by the Parties and approved herein meet the requirements of due process and 735 ILCS §5/2-803, are the best notice practicable under the circumstances, constitute adequate notice of the lawsuit and settlement to all persons entitled to the same. The Court approves the notice program in all respects (including the proposed forms of notice; Summary Notice and Full Notice for the Settlement Website) and orders that notice be given in substantial conformity therewith. The notice program shall be completed on or about 150 days after entry of this Order (the "Notice Deadline"). The costs of preparing, printing, publishing, mailing, and otherwise disseminating the notice shall be paid from the Settlement Fund in accordance with the Agreement.

2. At the preliminary approval hearing, Class Counsel generally discussed the process by which the Settlement Class Members will be identified for the purpose of providing notice of the class action. Based upon these representations, the Court understands that initial subpoenas to the various Class Members' financial institutions will be served no later than November 3, 2023. This will enable class counsel to obtain the contact information of the Settlement Class Members.

3. In order to make sure the process moves expeditiously, and notice is provided in sufficient time for the final approval hearing, as scheduled, the Court orders that Plaintiff may serve these subpoenas via FedEx, email, or other means reasonably calculated to provide notice to the subpoenaed financial institutions, which will speed up the process and also minimize expenses.

4. Along similar “speeding up the process” lines, Plaintiff submits that that the subpoenas should provide that any information responsive to the subpoenas should be provided within 14 days of receipt of the subpoena.

5. As for protection of any confidentiality of information responsive to the subpoenas to financial institutions, the Court notes that the Parties and credit card processor, Euronet Worldwide, Inc. (“hereinafter “Euronet”) have previously stipulated to the entry of a protective order (the “Protective Order”) to ensure the confidentiality of the Class Members’ personal and private financial information, including, but not limited to, credit or debit card transaction data and contact information. The Protective Order obligates certain persons to sign a certification of their obligations under the Protective Order. Moreover, the Claims Administrator is further instructed to ensure the protection of the information shared with them for the purpose of sending notice and mailing checks to the Class Members. **The Court now orders that the provisions of the Stipulated Confidentiality and Protective Order entered on July 5, 2023, shall apply to the confidential personal or financial information collected from subpoenas to any financial institution.**

6. Further, the Court orders that (a) the subpoenaed financial institutions shall provide Class Counsel the requested names, addresses, and telephone numbers, notwithstanding that the subpoenas seek documents and information to which non-party customers (e.g., the potential class members) may have a legitimate expectation and/or right of privacy pursuant to federal and state constitutions, statutes, or case law; (b) the names, addresses, and telephone numbers produced to Plaintiff’s counsel by the subpoenaed financial institutions shall be used only for the purposes of notifying Settlement Class Members of a settlement and evaluating their claims, and shall not be disclosed to any other person other than Class Counsel, Defendant’s counsel, the settlement claims

administrator, and the Court; (c) such consumer contact information shall be destroyed within ten (10) days after distribution of all settlement proceeds, including, but not limited to class member checks.

7. To the extent that any subpoenaed financial institutions have any objections to the subpoenas or the coverage of the previously entered protective order, or the additional protections set forth in paragraph 6 above, such objections shall be made by motion to the Court within ten (10) days of service of such subpoenas.

8. The Court appoints Kurtzman Carson Consultants (“KCC”) as Claims Administrator. Responsibilities of the Claims Administrator shall include the following:

- (a) arranging for distribution of the Class Notice and Settlement Claim Forms to Settlement Class Members;
- (b) making any mailings to Settlement Class Members required under the terms of the Agreement;
- (c) answering written and telephonic inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee;
- (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement;
- (e) establishing the Settlement Website that posts notices, Settlement Claim Forms, and other related documents;
- (f) receiving and processing Settlement Claim Forms from and distributing Settlement payments to Settlement Class Members;
- (g) paying from the Settlement Fund any fees and costs incurred or due to banks, credit card processing companies, or others for responding to subpoenas to locate or identify the Settlement Class Members; and
- (h) otherwise assisting with implementation and administration of the terms of the Agreement.

### III. REQUEST FOR EXCLUSION FROM THE CLASS

1. A Settlement Class Member who wishes to be excluded from the Settlement Class shall mail a written Request for Exclusion to the Claims Administrator, so that it is postmarked no later than 60 days after Notice Deadline, by July 16, 2024 (the “Opt-Out and Objection Deadline”), and shall clearly:

- (a) identify the case name and number;
- (b) identify the name, address, and telephone number of the Settlement Class Member;
- (c) be personally signed by the Settlement Class Member requesting exclusion; and
- (d) contain a statement that indicates a desire to be excluded from the Settlement Class in the Litigation, such as “I hereby request that I be excluded from the proposed Settlement Class in *Ulery v. DFS Group, L.P.*”

2. A Settlement Class Member who desires to opt out of the Settlement Class must take timely affirmative written action pursuant to this Order, even if he or she files or has filed a separate action against DFS, provided that DFS serves the Class Notice in that separate action upon counsel of record or if pro se, upon the plaintiff.

3. Any Settlement Class Member who does not properly and timely mail a Request for Exclusion as set forth above shall be automatically included in the Settlement Class, and shall be bound by all the terms and provisions of the Agreement, including the Release and the Order of Final Approval, whether or not such Settlement Class Member received actual notice or objected to the Class Settlement and whether or not such Settlement Class Member makes a claim upon or participates in the Class Settlement.

#### **IV. OBJECTIONS**

1. Objections must be received in accordance with the terms of the Agreement by the Opt-Out and Objection Deadline, which will be 60 days from the Notice Deadline (by July 16, 2024). To be valid, the objection must include:

- (a) the case name and number;
- (b) the name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his or her counsel;
- (c) a description of the specific basis for each objection raised;
- (d) a statement of whether he or she intends to appear at the Final Approval Hearing, either with or without counsel;
- (e) any documentation in support of such objection; and
- (f) the date of the purchase for which the Settlement Class Member received a receipt containing the violative debit or credit card numbers.

In addition, an objecting Settlement Class Member who does not complete and submit a Settlement Claim Form must provide, to the Claims Administrator, the first six (6) and last four (4) digits of the credit or debit card used to make the purchase. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Paragraph shall be deemed to have waived any such objection, shall not be permitted to object to any terms or 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 Agreement by appeal or other means.

#### **V. PROOFS OF CLAIM**

1. To effectuate the Agreement, Class Settlement, and the provisions of the Class Notice program, the Claims Administrator shall be responsible for maintaining a record all Requests for Exclusion and Settlement Claim Forms. The Claims Administrator shall preserve, on paper or transferred into electronic format, all Requests for Exclusion, Settlement Claim Forms, and any and all other written communications from Settlement Class Members in response to the



Class Notice for a period of three (3) years, or pursuant to further order of the Court. All written communications received by the Claims Administrator from Settlement Class Members relating to the Agreement shall be available at reasonable times for inspection and copying by Class Counsel and Counsel for IKEA, including prior to payments being mailed to each Settlement Class Member.

2. In order to be entitled to participate in the Class Settlement, if effectuated in accordance with all of the terms and conditions set forth in the Agreement, each Settlement Class Member shall take the following actions and be subject to the following requirements:

- (a) Submitting a properly executed Settlement Claim Form to the Claims Administrator on or before the Claims Deadline, which is 60 days after the Notice Deadline. If such Settlement Claim Form is submitted by mail via the United States Postal Service to the address indicated in the Class Notice, it shall be deemed to have been submitted as of the date postmarked. If such Settlement Claim Form is transmitted in any manner other than the United States Postal Service, it shall be deemed to have been submitted on the date it is actually received by the Claims Administrator.
- (b) Except as provided herein, each completed Settlement Claim Form must contain the following information: (i) name; (ii) mailing address; (iii) phone number, which shall be optional; and (iv) email address to the extent that the Settlement Class Member has one. The website claim form will prepopulate this information as available for persons who first enter their claim ID and will ask them to update or correct any information.
- (c) The Settlement Claim Form shall require each Settlement Class Member to verify they received at least one printed receipt at an DFS retail location between May 27, 2020, and June 30, 2022, as well as verify the information he or she is providing is true and correct as of the date thereof to the best of his or her knowledge and belief.
- (d) Each Settlement Claim Form shall be submitted to and reviewed by the

Claims Administrator, who shall make a recommendation to Class Counsel and counsel for DFS about which claims should be allowed.

- (e) The Claims Administrator will notify each person who filed a Settlement Claim Form of any recommendation of disallowance, in whole or in part, of the Settlement Claim Form submitted by such person and will set forth the reasons for any such disallowance. Settlement Class Members shall be permitted a reasonable period of time to cure any deficiency with respect to their respective Settlement Claim Form or Publication Notice Claim Form that is identified. A copy of such notification shall also be sent by the Claims Administrator to Class Counsel and Counsel for DFS.
- (f) Each Settlement Class Member who submits a Settlement Claim Form shall thereby expressly submit to the jurisdiction of the Court with respect to the claims submitted and shall, subject to final approval of the Agreement and Class Settlement, be bound by all the terms and provisions of the Agreement.

## **VI. CONFIDENTIALITY**

1. All Settlement Class Member information provided to Class Counsel pursuant to the Settlement Agreement and Release, and all transaction, card account, or putative Settlement Class Member identifying or contact information Plaintiff subpoenas from any nonparty, shall be treated as confidential, and not shared with anyone other than: (a) the Parties' counsel; (b) the Claims Administrator; or (c) the Court, except that Class Counsel may also share that information with any bank, card processing entity, or other third party to facilitate the process of identifying or locating class members. If any information described in this paragraph is filed with the Court, it shall be filed under seal. All such information shall be destroyed no later than thirty days after the final distribution of funds under the settlement.

2. The Court hereby determines the production of bank customer name, contact information, transaction information, account information, or other information Class Counsel subpoenas for the purpose of identifying or locating Settlement Class Members is necessary to facilitate the giving of notice of the settlement to the Settlement Class. Accordingly, to facilitate the production of that information, and avoid delay and unnecessary cost, and because the process is being supervised by the Court, Plaintiff and Class Counsel, and each subpoenaed entity, are excused from complying with any law that purports to restrict the production of such information or imposes any requirement that notice be given to Settlement Class Members before such information is produced. Likewise, the Court hereby directs each subpoenaed bank, credit union, credit or debit card processor, and other entity to comply with the subpoena to the extent such a directive is a pre-condition for compliance under any law or otherwise needed to comply with the subpoena, and hereby grants the complying entity permission to produce the subpoenaed information to Class Counsel or the Claims Administrator. The bank, credit union, credit or debit card processing entity, or other entity that produces subpoenaed information shall not be held liable to any individual for complying with the subpoena. If the bank, credit union, credit or debit card processing entity, or other entity complying with the subpoena wishes to seek reimbursement for any reasonable cost incurred in connection with the same, after compliance with the subpoena the entity shall promptly provide a reasonably detailed invoice for the claimed costs to Class Counsel for submission to the Court for consideration at the Fairness Hearing.

## **VII. FINAL APPROVAL HEARING**

1. A hearing on final settlement approval (the "Final Approval Hearing") will be held by the Court at the date and time below at 50 West Washington Street, Chicago, Illinois 60602, to consider, among other things, the following:

- (a) determining the fairness, adequacy, and reasonableness of this Agreement and associated settlement pursuant to the applicable Rules of Civil Procedure, applicable law, and other procedural rules or and requirements; and
- (b) entering the Order of Final Approval.

2. By the Notice Deadline, Class Counsel shall file with the Court any Fee Petition as well as any request by Plaintiff for an incentive award.

3. At least 14 days before the Final Approval Hearing, Class Counsel shall file with the Court any memoranda or other materials in support of final approval of the Agreement and Class Settlement.

4. Any Settlement Class Member who has not filed a Request for Exclusion in the manner set forth above and who also has timely filed an objection may appear at the Final Approval Hearing in person or by counsel and may be heard to the extent allowed by the Court. However, no person shall be heard in opposition to the Agreement and Class Settlement, or the Fee Petition, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless that person files such papers and briefs with the Court and serves them upon counsel listed below by the Opt-Out and Objection Deadline. Settlement Class Members who object in the manner and by the dates provided herein and in accordance with section IV above shall be subject to the jurisdiction of this Court. Settlement Class Members who fail to object in the manner and by the dates provided herein and in accordance with section IV above shall be deemed to have waived and shall forever be foreclosed from raising any such objections.

5. Counsel for the Parties who must be served with all documentation described above are as follows:

Counsel for the Settlement Class:

Scott D. Owens, Esq.  
Scott D. Owens, P.A.  
2750 N. 29th Ave., Ste. 209A  
Hollywood, Florida 33020

John R. Habashy  
Lexicon Law, PC  
633 W. 5th St., 28th Floor  
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Counsel for Defendants

Joshua W. Mahoney  
Michael D. Educate  
Barack Ferrazzano Kirschbaum & Nagelberg, LLP  
200 West Madison Street, Suite 3900  
Chicago, IL 60606

6. Any Settlement Class Member may hire an attorney at his or her or its own expense to appear in the action. Such attorney shall serve a Notice of Appearance on the Counsel listed above, and file it with the Court, within 60 days after the Notice Deadline.

7. The date and time of the Final Approval Hearing shall be set forth in the Summary Notice, Full Notice, and the Settlement Website, but shall be subject to adjournment by the Court without further notice to the Settlement Class Members other than that which may be posted at the Court, on the Court's website, and/or the Settlement Website to be established pursuant to the Class Notice program.

8. Pending Final Approval, all Settlement Class Members are hereby preliminarily enjoined from, either directly, representatively, or in any other capacity (other than a Class Member who validly and timely elects to be excluded from the Settlement Class), from:

- (a) filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action or proceeding based on any of the Released Claims; and

- (b) organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action or proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending or future action or proceeding) based on any of the Released Claims or the facts and circumstances relating thereto.

9. Upon Final Approval, all Settlement Class Members who do not file a timely Request for Exclusion shall be deemed to have forever released any and all of the Released Claims against any of the Defendant Releasees as described in the Agreement, including, but not limited to, all claims that relate to or arise from printing too much information on any receipts at a DFS retail location during the settlement class period, including, but not limited to, any claims under FACTA, for a violation of any consumer protection statutes, or regarding identity theft or the risk of identity theft. In addition, upon Final Approval, all such Settlement Class Members shall be forever enjoined and barred from asserting any of the Released Claims against any of the Defendant Releasees.

### **VIII. OTHER PROVISIONS**

1. Upon Final Approval, each and every term and provision of the Agreement (except as may be modified by the Final Approval Order) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth and shall have the full force and effect of an Order of the Court.

2. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing before this Court entered this Order, if the proposed Settlement is not finally approved by the Court, or does not become Final (as defined in the Agreement), pursuant to the terms of the Agreement. In such event, and except as provided therein, the proposed Agreement shall also become null and void and be

of no further force and effect; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; neither the Agreement nor this Order shall be used or referred to for any purpose whatsoever, provided however, provisions of the Agreement intended to survive in the event the settlement is not approved shall remain in effect, including but not limited to Section 2 of the Agreement; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification, including the right to argue that no class should be certified for any purpose.

3. This Order shall be of no force and effect if the Settlement does not become Final and shall not be construed or used as an admission, concession, or declaration by or against DFS of any fault, wrongdoing, breach, or liability, or by or against Plaintiff, Settlement Class Members that their claims lack merit or that the relief requested in the Complaint in this action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or arguments it may have.

4. The following summarize the deadlines stated above for issuing notice and submitting claims and objections:

|  |   |
|--|---|
| <p><b>May 17, 2024</b><br/>[150 days after the date of the Preliminary Approval Order]</p> | <p>Deadline for notice of the Settlement to be sent to the Settlement Class Members (Notice Deadline)</p> |
| <p><b>May 17, 2024</b><br/>[By Notice Deadline]</p>  | <p>Plaintiffs to file attorneys' fee petition</p>   |

|   |  |
|---|--|
| <p><b>July 16, 2024</b><br/>[60 days after Notice Deadline]</p>                                   | <p>Deadline for Settlement Class Members to request exclusion or file objections (Opt-Out and Objection Deadline)</p>  |
| <p><b>July 16, 2024</b><br/>[60 days after Notice Deadline]</p>                                   | <p>Deadline for Settlement Class Members to submit a Settlement Claim Form (Claim Deadline)</p>  |
| <p><b>September 6, 2024</b> [14 days prior to Final Approval Hearing]</p>                         | <p>Deadline for Parties to file the following:<br/>(1) List of persons who made timely and proper Requests for Exclusion (under seal);<br/>(2) Proof of Class Notice; and<br/>(3) Motion and memorandum in support of final approval, including responses to any objections.</p> |
| <p><b>September 20, 2024 at 9:30 a.m.</b><br/>[279 days after the Preliminary Approval Order]</p> | <p>Final Approval Hearing</p>  |

DONE and ORDERED in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Judge Alison C. Conlon

MAR 20 2024

Circuit Court - 2140





cc: counsel of record

Prepared by counsel for Plaintiff David Ulery and by counsel for DFS Group, L.P.

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