

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DAVID ALBERTO FONSECA, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

FLORIDA CREDIT UNION,

Defendant.

Case No: 8:25-cv-101

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff David Alberto Fonseca (“Plaintiff” or “Plaintiff Fonseca”), individually and on behalf of all others similarly situated, makes the following allegations, based on information and belief, against Defendant Florida Credit Union (“Defendant” or “FCU”):

INTRODUCTION

1. Defendant FCU follows a policy of denying full access to membership and credit products to applicants who are not United States citizens or Lawful Permanent Residents, including those who have Deferred Action for Childhood Arrivals (“DACA”) status.

2. Plaintiff Fonseca and members of the Classes he seeks to represent were and are unable to access Defendant’s membership and credit products because of their alienage or lack of U.S. citizenship. Plaintiff brings this case against FCU for

unlawful discrimination in violation of the Civil Rights Act of 1866, as codified at 42 U.S.C. § 1981 (“Section 1981”).

3. Defendant’s violations have inflicted harm on Plaintiff, and the Classes he seeks to represent, including but not limited to, denial of access to membership, denial of fair consideration for credit products, and emotional distress.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Plaintiff’s Section 1981 claims under 28 U.S.C. § 1331.

5. This Court is empowered to issue a declaratory judgment by 28 U.S.C. §§ 2201 and 2022.

6. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

PARTIES

Plaintiff

7. Plaintiff David Alberto Fonseca is a resident of Tampa, Florida and has lived in the United States since 1998. He arrived in the United States from Guinea-Bissau, Portugal when he was four years old. He currently works as an insurance agent.

8. Plaintiff Fonseca has been a DACA recipient since 2012. As a DACA recipient, Plaintiff Fonseca is authorized to work in the United States and has a social

security number. Plaintiff Fonseca resided in Tampa on the date that he applied for membership and credit with Defendant and was unlawfully denied full and equal consideration for membership and for a loan.

9. Defendant subjected Plaintiff and members of the Classes that he seeks to represent to discrimination in violation of federal law as described in this Complaint.

Defendant

10. Defendant Florida Credit Union is a member-owned credit union headquartered in Gainesville, Florida.

11. Defendant maintains a principal office at 1615 NW 80 Boulevard, Gainesville, Florida 32606.

12. Defendant offers its members a range of financial and credit products, including savings and checking accounts, credit cards, personal loans, auto loans, and mortgages.

13. Defendant requires all individuals who seek to apply for any of its financial products and services to initially become members.

STATEMENT OF FACTS

14. Plaintiff Fonseca brings this action on behalf of himself and members of the proposed Plaintiff Classes. The Classes seek damages, declaratory judgment, and injunctive relief.

15. Plaintiff Fonseca is a recipient of DACA and has been since 2012. Since that time, he has continuously possessed an employment authorization card and a social security number. As a DACA recipient, Plaintiff Fonseca can renew his work authorization.

16. In December 2023, Plaintiff Fonseca simultaneously applied for FCU membership and an auto loan through its website. Plaintiff Fonseca met the membership requirements listed on FCU's website. Plaintiff Fonseca sought membership in order to secure an auto loan. Based on FCU's structure, he needed first to become a member of FCU to be eligible for its financial products and services, including auto loans.

17. On January 2, 2024, FCU Contact Center Representative, Ron Neale ("Neale"), contacted Plaintiff Fonseca to schedule a phone call to discuss his application. The phone call occurred on January 3, 2024.

18. On January 3, 2024, following the phone call in which Neale requested additional documentation, Plaintiff Fonseca sent him the requested documents, including pay stubs and photographs of his Florida driver's license and employment authorization card.

19. On January 4, 2024, Plaintiff Fonseca emailed Neale to inquire whether he had received all necessary documents to proceed with his application. Neale responded: "I did, yes, thank you. I ran the IDs by my underwriting, but the driver's

license is temporary and the other is your work VISA. *I would not be able to qualify you for membership with these documents.*” (emphasis added).

20. Plaintiff Fonseca then asked Neale what additional documents were needed. Neale told him that “[FCU] would need a permanent license, and permanent resident card/green card to prove permanent status.”

21. Later that day, Plaintiff Fonseca emailed Neale the following: “I’ve just never had this issue before. With any of the auto loans I’ve applied for or credit card. Would I need it to be considered as a legal non-resident?” (errors in original). Neale answered that “[f]or our qualifications you have to be a permanent resident with the permanent resident/green card. The work VISA does not qualify.” (errors in original). After, Fonseca responded, “I cannot be discriminated against based on national origin. You may ask question but I am legally present in the US.” (errors in original). He then emailed Neale and said “So, just to verify, I am being denied from applying because of my immigration status regardless of whether I’m lawfully present in the U.S.? May I please see that policy.”

22. On January 4, 2024, FCU sent an “Adverse Action Notice” to Plaintiff Fonseca. The Notice includes a checked box that states, “We are unable to extend credit to you at this time” and another checked box that states “Not eligible for membership in this credit union.” Based on the Notice, FCU denied Fonseca both

membership and credit. The Notice also indicated that Plaintiff Fonseca had a credit score of 685 when he applied for membership from FCU.

23. On January 5, 2024, Neale provided FCU's Membership Agreement ("Agreement"), which states that "[t]o open accounts at the Credit Union, you must qualify under our approved field of membership and otherwise meet the membership requirements." Neither the Agreement nor information on the website specify that a member must be a permanent resident/green card holder or hold a "permanent license." The Agreement does not elaborate on the term "membership requirements" and does not include the terms "permanent" or "resident."

24. As a result of FCU's refusal to consider Plaintiff for credit union membership or for a loan, on January 22, 2024, Plaintiff Fonseca took out a loan with a different lender. Plaintiff Fonseca entered into a "Simple Interest Note and Security Agreement" with Auto Club Trust to finance the purchase of a 2023 Ford F-150 Lightning in the amount of \$58,724.41 with an interest rate of 8.29%, a term length of 84 months, and monthly payments of \$936.36.

25. Plaintiff Fonseca suffered harm from FCU's denial of his membership application on the sole basis of his alienage. This denial caused Plaintiff Fonseca to feel the deleterious effects of discrimination and to suffer harm, including actual damages, emotional distress, and other negative effects.

26. Because Plaintiff Fonseca never became a member of FCU, he was unable to access FCU's financial products and services, including auto loans.

27. Plaintiff Fonseca was unable to obtain an auto loan from FCU and had to obtain a loan elsewhere, which he believes came at a higher interest rate than he would have received from FCU. In addition, Plaintiff Fonseca's credit score was accessed and checked, with a negative effect on his credit worthiness, when FCU reviewed and ultimately denied his application without full consideration because of his non-citizenship.

28. FCU's denial of Plaintiff Fonseca's application because of its limited and arbitrary alienage requirement violates 42 U.S.C. § 1981.

29. There is an actual and substantial controversy between Plaintiff Fonseca and FCU.

CLASS ACTION ALLEGATIONS

30. Plaintiff Fonseca incorporates by reference the allegations raised in all preceding paragraphs.

31. Plaintiff Fonseca brings this action on behalf of himself and all others similarly situated under Rule 23 of the Federal Rules of Civil Procedure.

32. Plaintiff Fonseca seeks to represent the following Membership Class, composed of, and defined, as follows:

All persons who resided in the United States at the relevant time they applied for or attempted to apply for membership from FCU

but were denied full and equal consideration by FCU on the basis of their alienage or lack of U.S. citizenship.

33. Plaintiff Fonseca also seeks to represent the following Credit Denial Class, composed of, and defined, as follows:

All persons who resided in the United States at the relevant time they applied for or attempted to apply for a credit product from FCU but were denied full and equal consideration by FCU on the basis of their alienage or lack of U.S. citizenship.

34. Plaintiff Fonseca may amend the above class definitions as this Court may permit or require.

35. This action has been brought and may be properly maintained as a class action because all class treatment prerequisites are met under Rule 23 of the Federal Rules of Civil Procedure.

Rule 23(a)(1) – Numerosity

36. The potential members of the Membership Class and Credit Denial Class as defined are so numerous that joinder would be impracticable.

37. The Classes are ascertainable groups that, on information and belief, each consist of at least dozens of individuals.

38. With discovery, the size of the Classes will be ascertained. The names and addresses of many potential Class Members are available to Defendant.

39. Notice can be provided to the potential Class Members via first class mail, using techniques and a form of notice similar to those customarily used in class action lawsuits, as well as through published notice for those unknown to Defendant.

Rule 23(a)(2) – Common Questions of Law and Fact

40. There are questions of law and fact common to the Classes that predominate over any questions affecting only Plaintiff or any other individual Class Members. These common questions include, without limitation:

- a. Whether it is Defendant's policy or practice to reject applicants for membership and for full consideration for credit products on the basis of alienage;
- b. Whether Defendant violated 42 U.S.C. § 1981 by denying membership to Plaintiff and members of the Membership Class on the basis of alienage;
- c. Whether Defendant violated 42 U.S.C. § 1981 by denying the full and equal right to contract to Plaintiff and members of the Credit Denial Class on the basis of alienage;
- d. Whether Plaintiff and the Class Members are entitled to declaratory, injunctive, and other equitable relief; and
- e. Whether Plaintiff and the Class Members are entitled to damages and any other available relief.

Rule 23(a)(3) – Typicality

41. The claims of the named Plaintiff are typical of the claims of other members of the Classes. Plaintiff and all Class Members sustained injuries and damages arising out of and caused by Defendant’s common course of conduct and common policies in violation of Federal laws, regulations, and statutes as alleged here.

42. Plaintiff’s claims are representative of and co-existent with the claims of Class Members.

Rule 23(a)(4) – Adequacy of Representation

43. Plaintiff will fairly and adequately represent and protect the interests of Class Members. Plaintiff is a member of the Classes, does not have any conflicts of interest with other Class Members, and will prosecute the case vigorously on behalf of Class Members.

44. Plaintiff has retained counsel competent and experienced in complex litigation and discrimination class actions.

Rule 23(b)(2) – Declaratory, Equitable, and Injunctive Relief

45. Class certification is appropriate because FCU has acted and/or refused to act on grounds generally applicable to members of the Classes. FCU’s actions make appropriate declaratory, equitable, and injunctive relief with respect to Plaintiff and the Class Members as a whole.

46. FCU excludes Class Members from membership and credit products on the basis of alienage. The Class Members are entitled to declaratory, equitable, and injunctive relief to end FCU's common, unfair, and discriminatory policies.

Rule 23(b)(3) – Superiority of Class Actions

47. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual Class Members. Each Class Member has been injured and is entitled to recovery by reason of Defendant's unlawful policies and practices of discrimination on the basis of alienage and of denial of full and equal access to Defendant's services.

48. No other litigation concerning this controversy has been commenced by or against Class Members.

49. Class action treatment will allow similarly-situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. It is unlikely that individual Class Members have any interest in individually controlling separate actions in this case.

50. Damages are capable of measurement on a class-wide basis. Plaintiff and Class Members will rely on common evidence to resolve their legal and factual questions, including the applicable policies and practices in the relevant period.

51. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action. The benefits of maintaining this action on a class basis far outweigh any administrative burden in managing the class action. Conducting the case as a class action would be far less burdensome than prosecuting numerous individual actions.

FIRST CAUSE OF ACTION

**Membership Class
Alienage Discrimination
(42 U.S.C. § 1981)**

52. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1-51 as if fully set forth herein.

53. Plaintiff Fonseca brings this claim on his own behalf and on behalf of the Membership Class.

54. Plaintiff Fonseca and Membership Class Members are persons within the jurisdiction of the United States.

55. Plaintiff Fonseca and Membership Class Members are non-citizens.

56. Plaintiff Fonseca and Membership Class Members have the right to make and enforce contracts in the United States and are entitled to the full and equal benefits of the law.

57. Defendant conducts business in the United States and is obligated to comply with the provisions of 42 U.S.C. § 1981.

58. Defendant intentionally discriminated against Plaintiff Fonseca and Membership Class Members on the basis of their alienage by denying them the opportunity to become members of the credit union.

59. Defendant intentionally discriminated against Plaintiff Fonseca and Membership Class Members by interfering with their right to make and enforce contracts for membership on the basis of their alienage.

60. Plaintiff Fonseca and Membership Class Members have no plain, adequate, or complete remedy at law to redress the wrongs alleged here. Plaintiff Fonseca and Membership Class Members demand damages, and request that the Court issue a permanent injunction ordering Defendant to alter its policies and practices to prevent future discrimination on the basis of an applicant's alienage and to prevent further violations of 42 U.S.C. § 1981.

61. Plaintiff Fonseca and Membership Class Members are now suffering, and will continue to suffer irreparable injury from FCU's discriminatory acts and omissions.

SECOND CAUSE OF ACTION

**Credit Denial Class
Alienage Discrimination
(42 U.S.C. § 1981)**

62. Plaintiff re-alleges and incorporates the allegations contained in paragraphs 1-51 as if fully set forth herein.

63. Plaintiff Fonseca brings this claim on his own behalf and on behalf of the Credit Denial Class.

64. Plaintiff Fonseca and Credit Denial Class Members are persons within the jurisdiction of the United States.

65. Plaintiff Fonseca and Credit Denial Class Members are non-citizens.

66. Plaintiff Fonseca and Credit Denial Class Members have the right to make and enforce contracts in the United States and are entitled to the full and equal benefits of the law.

67. Defendant conducts business in the United States and is obligated to comply with the provisions of 42 U.S.C. § 1981.

68. Defendant intentionally discriminated against Plaintiff Fonseca and Credit Denial Class Members on the basis of their alienage by denying them the opportunity to acquire access to the credit union's financial products and services.

69. Defendant intentionally discriminated against Plaintiff Fonseca and Credit Denial Class Members by interfering with their right to make and enforce contracts for credit products on the basis of their alienage.

70. Plaintiff Fonseca and Credit Denial Class Members have no plain, adequate, or complete remedy at law to redress the wrongs alleged here. Plaintiff Fonseca and Credit Denial Class Members demand damages, and request that the Court issue a permanent injunction ordering Defendant to alter its policies and

practices to prevent future discrimination on the basis of an applicant's alienage and to prevent further violations of 42 U.S.C. § 1981.

71. Plaintiff Fonseca and Credit Denial Class Members are now suffering, and will continue to suffer irreparable injury from FCU's discriminatory acts and omissions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fonseca and the Classes he seeks to represent respectfully request the following relief:

- i. Certification of the case as a class action on behalf of the proposed Class Members in the Membership Class and Credit Denial Class;
- ii. Designation of Plaintiff Fonseca as class representative on behalf of the Membership Class and Credit Denial Class;
- iii. Designation of Plaintiff's counsel of record as Class Counsel;
- iv. Declaratory judgment that Defendant's policies and practices complained of here are unlawful and violate 42 U.S.C. § 1981;
- v. Preliminary and permanent injunction against Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies and practices complained of here and described in preceding paragraphs;

- vi. Award of compensatory damages to Plaintiff Fonseca and Class Members in an amount to be determined;
- vii. Costs incurred, including reasonable attorneys' fees and costs to the extent allowable by law;
- viii. Pre-judgment and post-judgment interest, as provided by law; and
- ix. For such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 14, 2025

Respectfully submitted,

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**Motion for pro hac vice forthcoming*
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