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15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF NEVADA**

18 TONYA GUNTER, individually, and on  
19 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 UNITED FEDERAL CREDIT UNION,  
23 DOES 1-5 inclusive, and ROE  
24 CORPORATIONS 6-10 inclusive,

25 Defendants.

Case No.: 3:15-cv-00483-MMD-WGC

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Assigned to Judge Miranda M. Du

1 The Court, having considered Plaintiff’s Motion for Preliminary Approval of Class Settlement,  
2 and all supporting documents thereto (collectively, the “Motion”), the Settlement Agreement and  
3 Release dated as of February 5, 2019 (the “Settlement Agreement”), and the arguments of counsel, rules  
4 as follows:

5  
6 1. Defined terms in this Order shall have the same meaning given such terms in the  
7 Settlement Agreement.

8 2. This Court finds on a preliminary basis that the class as defined in the Settlement  
9 Agreement (“Settlement Class”) meets all of the requirements for certification of a settlement class  
10 under the Federal Rules of Civil Procedure and applicable case law. Accordingly, the Court  
11 provisionally certifies the Settlement Class, which is composed of the following two subclasses:

12  
13 “Regulation E Class” shall mean those members of Defendant who were assessed an Overdraft  
14 Fee for an ATM or non-recurring debit card payment transaction for the first time between  
15 August 15, 2010 and September 30, 2018; and

16  
17 “Sufficient Funds Class” shall mean those members of Defendant who were assessed an  
18 Overdraft Fee between October 3, 2011 and September 30, 2018 on any type of payment  
19 transaction and at the time such fee was assessed, the member had sufficient money in his or her  
20 ledger balance to cover the transaction that resulted in the fee.

21 3. The Court provisionally appoints Tonya Gunter as the Class Representative of the  
22 Settlement Class.

23 4. The Court appoints Kurtzman Carson Consultants, LLC (“KCC”) as the Claims  
24 Administrator under the terms of the Settlement Agreement.

25 5. For purposes of the Settlement Agreement, the Court further provisionally finds that  
26 counsel for the Settlement Class, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of  
27 The Kick Law Firm, APC, are qualified, experienced, and skilled attorneys capable of adequately  
28 representing the Settlement Class, and they are provisionally approved as Class Counsel.

6. This certification of a preliminary Settlement Class under this Order is for settlement

1 purposes only and shall not constitute, nor be construed as, an admission on the part of the Defendant in  
2 this Action that any other proposed or certified class action is appropriate for class treatment pursuant to  
3 the Federal Rules of Civil Procedure or any similar statute, rule or common law. Entry of this Order is  
4 without prejudice to the rights of Defendant to oppose class certification in this action should the  
5 settlement not be approved or not be implemented for any reason or to terminate the Settlement  
6 Agreement as provided in the Settlement Agreement.  
7

8         7. The Court provisionally, and solely for purposes of this settlement, finds that the  
9 members of the Settlement Class are so numerous that joinder of all members would be impracticable,  
10 that the litigation and proposed settlement raise issues of law and fact common to the claims of the Class  
11 Members and these common issues predominate over any issues affecting only individual members of  
12 the Settlement Class, that the claims of Tonya Gunter (the “Named Plaintiff”) are typical of the claims  
13 of the Settlement Class, that in prosecuting this Action and negotiating and entering into the Settlement  
14 Agreement, the Named Plaintiff and her counsel have fairly and adequately protected the interests of the  
15 Settlement Class and will adequately represent the Settlement Class in connection with the settlement,  
16 and that a class action is superior to other methods available for adjudicating the controversy.  
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19         8. The Court has reviewed the Settlement Agreement and the attached Notice of Pending  
20 Class Action and Proposed Settlement (“Notice”) (Exhibit 1 to the Settlement Agreement) and finds that  
21 the settlement memorialized therein falls within the range of reasonableness and potential for final  
22 approval, thereby meeting the requirements for preliminary approval, and that the Notice should go out  
23 to the Settlement Class in the manner described in the Settlement Agreement. The settlement appears to  
24 be reasonable in light of the risk inherent in continuing with litigation. The Court also notes that the  
25 settlement is a non-reversionary one where no money will be returned to the Defendant. The Court also  
26 notes that the settlement was arrived at after an arm’s length negotiation involving experienced counsel.  
27

28         9. The Court finds that the methods of giving notice prescribed in the Settlement Agreement

1 meet the requirements of the Federal Rules of Civil Procedure and due process, are the best notice  
2 practicable under the circumstances, shall constitute due and sufficient notice to all persons entitled  
3 thereto, and comply with the requirements of the Constitution of the United States, and all other  
4 applicable laws.

5  
6 10. For the purposes stated and defined in the Settlement Agreement, the Court hereby sets  
7 the following dates and deadlines:

- 8 a. Ten days after issuance of this Order – Deadline for notice administrator to send notice;  
9 b. Thirty days after notice is sent – Deadline to opt out;  
10 c. Thirty-five days after notice is sent – Deadline for motion for final approval and  
11 attorneys' fees;  
12 d. Fifteen days after Motion for Final Approval is filed – Deadline to object;  
13 e. Ten days after deadline to object – Deadline for class counsel or defendant's counsel to  
14 file responses to any objections and to provide list of opt outs;  
15 f. Twenty days after deadline to object – Hearing on final approval;  
16 g. Thirty days after the time to cash checks has expired – Preliminary deadline for filing of

17  
18 Final Accounting

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20 11. The Court hereby approves and adopts the procedures, deadlines, and manner governing  
21 all requests to be excluded from the Class, or for objecting to the proposed settlement, as provided for in  
22 the Settlement Agreement.

23 12. All costs incurred in connection with providing notice and settlement administration  
24 services to the Class Members shall be paid from the Settlement Fund.

25  
26 13. If the settlement is not approved or consummated for any reason whatsoever, the  
27 Settlement Agreement and all proceedings in connection therewith shall terminate without prejudice to  
28 the status quo ante and rights of the parties to the action as they existed prior to the date of the execution

1 of the Settlement Agreement, except as otherwise provided in the Settlement Agreement.

2 Good cause appearing therefore, IT IS SO ORDERED. The final hearing is set for July 8,  
3 2019 at 10:00 AM in Reno Courtroom 5 before Judge Miranda M. Du.

4 Dated: February 14, 2019.



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7 Honorable Miranda M. Du  
8 United States District Judge

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