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SUPERIOR COURT

2022 SEP -9 PM 2: 50

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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN JOAQUIN**

16 STK-CV-UBC-2022-7941

17 LATOYA ANDERSON, individually, and on)
behalf of all others similarly situated,)

18 Plaintiff,)

19 v.)

20 NAVY FEDERAL CREDIT UNION,)

21 Defendants.)
22)
23)
24)

Case No:

CLASS ACTION COMPLAINT

\$585 | 770464
\$1000 | 770465
[DEMAND FOR JURY TRIAL]

25 Plaintiff Latoya Anderson ("Plaintiff") brings this complaint, by and through her attorneys
26 and on behalf of all others similarly situated, against Defendant Navy Federal Credit Union ("Navy
27 Federal," "NFCU," or "Defendant") and alleges upon information and belief as follows:

28 ///

1 INTRODUCTION

2 1. The Zelle money transfer system is rife with fraud—fraud that places all Zelle users
3 at an acute and immediate risk. Billions of dollars of fraudulent transactions are processed by the
4 service each year. Victims of Zelle fraud, like Plaintiff, are often left devastated by such fraud, which
5 can drain hundreds or thousands of dollars from their bank accounts.

6 2. But when Zelle fraud victims turn to Navy Federal for help, the Bank has a simple,
7 repeated, bad faith response: it is your fault, you are on your own, and we will not help.

8 3. The Bank’s corporate policy of “blaming the victim” is good business for the Bank.
9 The Bank has a huge incentive to get as many of its customers as possible to sign up for and use the
10 Zelle service for payments and money transfers. The more of its accountholders it can convince to
11 sign up for and use Zelle, the more the Bank saves by avoiding transaction payments to *other* payment
12 networks. Accordingly, the Bank works with Zelle to aggressively market the Zelle service to its
13 accountholders, repeatedly urging accountholders to sign up for Zelle every time they log in to online
14 banking or use the mobile app.

15 4. But the marketing of the Zelle service by Defendant, including during the quick,
16 rushed process by which Navy Federal accountholders sign up for Zelle in the Bank’s mobile banking
17 app or website, contains materially deceptive representations that the service is “safe” and material
18 omissions regarding the acute and immediate risk of fraud. Those representations and omissions,
19 which Plaintiff relied upon, are false and misleading.

20 5. Unlike other commonly used consumer payment systems—credit cards, debit cards,
21 even Paypal—*Zelle has no consumer fraud protections, money transfers are immediate and*
22 *irrevocable, and the Bank will provide no help in the case of fraud.* These essential, material facts
23 about Zelle are omitted from marketing about Zelle promulgated by Defendant, for a simple reason:
24 no reasonable consumer would sign up for and use the service if these facts were fairly disclosed.

25 6. Having lured Navy Federal accountholders to sign up for and use the Zelle service
26 with deceptive and incomplete marketing promises, the Bank fails victims of Zelle fraud in two
27 distinct ways.

28

1 7. First, for victims of Zelle fraud who had their access devices (phones or computers)
2 stolen and used by fraudsters, the Bank maintains a massive bureaucratic apparatus designed to make
3 it impossible for victims to lodge a successful fraud claim. When such victims make a claim for fraud,
4 the Bank engages in bad faith, sham “investigations” whose sole purpose is to blame fraud victims
5 for the fraud. As occurred with Plaintiff Anderson, the Bank summarily rejects fraud claims without
6 explanation, recourse, or the ability to appeal.

7 8. Second, for victims of Zelle fraud who were tricked into making fraudulent transfers
8 to fraudsters, the Bank has adopted a secret policy wherein any and all such fraud reimbursement
9 claims are denied in their entirety—another instance of the Bank’s “blame the victim” corporate
10 policy.

11 9. These policies contradict NFCU’s marketing promises, they breach contractual
12 promises the Bank made, and they violate the federal Electronic Funds Transfer Act, as discussed in
13 detail below.

14 10. Plaintiff and the Class members have been injured by signing up for and using the
15 Zelle service. Plaintiff brings this action on behalf of themselves, the putative Classes, and the general
16 public. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction on behalf of
17 the general public to prevent Navy Federal and Zelle from continuing to engage in its illegal practices
18 as described herein.

19 JURISDICTION AND VENUE

20 11. This Court has jurisdiction over Defendant and the claims set forth below pursuant to
21 Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case
22 is a cause not given by statute to the other trial courts.

23 12. Plaintiff is informed and believes that the State of California has personal jurisdiction
24 over the Defendant named in the action because Defendant is a company authorized to conduct and
25 does conduct business in this State. Defendant is registered with the California Secretary of State to
26 do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally
27 avails itself of the California market, including in the County of San Joaquin, which has caused both
28 obligations and liability of Defendant to arise in the County of San Joaquin

1 13. The amount in controversy exceeds the jurisdictional minimum of this Court.

2 **PARTIES**

3 14. Plaintiff Anderson is, and at all times mentioned herein a natural person, individual
4 citizen and resident of California, County of San Joaquin, in this judicial district.

5 15. Defendant Navy Federal Credit Union is and was, at all relevant times to this lawsuit,
6 a nationally-chartered credit union with its principal place of business in Vienna, Virginia. NFCU
7 operates banking centers and conducts business throughout the State of California.

8 **ZELLE – THE FAVORITE APP OF FRAUDSTERS AND A MONEYSMAKER**
9 **FOR THE BANK**

10 16. Created in 2017 by America's largest banks¹ to enable digital money transfers, Zelle
11 comes embedded in banking apps and is now America's most widely used money transfer service,
12 outpacing its closest rival (Venmo) by \$260 billion in transfers in 2021.²

13 17. About 1.8 billion payments — totaling \$490 billion — were sent by consumers and
14 businesses through the Zelle Network in 2021, according to the Early Warning Services. Total dollars
15 transferred were up 59% from 2020.

16 18. Nearly 18 million people have been hit by "widespread fraud" on money transfer apps,
17 according to a letter sent in late April to Zelle's network operator Early Warning Services by U.S.
18 Sens. Elizabeth Warren of Massachusetts, Robert Menendez of New Jersey, and Jack Reed of Rhode
19 Island.

20 19. "Zelle's biggest draw — the immediacy of its transfers — also makes scams more
21 effective and 'a favorite of fraudsters,' as consumers have no option to cancel a transaction even
22 moments after authorizing it," the letter stated.

23 20. Organized crime is rampant on Zelle.

24
25
26 ¹ Bank of America, Capital One, JPMorgan Chase, PNC, BB&T (now Truist), U.S. Bank and Wells
Fargo.

27 ² *Fraud is Flourishing on Zelle. The Banks Say It's Not Their Problem*, The New York Times (March
28 6, 2022) <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last
visited September 6, 2022).

1 21. The 1,500 banks and credit unions who are members of the Zelle network, including
2 NFCU, know full well that they have a widespread fraud problem on their hands, but have
3 misrepresented and failed to take steps to warn their accountholders of these risks—or protect their
4 accountholders who fall prey to fraud.

5 22. In short, and unbeknownst to average Zelle users, the Zelle network has become a
6 preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who use
7 social media sites to advertise fake concert tickets and purebred puppies—or simply for those who
8 steal phones and computers and use their access to drain money from accounts via Zelle.

9 23. Fraudsters and scammers have turned to Zelle as their favorite service. The service
10 seems designed precisely to meet their fraudulent needs, since transfers are immediate and
11 unrecoverable. There is an additional design feature of Zelle that makes it a fraudster’s favorite: one
12 can become a Zelle user and recipient without revealing their true identity.

13 24. Led by Idaho Attorney General Lawrence Wasden and Oregon Attorney General Ellen
14 Rosenblum, a bipartisan coalition of thirty-three (33) attorneys general wrote the Consumer Financial
15 Consumer Protection Bureau (“CFPB”), calling for stronger consumer safeguards for money sharing
16 platforms and apps like Zelle. The letter, written in response to the CFPB’s request for comments on
17 its inquiry into “Big Tech Payment Platforms,” noted a rise in complaints against popular payment
18 apps including Zelle. The letter highlighted that: “[m]any consumers have been scammed out of
19 hundreds or thousands of dollars by other users of these payment platforms [like Zelle]. *Scammers*
20 *are attracted to real-time payment platforms, in large part, because they do not need to reveal their*
21 *true identity to set up an account*” (emphasis added).

22 25. As a result, crooks are using Zelle and other apps to rob consumers when listing fake
23 puppies to sell, advertising phony apartments or homes to rent, threatening utility service cut-off
24 without immediate transfer of money, or offering extra income from wrapping a personal car in an
25 ad.

26 26. A common version of the utility scam involves fraudsters, posing as utility company
27 employees, initially contacting customers via text message, then by phone call and asking them to
28 make missed payments via a website.

1 27. Another common scam: a prospective buyer supposedly wants to buy an item listed
2 on Facebook Marketplace but then claims that the seller needs to upgrade his Zelle app to accept
3 money from their "business account" for the big-ticket purchase to go through, according to a June,
4 2022 alert by the Better Business Bureau. The scammer supposedly puts up \$300 and sends
5 you screenshots of his Zelle app as proof. Then, the scammer pressures you into paying him back.

6 28. "Scammers go where it's easy to get the money. Zelle is their current mechanism to
7 drain consumer accounts," warned Ed Mierzwinski, PIRG Education Fund's senior director of federal
8 consumer programs. "The scammers are taking advantage of consumers because the banks are letting
9 them," Mierzwinski said. "My basic advice is don't use these apps."³

10 29. The fraud risk is so acute and immediate that if consumers do use Zelle, PIRG suggests
11 consumers keep one separate bank account to link to Zelle accounts.

12 30. Scams like these are rampant on the Zelle network precisely because of the design and
13 architecture of the network, specifically that money transfer is instantaneous and unrecoverable.
14 Indeed, there is virtually no recourse for consumers to recoup losses due to fraud, unlike other
15 payment methods commonly used by American consumers—debit cards, credit cards, and even
16 Paypal or Venmo.

17 31. The unique, misrepresented, and undisclosed architecture of the Zelle payment system
18 and NFCU's own fraud policies means—again, unlike other payment options commonly used by
19 American consumers—that virtually any money transferred for any reason via Zelle is gone forever,
20 without recourse, reimbursement or protection for victimized accountholders

21 32. Zelle fraud is not a bug of the Zelle system, it's a feature of the system. Navy Federal has
22 done nothing to stop the problem or even warn users of the problem, for fear of suppressing new
23 users and use of the service by existing users.

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25 _____
26 ³ *DTE impersonators drained Rochester Hills woman's checking account using Zelle app*, Detroit
27 Free Press (June 30, 2022), <https://www.freep.com/story/money/personal-finance/susan-tompson/2022/06/30/utility-shutoff-scam-stole-cash-via-zelle/7714138001/> (last accessed September
28 7, 2022).

1 **THE FALSE AND MISLEADING ZELLE SIGN-UP PROCESS LURES**
2 **ACCOUNTHOLDERS TO SIGN UP FOR AND USE ZELLE**

3 33. It is free to sign up with Zelle, and Zelle is integrated into NFCU’s websites and mobile
4 app.

5 34. Accountholders sign up for Zelle after they have already become Navy Federal
6 accountholders—often, years later.

7 35. During the Zelle sign-up process, users are not affirmatively provided with agreements
8 or disclosures previously provided at the time they opened their Navy Federal account.

9 36. Navy Federal’s mobile app and online banking website feature and have featured
10 numerous invitations and advertisements to sign up for and use the Zelle service.

11 37. In its marketing about Zelle and during the Zelle signup process within the Bank’s
12 mobile app or website, the Bank makes repeated promises that Zelle is a “fast, safe and easy way to
13 send and receive money” (emphasis added).

14 38. It also promises: “Move money in the moment. It’s simple and secure – with lots of
15 people you know” (emphasis added).

16 39. At no time in its marketing or during the sign-up process does NFCU warn potential
17 users of the true security risks of using the Zelle service—including the immediate and acute risk of
18 fraud, the dangerous architecture of the system (described above) and the risk that fraudulent losses
19 will never be reimbursed by NFCU.

20 40. NFCU misrepresents (and omits facts about) the true nature, benefits, and risks of the
21 Zelle service, functioning of which means that users are at extreme and undisclosed risk of fraud
22 when using Zelle. Had Plaintiff been adequately informed of these risks, she would not have signed
23 up for or used Zelle.

24 41. Defendant’s marketing representations about Zelle—including within its app and
25 website—misrepresent and never disclose these risks and material facts, instead luring accountholders
26 to sign up for and use the service with promises of ease, safety and security.

27 42. These representations—which all users view during the sign-up process—are false and
28 contain material omissions.

1 43. Defendant misrepresents the true nature, benefits and risks of the service, which
2 burden users with an extreme and undisclosed risk of Zelle causing losses due to fraud. Plaintiff would
3 not have used Zelle if she had been adequately informed of the risks.

4 44. Defendant’s misrepresentations and omissions are especially pernicious because
5 Defendant alone know material facts regarding Zelle—including rampant fraud and the fact that
6 fraud-induced Zelle transfers will almost never be reimbursed to accountholders.

7 **FALSE AND MISLEADING ZELLE MARKETING**

8 45. Zelle fraud is not a bug, it’s a feature of the system. It’s everywhere. And Defendant
9 has done nothing to stop it, for fear of suppressing new users.

10 46. In its marketing about Zelle and during the Zelle signup process within the Bank’s
11 mobile app or website, the Bank makes repeated promises that the Zelle money transfer services is “a
12 fast, safe and easy way to send and receive money” (emphasis added).

13 47. It also promises: “Move money in the moment. It’s simple and **secure** – with lots of
14 people you know” (emphasis added).

15 48. Defendant prominently touts Zelle to its accountholders as a secure, free and
16 convenient way to make money transfers. However, the marketing (including during the sign-up
17 process) misrepresents and omits a key fact about the service that is unknown to accountholders: that
18 there is virtually no recourse for consumers to recoup losses due to fraud. Indeed, unlike virtually
19 every other payment method commonly used by American consumers—debit cards, credit cards, and
20 even Paypal—there is a no protection for accountholders who are victims of fraud, and virtually no
21 recourse for accountholders attempting to recoup losses due to fraud.

22 49. The unique, misrepresented, and undisclosed architecture of the Zelle payment system
23 means—again, unlike other payment options commonly used by American consumers—that virtually
24 any money transferred for any reason via Zelle is gone forever, without recourse, reimbursement or
25 protection. This too is omitted from all marketing, including during the sign-up process.

26 50. Worse, NFCU misrepresents and omits the truth about a secret policy it has adopted:
27 it does not and will not reimburse its accountholders for losses when users are tricked into making
28 Zelle transfers due to fraud, and will almost never reimburse accountholders for losses when their

1 phones or other access devices are stolen—even where those losses are timely reported by
2 accountholders.

3 51. Defendant was required not to misrepresent the unique and dangerous features of the
4 Zelle service in its marketing about it and in contractual representations. But they failed to do so.

5 52. As a result, users like Plaintiff sign up for and used the Zelle service without the benefit
6 of accurate information regarding that service, and later end up with huge, unreimbursed losses due
7 to fraud. Such users never would have signed up for Zelle in the first place if they had known the
8 extreme risks of signing up for and using the service.

9 53. The acute and immediate risks described above are well known to Defendant but are
10 omitted from all of its marketing regarding Zelle.

11 **NAVY FEDERAL HAS IGNORED REGULATORY GUIDANCE**

12 54. Recent CFPB guidance on unauthorized Electronic Fund Transfers (“EFTs”) indicates
13 P2P payments are EFTs, such as transactions made with Zelle, and trigger “error resolution
14 obligations” to consumers to protect them from situations where they are fraudulently induced and
15 requested by a third party to provide their account information that results in authorized debits from
16 their accounts.⁴

17 55. Additionally, the Federal Deposit Insurance Corporation (“FDIC”) issued a report in
18 March 2022 finding that Regulation E’s “liability protections for unauthorized transfers apply even
19 if a consumer is deceived into giving someone their authorization credentials.”⁵ Further, the FDIC
20 stated that “[c]onsumer account disclosures cannot limit protections provided for in the regulation.”⁶
21 The FDIC stated that both the banks and money payment platforms (“MPPs”), such as Zelle, are
22

23 ⁴“Electronic Fund Transfers FAQs,” Consumer Financial Protection Bureau,
24 [https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-
resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#financial-institutions-2](https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#financial-institutions-2) (last
25 visited June 28, 2022).

26 ⁵ “Consumer Compliance Supervisory Highlights Federal Deposit Insurance Corporation,” (March
27 2022), [https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-
highlights/documents/ccs-highlights-march2022.pdf](https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2022.pdf).

28 ⁶ *Id.*

1 considered “financial institutions” under Regulation E, and as such have investigative and error
2 resolution obligations under Regulation E.

3 56. Even so, Navy Federal has not changed course and provided protections for fraud.

4 57. On information and belief, Navy Federal does not reimburse consumers for losses
5 from unauthorized EFTs due to fraud, even where the losses are timely reported by consumers.

6
7 **NAVY FEDERAL BREACHES CONTRACT PROMISES AND THE IMPLIED
COVENANT**

8 58. NFCU’s Deposit Agreement & Disclosures applicable to consumer accounts
9 repeatedly promises users that, if they timely report fraud, such fraud will be fairly investigated and
10 accountholders will not be liable for fraudulent transfers:

11 **Your Liability for Unauthorized Electronic Funds Transfers**

12 **Notify us AT ONCE if you believe:**

- 13
- your account may have been accessed without your authority;
 - your card, code, or password has been lost or stolen;
 - 14 • someone has transferred or may transfer money from your account without
your permission; or
 - 15 • an electronic funds transfer has been made without your permission using
16 information from your check or your MMSA check

17 The best way to minimize your possible loss is to telephone or, if you have Online
18 Banking, contact us through our eMessaging system at navyfederal.org, although you
19 may advise us in person or in writing. See the telephone numbers and address listed at
the end of this agreement and disclosure. If you do not notify us, you could lose all the
money in your account (*plus your maximum line of credit amount*).

20 If you tell us within two (2) business days after you discover your password or other
21 means to access your account has been lost or stolen, your liability is no more than
\$50.00 should someone access your account without your permission. If you do not
22 tell us within two (2) business days after you discover such loss or theft, and we can
23 prove that we could have prevented the unauthorized use of your password or other
24 means to access your account if you had told us, you could be liable for as much as
\$500.00.

25 **Also, if your statement shows transfers that you did not make or authorize, tell**
26 **us AT ONCE.** If you do not tell us within sixty (60) days after the statement was
27 delivered to you of any unauthorized or fraudulent use of your account, you may not
28 get back any of the money you lost after the sixty (60) days if we can prove that we
could have stopped someone from taking the money if you had told us in time. If a

1 good reason (*such as a long trip or a hospital stay*) prevented you from telling us, we
2 may in our sole discretion extend the time periods.

3 **In Case of Errors or Questions about your Electronic Transfers**

4 If you think your statement or receipt is wrong, or if you need more information about
5 a transaction listed on your statement or receipt, contact us as soon as possible at the
6 telephone numbers and address listed at the end of this agreement and disclosure.

7 We must hear from you no later than sixty (60) days after the FIRST statement on
8 which the problem or error appeared... We will determine whether an error occurred
9 within ten (10) business days (*twenty (20) business days for new accounts*) after you
10 notify us of the error and will correct any error promptly... If it is determined that
11 there was no error, we will... send you a written explanation within three (3) business
12 days... You may ask for copies of documents used in our investigation.

13 59. The Agreement never mentions Zelle transfers, and never specifies whether Zelle
14 transfers are governed by Regulation E or not.

15 60. Navy Federal breaches the contract promises. Navy Federal has adopted an
16 unreasonable and unfair understanding of the contract term “unauthorized.”

17 61. That term reasonably encompasses all transactions occurring as a result of fraud. In
18 other words, no fraud-induced transaction can reasonable be considered “authorized.”

19 62. Navy Federal unfairly and improperly considers Zelle transactions induced by fraud
20 to be “authorized,” thus shirking fraud protection promises it otherwise makes in the Agreement.

21 63. Moreover, Navy Federal has adopted an investigations apparatus that almost always
22 rejects valid claims, in breach of the implied covenant.

23 **PLAINTIFF ANDERSON’S FACTUAL ALLEGATIONS**

24 64. When Plaintiff Anderson signed up for Zelle she was not informed that Zelle’s service
25 had a significant “catch” and that significant monetary losses could result from signing up for the
26 service—or that those losses almost never are reimbursed by Navy Federal.

27 65. For example, on or about July 4 and 5, 2022, a fraudster transferred \$2,200 from
28 Plaintiff’s personal bank account using the Zelle service.

66. Plaintiff agreed to purchase a car engine for \$2,200 on Facebook Marketplace from
the fraudster.

67. First, Plaintiff transferred \$1,500 to the fraudster (the daily transfer limit). Then, on

1 the following day, she transferred another \$700 to the fraudster.

2 68. A few days later, after never receiving a shipping tracking number for the car engine,
3 Plaintiff tried calling the fraudster multiple times to no avail. At this point, Plaintiff suspected she fell
4 victim to fraud.

5 69. Plaintiff timely informed NFCU of the fraud, but NFCU refused to help Plaintiff and
6 instead it directed her to contact Zelle.

7 70. NFCU has yet to reimburse Plaintiff for her loss.

8 **CLASS ALLEGATIONS**

9 71. Plaintiff brings this action on behalf of herself and on behalf of all other persons
10 similarly situated, on behalf of the below-defined Classes:

11 All persons who: a) had a bank account with Navy Federal and were
12 induced via fraud to perform a Zelle transfer; b) alerted Navy Federal
13 of the fraudulent transfer within 60 days; and c) did not have the
14 fraudulent transfer amount(s) credited by Navy Federal (the
15 "Nationwide Class")

16 All persons in California who: a) had a bank account with Navy Federal
17 and were induced via fraud to perform a Zelle transfer; b) alerted Navy
18 Federal of the fraudulent transfer within 60 days; and c) did not have
19 the fraudulent transfer amount(s) credited by Navy Federal (the
20 "California Class")

21 72. Excluded from the Classes are Defendant's officers, directors, and employees; any
22 entity in which Defendant has a controlling interest; and the affiliates, legal representatives, attorneys,
23 successors, heirs, and assigns of Defendant. Further excluded from the Classes are members of the
24 judiciary to whom this case is assigned, their families, and members of their staff.

25 73. **Numerosity**: The members of the Classes are so numerous that joinder of all of them
26 is impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, based
27 on information and belief, the Class consists of thousands of individuals.

28 74. **Commonality**: There are questions of law and fact common to the Classes, which
predominate over any questions affecting only individual Class Members. These common questions
of law and fact include, without limitation:

1 a. Whether Plaintiff and the Class Members lost money that was transferred from
2 their account via Zelle;

3 b. Whether Plaintiff and the Class Members were customers of NFCU at the time
4 they lost money;

5 c. Whether Defendant violated EFTA by failing to adequately investigate the
6 disputes of Plaintiff and the Class Members;

7 d. Whether Defendant violated EFTA by failing to correct errors on the accounts
8 of Plaintiff and the Class Members within 45 days of the transaction being disputed;

9 e. Whether Plaintiff and the Class Members are entitled to maximum statutory
10 damages, costs, and fees under EFTA;

11 f. Whether Defendant's conduct was "unlawful" as that term is defined in the
12 UCL;

13 g. Whether Defendant's conduct was "unfair" as that term is defined in the UCL;

14 h. Whether Defendant have been conferred an enrichment by keeping funds that
15 they were obligated to replace pursuant to Regulation E's error resolution obligations;

16 i. Whether Navy Federal breached its contract; and

17 j. Whether Plaintiff and the Classes are entitled to injunctive relief.

18 75. **Typicality:** Plaintiff's claims are typical of those of other Class Members because
19 Plaintiff was a victim of the Zelle scam by a third party who caused a withdrawal of funds from her
20 NFCU account to occur through the NFCU/Zelle mobile application, after disputing that unauthorized
21 transaction, Plaintiff was informed by Defendant that the unauthorized transaction would ultimately
22 not be reversed.

23 76. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and
24 protect the interests of Class Members. Plaintiff's Counsel are competent and experienced in litigating
25 consumer class actions.

26 77. **Predominance:** Defendant has engaged in a common course of conduct toward
27 Plaintiff and Class Members, in that all were induced into allowing a third party to make unauthorized
28 withdrawals on their NFCU accounts using Zelle. The common issues arising from Defendant's

1 conduct affecting Class Members set out above predominate over any individual issues. Adjudication
2 of these common issues in a single action has important and desirable advantages of judicial economy.

3 78. Superiority: A class action is superior to other available methods for the fair and
4 efficient adjudication of the controversy. Class treatment of common questions of law and fact is
5 superior to multiple individual actions or piecemeal litigation. Absent a Class action, most Class
6 Members would likely find that the cost of litigating their individual claims is prohibitively high and
7 would therefore have no effective remedy. The prosecution of separate actions by individual Class
8 Members would create a risk of inconsistent or varying adjudications with respect to individual Class
9 Members, which would establish incompatible standards of conduct for Defendant. In contrast, the
10 conduct of this action as a Class action presents far fewer management difficulties, conserves judicial
11 resources and the parties' resources, and protects the rights of each Class Member.

12 79. Defendant has acted on grounds that apply generally to the Class, so that class
13 certification is appropriate.

14 80. All Members of the proposed Class are readily ascertainable. Defendant has access to
15 consumer reporting of fraudulent and/or unauthorized transactions on their books and records. Using
16 this information, Class Members can be identified and ascertained for the purpose of providing notice.

17 81. Notice: Plaintiff anticipates providing direct notice to the Class for purposes of class
18 certification, via U.S. Mail and/or email, based upon Defendant's and/or Defendant's agents' records.

19 **FIRST CAUSE OF ACTION**
20 **California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq.**
 (Asserted on Behalf of Plaintiff and the Classes)

21 82. Plaintiff Anderson realleges and incorporates herein by reference the allegations
22 contained in all preceding paragraphs, and further allege as follows:

23 83. The UCL defines "unfair business competition" to include any "unlawful, unfair, or
24 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal.
25 Bus. & Prof. Code § 17200.

26 84. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally
27 or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such
28 practices occurred.

1 ***“Deceptive” Prong***

2 85. A business act or practice is “fraudulent” under the UCL if it is likely to deceive
3 members of the public.

4 86. Defendant’s practices, as described herein, constitute “fraudulent” business practices
5 in violation of the UCL because, among other things, Defendant’s marketing regarding Zelle indicates
6 the Bank will protect against fraudulent losses incurred using the Zelle service. Moreover, Defendant
7 concealed the security risks of using the Zelle service, including the risk of fraud and the risk that
8 fraudulent losses will never be reimbursed by NFCU as a matter of secret policy, is a practice that is
9 likely to deceive a consumer acting reasonably under the circumstances, to the consumer’s detriment.

10 ***“Unfair” Prong***

11 87. A business practice is “unfair” under the UCL if it offends an established public policy
12 or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and that
13 unfairness is determined by weighing the reasons, justifications and motives of the practices against
14 the gravity of the harm to the alleged victims.

15 88. Defendant’s actions constitute “unfair” business practices because, as alleged above,
16 it declined to reverse fraudulent charges on the accounts of Plaintiff and Class Members, despite
17 marketing representations, contract promises, and statutory obligations pursuant to EFTA.

18 89. The harm to Plaintiff and Class Members grossly outweighs the utility of Defendant’s
19 practices as there is no utility to practices of Defendant.

20 ***“Unlawful” Prong***

21 90. A business act or practice is “unlawful” under the UCL if it violates any other law or
22 regulation.

23 91. Defendant’s acts and practices alleged above constitute unlawful business acts or
24 practices as they have violated the plain language of EFTA as described in Plaintiff’s Seventh Cause
25 of Action below.

26 92. The violation of any law constitutes as “unlawful” business practice under the UCL.

27 93. These acts and practices alleged were intended to or did result in violations of EFTA.

28

1 94. Defendant has and will continue to unlawfully deny the transaction disputes of
2 Plaintiff, the Classes, and the public by claiming that said disputed transactions are “authorized,” even
3 though said transactions are actually “unauthorized,” as that term is defined by EFTA and applicable
4 regulations. Consequently, the practices of NFCU constitute unfair and unlawful business practices
5 within the meaning of the UCL.

6 95. Pursuant to the UCL, Plaintiff and the Classes are entitled to preliminary and
7 permanent injunctive relief and order Defendant to cease this unfair and unlawful competition, as
8 well as disgorgement and restitution to Plaintiff and the Classes of all the revenues associated with
9 this unfair and unlawful competition, or such portion of said revenues as the Court may find applicable.

10 96. Pursuant to the UCL, Plaintiff and the Classes are entitled to preliminary and
11 permanent injunctive relief and an order requiring Defendant to cease this unfair and unlawful
12 competition, as well as disgorgement and restitution to Plaintiff and the Classes of all revenues
13 associated with this unfair and unlawful competition, or such portion of said revenues as the Court
14 may find applicable.

15
16 **SECOND CAUSE OF ACTION**
17 **Violation of California’s False Advertising Law (“FAL”)**
 Cal. Bus. & Prof. Code §§ 17500, *et seq.*
 (Asserted on Behalf of Plaintiff and the Classes)

18 97. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

19 98. California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, states
20 that “[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to
21 induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be
22 made or disseminated ... from this state before the public in any state, in any newspaper or other
23 publication, or any advertising device, or by public outcry or proclamation, or in any other manner or
24 means whatever, including over the Internet, any statement...which is untrue or misleading and which
25 is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...”

26 99. Defendant’s material misrepresentations and omissions alleged herein violate Bus. &
27 Prof. Code § 17500.

28

1 100. Defendant knew or should have known that its misrepresentations and omissions were
2 false, deceptive, and misleading.

3 101. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and Class
4 Members, on behalf of the general public, seeks an order of this Court enjoining Defendant from
5 continuing to engage, use, or employ their practice of misrepresenting the Zelle service.

6 102. Further, Plaintiff and Class Members seek an order requiring Defendant to disclose
7 such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money
8 wrongfully acquired by Defendant by means of said misrepresentations.

9 103. Additionally, Plaintiff and the Classes seek an order requiring Defendant to pay
10 attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

11 **THIRD CAUSE OF ACTION**
12 **Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing**
13 **(Asserted on Behalf of the Plaintiff and the Classes)**

13 104. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

14 105. Plaintiff and members of the Class contracted with NFCU for checking account
15 services, as embodied in the Deposit Agreement & Disclosures.

16 106. NFCU breached the terms of its contract with consumers when as described herein,
17 NFCU failed to refund fraudulent transactions on the Zelle money transfer service and failed to
18 reimburse accountholders for fraud-induced losses incurred using the Zelle service.

19 107. Further, under the law of each of the states where NFCU does business, an implied
20 covenant of good faith and fair dealing governs every contract. The covenant of good faith and fair
21 dealing constrains Defendant's discretion to abuse self-granted contractual powers.

22 108. This good faith requirement extends to the manner in which a party employs discretion
23 conferred by a contract.

24 109. Good faith and fair dealing, in connection with executing contracts and discharging
25 performance and other duties according to their terms, means preserving the spirit—not merely the
26 letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with
27 the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing
28 the power to specify terms constitute examples of bad faith in the performance of contracts.

1 110. Subterfuge and evasion violate the obligation of good faith in performance even when
2 an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of
3 inaction, and fair dealing may require more than honesty. Other examples of violations of good faith
4 and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms,
5 and interference with or failure to cooperate in the other party's performance.

6 111. Defendant breached the covenant of good faith and fair dealing when it failed to fairly
7 investigate reported fraudulent transactions on the Zelle money transfer service, failed to reimburse
8 accountholders for fraud-induced losses incurred using the Zelle service, and adopted and unfair and
9 unreasonable definition of the term "unauthorized transaction."

10 112. Each of Defendant's actions were done in bad faith and was arbitrary and capricious.

11 113. Plaintiff and members of the Classes have performed all of the obligations imposed on
12 them under the contract.

13 114. Plaintiff and members of the Classes have sustained monetary damages as a result of
14 NFCU's breaches of the contract and covenant of good faith and fair dealing.

15 **FOURTH CAUSE OF ACTION**
16 **Negligence**
(Asserted on Behalf of Plaintiff and the Classes)

17 115. Plaintiff realleges and incorporates herein by reference the allegations contained in all
18 preceding paragraphs, and further alleges as follows:

19 116. NFCU owed Plaintiff and the Classes at least a duty to take reasonable steps to
20 safeguard their financial information and protect their financial accounts from malicious third parties,
21 to adequately warn of known risks and/or dangers associated with the Zelle mobile application, and
22 to properly investigate disputed transaction initiated and consummated through the NFCU and/or
23 Zelle app.

24 117. Zelle owed Plaintiff and the Classes at least a duty to take reasonable steps to
25 adequately warn of known risks and/or dangers associated with the NFCU/Zelle app, and to take
26 appropriate steps in response to a known scam involving the app to protect consumers from malicious
27 third parties.

28

1 118. Defendant breached its obligations to Plaintiff and Class Members and was otherwise
2 negligent and/or reckless by at least:

3 a. Failing to maintain adequate data security measures to prevent or reduce the
4 risk of disclosure of the names, phone numbers, and bank affiliation of Plaintiff and the Class
5 to malicious third parties;

6 b. Failing to adequately protect the private information of Plaintiff and the Class;

7 c. Failing to properly warn Plaintiff and the Class of the risks and/or dangers
8 associated with the NFCU/Zelle mobile app or informing consumers about the Zelle-related
9 scams;

10 d. Failing to adequately investigate and document findings from the
11 investigations of fraud-related EFT disputes of the unauthorized transactions made on the
12 accounts of Plaintiff and the Class using the NFCU/Zelle payment platform;

13 e. Failing to take appropriate steps to avoid unauthorized transactions through the
14 NFCU/Zelle mobile application in response to known scams and continuing with business as
15 normal;

16 f. Failing to implement appropriate and sufficient safeguards against scams of
17 the nature alleged in the Complaint in light of the knowledge that those scams have been
18 rampant across the country;

19 g. Failing to review account agreements and disclosures to ensure they do not
20 attempt to diminish or limit consumers' rights under Regulation E;

21 h. Permitting scammers to use Zelle's member banks to siphon funds from
22 Plaintiff's and Class Members' accounts using the NFCU/Zelle payment platform;

23 i. Failing to reverse unauthorized transactions pursuant to Regulation E error
24 resolution requirements following disputes of Plaintiff and the Class despite Defendant's
25 knowledge that said transactions were unauthorized as part of a scam that is well-known to
26 Defendant; and

27 j. Failing to permanently reverse unauthorized transactions upon a sufficient
28 showing by Plaintiff and the Class that said transactions were unauthorized.

1 119. As a direct and proximate result of Defendant's breach, Plaintiff and Class Members
2 lost funds from their NFCU bank accounts.

3 120. Plaintiff and Class Members are entitled to damages for their continuing and increased
4 risk of fraud and their loss of money.

5 **FIFTH CAUSE OF ACTION**
6 **Unjust Enrichment**
7 **(Asserted on Behalf of Plaintiff and the Classes)**

8 121. Plaintiff realleges and incorporates herein by reference the allegations contained in all
9 preceding paragraphs, and further alleges as follows:

10 122. NFCU has been conferred the benefit or enrichment by keeping funds that they are
11 otherwise obligated to replace for Plaintiff and Class Members pursuant to Regulation E's error
12 resolution obligations.

13 123. NFCU knew and appreciated this benefit or enrichment and the detriment or
14 impoverishment to Plaintiff and Class Members.

15 124. It is inequitable for NFCU to retain the benefit or enrichment of keeping these funds
16 when they know that, as financial institutions, they are obligated to comply with Regulation E and
17 credit Plaintiff and putative Class Members' accounts for the amounts taken.

18 125. Plaintiff and Class Members have sustained a detriment or an impoverishment from
19 NFCU's failure to remedy this inequity and are entitled to restitution for the unjust enrichment to
20 NFCU.

21 126. Plaintiff and Class Members are entitled to restitution and disgorgement of the funds
22 unjustly retained by NFCU in the absence of any legal relief.

23 **SIXTH CAUSE OF ACTION**
24 **VIOLATION OF THE ELECTRONIC FUND TRANSFER ACT ("EFTA")**
25 **15 U.S.C. §§ 1693, et seq.**
26 **(On Behalf of Plaintiff and the Classes)**

27 127. Plaintiff realleges and incorporates herein by reference the allegations contained in all
28 preceding paragraphs, and further alleges as follows:

1 128. The Electronic Fund Transfer Act (“EFTA”) and Regulation E apply to electronic fund
2 transfers that authorize a financial institution to debit or credit a consumer’s account. 12 C.F.R.
3 1005.3(a).

4 129. The primary objective of EFTA is “the protection of individual consumers engaging
5 in electronic fund transfers and remittance transfers.” 12 C.F.R. § 1005.1(b).

6 130. Financial institutions have error resolution obligations pursuant to Regulation E in the
7 event that a consumer notifies the financial institution of an error. 12 C.F.R. § 1005.11.

8 131. NFCU is a financial institution. 12 C.F.R. § 1005.2(i).

9 132. Zelle is an MPP and financial institution, as the applicable code, 12 C.F.R. § 1005.2(i),
10 is interpreted by the CFPB and the FDIC, because it issues an access device and agrees with a
11 consumer to provide electronic fund transfer services.

12 133. “If a financial institution, within sixty days after having transmitted to a consumer
13 pursuant to [15 U.S.C. § 1693d(a), (c), or (d)] or notification pursuant to [15 U.S.C. § 1693(d)]
14 receives oral or written notice in which the consumer[:] (1) sets forth or otherwise enables the
15 financial institution to identify the name and the account number of the consumer; (2) indicates the
16 consumer’s belief that the documentation, or, in the case of notification pursuant to [15 U.S.C. §
17 1693d(b)], the consumer’s account, contains an error and the amount of such error; and (3) sets forth
18 the reasons for the consumer’s belief (where applicable) that an error has occurred,” the financial
19 institution is required to investigate the alleged error. 15 U.S.C. § 1693f(a).

20 134. After said investigation, the financial institution must determine whether an error has
21 occurred and report or mail the results of such investigation and determination to the consumer within
22 ten (10) business days. *Id.*

23 135. A financial institution that provisionally recredits the consumer’s account for the
24 amount alleged to be in error pending an investigation, however, is afforded forty-five (45) days after
25 receipt of notice of error to investigate. *Id.* § 1693f(c).

26 136. Pursuant to the EFTA, an error includes “an unauthorized electronic fund transfer.”
27 *Id.* § 1693f(f).

28

1 137. An Electronic Fund Transfer (“EFT”) is any transfer of funds that is initiated through
2 an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing,
3 or authorizing a financial institution to debit or credit a consumer’s account. 12 C.F.R. 1005.3(b)(1).
4 Accordingly, Regulation E applies to any P2P or mobile payment transactions that meet the definition
5 of EFT. 12 C.R.F. 1005.3(b)(1)(v); *id.*, Comment 3(b)(1)-1ii.

6 138. Unauthorized EFTs are EFTs from a consumer’s account initiated by a person other
7 than the consumer without actual authority to initiate the transfer and from which the consumer
8 receives no benefit. 12 C.F.R. 1005.2(m).

9 139. According to the CFPB and FDIC, when a third party fraudulently induces a consumer
10 into sharing account access information that is used to initiate an EFT from the consumer’s account,
11 that transfer meets Regulation E’s definition of an unauthorized EFT.⁷

12 140. In particular, Comment 1005.2(m)-3 of Regulation E explains that an unauthorized
13 EFT includes a transfer initiated by a person who obtained the access device from the consumer
14 through robbery or fraud. As such, when a consumer is fraudulently induced into sharing account
15 access information with a third party, and a third party uses that information to make an EFT from
16 the consumer’s account, the transfer is an unauthorized EFT under Regulation E.⁸

17 141. Here, Plaintiff and Class Members were fraudulently induced by third party scammers
18 to make unauthorized EFTs from their NFCU bank accounts.

19 142. After the unauthorized EFTs were made, the EFTs appeared on the bank statements of
20 Plaintiff and Class Members.

21 143. Plaintiff and Class Members notified NFCU of these errors within sixty (60) days of
22 their appearances on the accounts of Plaintiff and other Class Members.

23 144. After receiving notice of the unauthorized EFTs on Plaintiff’s and other Class
24 Members’ accounts, NFCU erroneously concluded that that the unauthorized EFTs were authorized.

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⁷ See *supra*, note 5.

⁸ *Id.*

1 145. As a direct and proximate result of the conduct of NFCU, Plaintiff and other Class
2 Members were unable to reclaim funds that were fraudulently taken from their accounts with NFCU
3 within the authorized period for error resolution.

4 146. Upon information and belief, NFCU knowingly and willfully concluded that the
5 transfers of funds via Zelle on accounts of Plaintiff and other Class members were not in error when
6 such conclusions could not reasonably have been drawn from the evidence available to the financial
7 institutions at the time of the investigation. 15 U.S.C. § 1693f(e)(2).

8 147. Upon information and belief, NFCU intentionally determined that the unwanted
9 transfer of funds via Zelle on accounts of Plaintiff and Class Members were not in error due to, at
10 least in part, NFCU's financial self-interest as a member-bank of Zelle, and to avoid its liability to
11 Plaintiff and other Class members for the unauthorized transfers pursuant to Regulation E.

12 148. Defendant refuses to completely reverse or refund funds to Plaintiff and Class
13 Members consistent with their obligations under Regulation E, § 1005.6.

14 149. As such, Plaintiff and Class Members are each entitled to (i) actual damages; (ii) treble
15 damages; (iii) the lesser of \$500,000.00 or one percent (1%) of the net worth of NFCU; and (iii)
16 reasonable attorneys' fees and costs. *Id.* §§ 1693f(e)(2), 1693m(a)(2)(B)-(3).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for relief and judgment against Defendant as follows:

- 19 A. Class certification of this action;
- 20 B. Appointment of Plaintiff as Class Representative;
- 21 C. Appointment of Plaintiff's attorneys as Class Counsel;
- 22 D. An award of actual damages, in an amount to be determined at trial;
- 23 E. An award of treble damages pursuant to the EFTA;
- 24 F. An award of the lesser of \$500,000.00 or one percent (1%) of the net worth of
25 Defendant;
- 26 G. Injunctive and other equitable relief against Defendant as necessary to protect the
27 interests of Plaintiff and other Class Members, and an order prohibiting Defendant from engaging in
28 unlawful and/or unfair acts described above, including public injunctive relief;

- 1 H. Disgorgement;
- 2 I. An order of restitution from NFCU for unjust enrichment;
- 3 J. An order declaring Defendant's conduct as unlawful;
- 4 K. Costs of Suit;
- 5 L. Pre- and post-judgment interest;
- 6 M. An award of reasonable attorneys' fees; and
- 7 N. Any other relief the Court may deem just and proper, including interest.

8 **DEMAND FOR TRIAL BY JURY**

9 Plaintiff, individually and on behalf of all others similarly situated, hereby demand a jury trial
10 on all claims so triable.

11 Dated: September 9, 2022

KALIELGOLD PLLC



12
13 By: _____

14 JEFFREY D. KALIEL
15 SOPHIA GOREN GOLD

16 *Attorneys for Plaintiff and the putative class*

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