

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SIOBHAN MORROW and TRACEE LE
FLORE, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

NAVY FEDERAL CREDIT UNION,

Defendant.

Case No. 1:21-cv-722-MSN-LRV

MARIA HART and TRACEE LE FLORE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

NAVY FEDERAL CREDIT UNION,

Defendant.

Case No. 1:22-cv-844-MSN-LRV

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement” or “Agreement”)¹, dated November 20, 2023, is entered into by Plaintiffs, Siobhan Morrow, Tracee Le Flore, and Maria Hart, individually, and on behalf of the Settlement Class (as defined below), and Defendant, Navy Federal Credit Union. This Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions of

¹ All capitalized terms herein shall have the same meanings as those ascribed to them in Section II below.

this Agreement, and subject to the Final Approval Order and Final Judgment.

I. Procedural History

1. On August 21, 2020, Plaintiff Siobhan Morrow, a California resident, filed suit against Navy Federal on behalf of a putative nationwide class of Navy Federal accountholders in the U.S. District Court for the Southern District of California. *See Morrow v. Navy Fed. Credit Union*, 3:20-cv-01636-LAB-JLB (S.D. Cal.) (“California Action”). Plaintiff Morrow dismissed the California Action voluntarily on March 12, 2021.

2. On January 7, 2021, Plaintiff Maria Hart, a South Carolina citizen, and Plaintiff Tracee Le Flore, a Tennessee citizen, filed a nearly identical suit against Navy Federal on behalf of a putative nationwide class of Navy Federal accountholders in the U.S. District Court for the District of South Carolina. *See Hart v. Navy Fed. Credit Union*, No. 2:21-cv-44-RMG (D.S.C.) (“South Carolina Action”), ECF No. 1.

3. On April 14, 2021, Plaintiff Hart and Plaintiff Le Flore amended their complaint, which Navy Federal moved to dismiss on April 28, 2021. *Id.*, ECF Nos. 12, 19. In addition to challenging the merits of Plaintiffs’ claims, Navy Federal argued that the South Carolina court was barred from presiding over the claims of a nationwide class based on South Carolina’s “door closing statute.” *Id.*, ECF No. 19-1 at 5-14. In opposition to that motion to dismiss, Plaintiff Le Flore voluntarily withdrew her claims without prejudice on May 26, 2021. *Id.*, ECF No. 22 at 1 n.1; *Id.* ECF No. 23.

4. On June 11, 2021, the court in *Hart* entered its order on Navy Federal’s motion, dismissing the South Carolina Action as to the putative nationwide class, but denying Navy Federal’s motion as to Plaintiff Hart’s claim for breach of contract brought on behalf of a South Carolina class under the contract’s governing Virginia law. *Id.*, ECF No. 28.

5. Plaintiff Le Flore—together with Plaintiff Morrow—filed a complaint in this Court on behalf of a nationwide class on June 15, 2021, asserting the same claims as the other earlier-filed lawsuits. *See Morrow, et al. v. Navy Fed. Credit Union*, Case No. 1:21-cv-722-MSN-LRV (“Virginia Action”), ECF No. 1.

6. On August 27, 2021, Navy Federal moved to dismiss Plaintiffs Morrow and Le Flore’s complaint, arguing in part that the contract unambiguously permitted Navy Federal to charge ISA Fees on transactions with foreign merchants that occurred while the cardholder was physically located in the United States. The Parties fully briefed that motion. ECF Nos. 17, 18, 22, 23.

7. On October 27, 2021, the Court dismissed the Virginia Action with prejudice. ECF No. 33.

8. On November 24, 2021, Plaintiffs appealed to the Fourth Circuit. ECF No. 34. Following briefing and oral argument, on July 7, 2022, the Fourth Circuit vacated that decision. *Morrow v. Navy Fed. Credit Union*, No. 21-2323, 2022 WL 2526676 (4th Cir. July 7, 2022).

9. During the pendency of the Virginia Action, in 2022, Navy Federal clarified its ISA Fee practices in its Debit Card Disclosure which it disseminates to new members who open debit cards.

10. Following the Fourth Circuit’s opinion, by agreement of the Parties, the South Carolina Action was transferred to this Court on July 25, 2022, and consolidated with the Virginia Action on August 2, 2022. ECF No. 42.

11. Following that decision, the Parties participated in formal discovery. In the consolidated Action, Plaintiffs propounded two sets of interrogatories, one set of requests for admissions, and one set of requests for production (“RFPs”) to Navy Federal. In the South Carolina

Action, prior to consolidation, Plaintiff Hart propounded one set of interrogatories, two sets of requests for admission, and one set of RFPs. In response to the RFPs, Navy Federal produced approximately 53,000 pages of documents and transaction data. Navy Federal, in turn, propounded one set of interrogatories, one set of requests for admissions, and one set of RFPs to each of the Plaintiffs in both the South Carolina Action and Virginia Action. In response to the RFPs, the Plaintiffs collectively produced 11 pages of documents.

12. Additionally, Navy Federal bore the expense of producing transactional data maintained by VISA Debit Processing Services (“VISA DPS”), a third party with whom Navy Federal has a contractual relationship. ECF Nos. 111, 135, 136. Plaintiffs also subpoenaed VISA DPS for a deposition. *Id.*

13. Over the course of discovery, Plaintiffs took 7 depositions, consisting of 3 Navy Federal fact witnesses (including the corporate representative), 3 expert witnesses, and a corporate representative for VISA DPS. Meanwhile, Navy Federal took 5 depositions, including one of each of the named Plaintiffs and two of Plaintiffs’ expert witness.

14. On September 22, 2022, the Parties appeared for a settlement conference before Magistrate Judge Ivan D. Davis, which was unsuccessful.

15. Towards the end of the fact discovery period, the Parties fully briefed Plaintiffs’ motion for class certification. ECF Nos. 59-73, 78, 99-100. Navy Federal moved to exclude the testimony of Plaintiffs’ damages expert, Arthur Olsen. ECF Nos. 79, 80, 82, 93, 101. After the Parties briefed both motions, they appeared for oral argument before this Court on March 24, 2023. ECF No. 127. On that same day, the Court granted class certification and denied the motion to exclude. ECF No. 128. The Court subsequently entered a written order certifying the class, and explaining that Navy Federal “retains the right to seek de-certification.” ECF No. 144. Navy

Federal moved the Court to reconsider the order granting class certification, Plaintiffs responded in opposition, and the Court ultimately denied the motion. ECF Nos. 140-144.

16. On April 24, 2023, Navy Federal petitioned the Fourth Circuit for permission to appeal the class certification order under Fed. R. Civ. P. 23(f). *Navy Fed. Credit Union v. Morrow, et al.*, No. 23-165 (4th Cir.), ECF No. 2. Following briefing, on May 31, 2023, the petition was denied. *Id.*, ECF No. 24.

17. On July 19, 2023, Plaintiffs filed an unopposed motion to modify the class definition to alter the beginning date of the Class Period from January 7, 2016 to August 9, 2016. ECF Nos. 164, 165. That motion was filed after Plaintiffs determined after class certification was granted that sufficient VISA DPS transaction data for the period of January 7, 2016 to August 8, 2016 was unavailable. That motion remained pending when the Parties agreed to this Settlement.

18. Plaintiffs also drafted and submitted for Court approval a proposed plan to provide notice to the certified class, which the Court ultimately approved. ECF Nos. 166, 167.

19. The Parties also exchanged merits expert reports and, as noted above, deposed those experts. Plaintiffs submitted an opening report by Mr. Olsen. ECF No. 178-1. Navy Federal submitted an opening report by survey expert Dr. Elaine Reardon, ECF No. 173-1, and two rebuttal reports by Mr. David Alfaro and Mr. Stephen Mott. ECF Nos. 178-3, 178-4.

20. The Parties also began to prepare for trial. In advance of the Final Pretrial Conference, the Parties exchanged Rule 26(a)(3) disclosures, including Witness Lists and Exhibit Lists, and their objections to the latter. ECF Nos. 159, 160, 162, 168, 169, 184, 187. The Parties drafted and entered into a Stipulation of Uncontested Facts as well. ECF No. 163.

21. The Final Pretrial Conference was held on July 20, 2023. ECF No. 170. At the Final Pretrial Conference, the Court ordered the Parties to attend a Settlement Conference before

Magistrate Judge Lindsey R. Vaala, and partially adopted the Parties' Joint Proposed Scheduling Order, which set deadlines for the rest of the case. *Id.*; ECF No. 167.

22. Additionally, Navy Federal moved to decertify the class, including to argue that Plaintiffs' proffered class-wide method to identify the class was deficient. ECF. Nos. 174-175. Navy Federal also moved to exclude Mr. Olsen's computation of damages, arguing it was unreliable. ECF Nos. 176-177. Meanwhile, Plaintiffs moved to exclude Elaine Reardon, Navy Federal's proffered expert on consumer surveys. ECF Nos. 172, 173, 192, 193, 203. After these motions were fully briefed, ECF Nos. 174-178, 194-196, 204-206, they were argued before the Court on August 25, 2023 and taken under advisement. ECF No. 219.

23. On September 7, 2023, the Parties appeared at a Settlement Conference before Magistrate Judge Vaala. The Parties made progress, but did not immediately reach a settlement that same day.

24. Over the next few days, the Parties continued to negotiate, and reached a settlement in principle. Thus, on September 11, 2023 and September 12, 2023, the Settlement Conference continued, culminating in Magistrate Judge Vaala ordering a suspension of all pending deadlines for 45 days to allow for the preparation of this Agreement and a motion for preliminary approval. ECF No. 229.

25. On September 13, 2023, the Parties filed their joint consent to have Magistrate Judge Vaala conduct any and all further proceedings in the Action, and the Action has been so referred. ECF No. 230-231.

26. The Parties now agree to settle the Action entirely, without any admission of liability or wrongdoing, with respect to all Released Claims (as defined below) of the Releasing Parties (as defined below). Navy Federal has entered into this Agreement to resolve all

controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burdens, and disruptions to its business operations associated with further litigation. Navy Federal does not in any way acknowledge, admit to, or concede any of the allegations made in any of the complaints filed in the California Action, the South Carolina Action, or the Virginia Action, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in any of those complaints or the Action. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to effectuate and enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Action lack merit. The Parties intend this Agreement to bind Plaintiffs, Navy Federal, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, and subject to Final Approval by the Court, for good and valuable consideration, as set forth herein, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows.

II. Definitions

27. “Account” means any checking account maintained by Navy Federal.
28. “Accountholder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period, and includes Current Accountholders and Past Accountholders.
29. “Action” means the consolidated lawsuits: *Morrow v. Navy Federal Credit Union*,

Case No. 1:21-cv-7222-MSN-LRV and *Hart v. Navy Federal Credit Union*, Case No. 1:22-cv-844-MSN-LRV, pending in the U.S. District Court for the Eastern District of Virginia.

30. “Actual ISA Fee” shall be the cumulative amount of the ISA Fee(s) of each Settlement Class Member as reflected in the Settlement Class Transactional Data.

31. “Additional Settlement Class Member Payment” reflects the additional payment that each Settlement Class Member who submits a Valid Claim and incurred more than \$4.00 in Actual ISA Fee(s) will receive if the amount of the Net Settlement Fund exceeds the total amount of Base Settlement Class Member Payments.

32. “Application for Approval of Attorneys’ Fees, Costs, and Service Awards” means the application made with the Motion for Final Approval seeking approval of Class Counsel’s attorneys’ fees and costs, and Service Awards for the Class Representatives.

33. “Attorneys’ Fees and Costs Payment” means the amount of attorneys’ fees and costs that Class Counsel is awarded by the Court in connection with the Application for Approval of Attorneys’ Fees, Costs, and Service Awards.

34. “Base Settlement Class Member Payment” reflects the agreed-upon payment of \$4.00 each Settlement Class Member who submits a Valid Claim will receive, or the amount reduced *pro rata* in the event the total amount of Base Settlement Class Member Payments exceeds the amount in the Net Settlement Fund.

35. “Claim” means the submission of a Claim Form by a Claimant.

36. “Claim Form” means the proof of claim, in the form attached hereto as *Exhibit 4*, by which a Settlement Class Member may apply for a Settlement Class Member Payment.

37. “Claimant” means a Settlement Class member who submits a Claim Form seeking a Settlement Class Member Payment.

38. “Claims Deadline” shall be 15 days after the original date of the Final Approval Hearing set forth in the Preliminary Approval Order. The Claims Deadline shall be the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class Member Payment.

39. “Claims Process” means the procedure by which a Claimant may submit a Claim Form to receive a Settlement Class Member Payment.

40. “Class Counsel” means Sophia Gold of KalielGold PLLC, Jeff Ostrow and Daniel Tropin of Kopelowitz Ostrow P.A., (Eddie) Jae K. Kim of Lynch Carpenter LLP, and David M. Wilkerson of The Van Winkle Law Firm.

41. “Class Period” means the period from August 9, 2016 to March 24, 2023.

42. “Class Representatives” mean Siobhan Morrow, Tracee Le Flore, and Maria Hart.

43. “Complaint” means the operative complaints filed in the South Carolina Action and Virginia Action and consolidated in this Action.

44. “Court” means the U.S. District Court for the Eastern District of Virginia.

45. “Current Accountholder” means a Settlement Class member who is an Accountholder as of the date of Preliminary Approval and/or the Effective Date.

46. “Defendant” means Navy Federal Credit Union.

47. “Effective Date” shall be the later of: (1) 10 days after the time period has expired to appeal the judgment entered after the entry of the Final Approval Order without any appeal or motion to vacate judgment being filed; or (2) if an appeal of the judgment entered after the entry of Final Approval Order is taken, then the earlier of 10 days after the entry of an order dismissing the appeal or 10 days after the appeal has been finally resolved in the appellate court of last resort without any right to appeal or seek further review from another appellate court.

48. “Electronic Payment” means the manner in which Settlement Class Member Payments to Settlement Class Members with Valid Claims will be issued by the Settlement Administrator.

49. “Email Notice” means a short form of Notice that shall be sent by email to Accountholders in the Settlement Class for whom Navy Federal has email addresses, in the form attached as *Exhibit 1*.

50. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

51. “Final Approval” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order and Final Judgment.

52. “Final Approval Hearing” means the hearing held before the Court to consider granting Final Approval of the Settlement and further determine whether to approve the Application for Approval of Attorneys’ Fees, Costs, and Service Awards.

53. “Final Approval Order and Final Judgment” means the final order that the Court enters granting Final Approval of the Settlement and that includes the entry of judgment finally disposing of the entire Action. The proposed Final Approval Order and Final Judgment shall be in substantially the form agreed to by the Parties before it is submitted to the Court and shall be attached as an exhibit to the Motion for Final Approval. The Final Approval Order and Final Judgment will constitute a final judgment of dismissal of the Action with prejudice.

54. “International Service Assessment Fee” or “ISA Fee” means the fee Navy Federal charged on debit card transactions with a foreign merchant.

55. “Long Form Notice” means the long form detailed notice of the Settlement, in the form attached hereto as *Exhibit 3*, that shall be posted on the Settlement Website and shall be

available to Accountholders in the Settlement Class by mail on request made to the Settlement Administrator.

56. “Motion for Final Approval” means the motion that Plaintiffs and Class Counsel will file with the Court seeking Final Approval of the Settlement.

57. “Motion for Preliminary Approval” means the motion that Plaintiffs and Class Counsel will file requesting that the Court grant Preliminary Approval to the Settlement pursuant to Fed. R. Civ. P. 23(a), (b)(3), and (e).

58. “Navy Federal” means Navy Federal Credit Union.

59. “Navy Federal’s Counsel” means Michael Gottlieb, Nicholas Reddick and Meryl Governski of Willkie Farr & Gallagher LLP.

60. “Net Settlement Fund” means the Settlement Fund, minus the Settlement Administration Costs, the Court-approved Attorneys’ Fees and Costs Payment, and Court-approved Service Awards.

61. “Notice” means the Email Notice, Postcard Notice, and Long Form Notice that Plaintiffs and Class Counsel will ask the Court to approve in the Motion for Preliminary Approval.

62. “Notice Program” means the methods provided for in this Agreement for giving Notice to the Settlement Class, and consists of the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and toll-free telephone line.

63. “Objection Period” means the period that begins the day after which the Notice is first distributed, and that ends 30 days before the original date set for the Final Approval Hearing.

64. “Opt-Out Period” means the period that begins the day after which the Notice is first distributed, and that ends 30 days before the original date set for the Final Approval Hearing.

65. “Parties” means the Plaintiffs and Navy Federal. “Party” means any of the Plaintiffs

or Defendant.

66. “Past Accountholder” means a Settlement Class member who is no longer an Accountholder as of the date of Preliminary Approval and/or the Effective Date.

67. “Plaintiffs” mean Siobhan Morrow, Tracee Le Flore, and Maria Hart.

68. “Postcard Notice” shall mean the short form of Notice that shall be sent by mail to Accountholders in the Settlement Class for whom Navy Federal does not have an email address, or for whom the Settlement Administrator is unable to deliver Email Notice using the email address provided by Navy Federal, in the form attached as *Exhibit 2*.

69. “Preliminary Approval” means the preliminary approval of the Settlement pursuant to Fed. R. Civ. P. 23(a), (b)(3), and (e), which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached to the Motion for Preliminary Approval.

70. “Preliminary Approval Order” means the order that the Court enters preliminarily approving the Settlement and Notice Program and setting forth the date for the Final Approval Hearing, or any amendment to that order.

71. “Released Claims” means any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, that arise from or relate to the conduct alleged in any of the complaints filed in the California Action, the South Carolina Action, or the Virginia Action, and claims that were asserted or could possibly have been asserted in any of those actions relating to the conduct alleged in the Complaint.

72. “Released Parties” means Navy Federal and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former

directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, and predecessors.

73. “Releases” means the releases and waivers set forth in Section XIII of this Agreement.

74. “Releasing Parties” means (i) Plaintiffs and all Settlement Class Members, (ii) each of their respective executors, estates, administrators, representatives, present or past heirs, predecessors, assigns, beneficiaries, affiliates, successors, trusts, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, and attorneys.

75. “Residual Funds” means the portion of the Net Settlement Fund that remains undistributed as further described in Section X.

76. “Service Awards” means the payment the Court may award the Plaintiffs for serving as the Class Representatives, which is in addition to any payment due to the Plaintiffs as a Settlement Class Member Payment.

77. “Settlement Administrator” means Epiq Class Action & Claims Solutions, Inc. Class Counsel and Navy Federal may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has granted Preliminary Approval or Final Approval. In the absence of agreement, either Class Counsel or Navy Federal may move the Court to substitute a different organization as Settlement Administrator on a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

78. “Settlement Administration Costs” means all costs and fees incurred in connection with providing notice to the Settlement Class and the administration of the Settlement.

79. “Settlement Class” means all current and past Navy Federal Accountholders who were assessed at least one ISA Fee during the Class Period for purchases made while they were physically located in the United States. Excluded from the Settlement Class is Navy Federal, its parents, subsidiaries, affiliates, officers and directors, all Settlement Class members who make a timely election to be excluded, and all judges assigned to this litigation and their immediate family members.

80. “Settlement Class List” means the list of Accountholders Plaintiffs identified using the methodology #1 described in the Expert Report of Arthur Olsen (ECF 178-1) who are to be sent Notice of the Settlement.

81. “Settlement Class Member” means any Accountholder in the Settlement Class who has not opted-out of the Settlement and who is entitled to benefits under the Settlement, including a Settlement Class Member Payment.

82. “Settlement Class Member Payment” means the payment that Settlement Class Members who submit Valid Claims shall receive under the Settlement, inclusive of the Base Settlement Class Member Payment and the Additional Settlement Class Member Payment, if applicable.

83. “Settlement Class Transactional Data” refers to the VISA DPS transactional data on which Plaintiffs relied to identify Accountholders to be included in the Settlement Class List and on which the Parties will rely to determine Settlement Class Members’ Actual ISA Fee(s). ECF Nos. 166, 167.

84. “Settlement Fund” means the \$5,500,000.00 total non-reversionary common cash fund Navy Federal is obligated to pay under the Settlement.

85. “Settlement Website” means the website the Settlement Administrator will

establish as a means for the Accountholders on the Settlement Class List to obtain notice and information about the Settlement and to electronically submit Claim Forms, including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, paper Claim Form, Motion for Final Approval, and Final Approval Order and Final Judgment, as well as other documents the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for six months after Final Approval. The Settlement Website, along with its URL and all contents therein, must be approved by the Parties prior to its publication.

86. “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) personally signed physically or by e-signature by the Settlement Class Member; (c) returned via mail and postmarked by the Claims Deadline, or, if submitted online, submitted by 11:59 p.m., Eastern time on the Claims Deadline; and (d) determined to be valid by the Settlement Administrator.

III. Certification of the Settlement Class for Settlement Purposes Only

87. Plaintiffs shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes only. Navy Federal agrees solely for purposes of this Settlement that this Action shall proceed as a class action; provided, however, that if the Final Approval Order and Final Judgment is not issued, then any certification shall be null and void, and Navy Federal shall retain all rights to object to any future requests to certify any class, including because the location of Accountholders who incurred ISA Fees during the Class Period allegedly cannot be determined.

IV. Settlement Consideration and Escrow Account

88. In full settlement of the claims asserted in the Action against Navy Federal and in

consideration of the Released Claims, above, all of which the Parties agree are good and valuable consideration, Navy Federal shall pay, or cause to be paid, a total of \$5,500,000.00.

89. Navy Federal agrees to fund the Settlement Fund in the amount of \$5,500,000.00, into the Escrow Account within 10 days following Preliminary Approval.

90. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; the Settlement Administration Costs; the Attorneys' Fees and Costs Payment; and any Court-approved Service Awards to each of the Class Representatives.

91. Aside from its obligation to fund the Settlement Fund, Navy Federal shall not be responsible for any other payments under this Agreement.

92. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Navy Federal, Navy Federal's Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Navy Federal, Navy Federal's Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Navy Federal, Navy Federal's Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

V. Settlement Approval

93. After execution of this Agreement by all Parties, Class Counsel shall promptly file a Motion for Preliminary Approval. The proposed Preliminary Approval Order that will be attached to the motion shall be agreed to in full by the Parties. The Motion for Preliminary Approval shall, among other things, request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Fed. R. Civ. P. 23(a), (b)(3), and (e) for settlement purposes only; (3) approve the Notice Program and Claim Process set forth herein and approve the form and content of the Notices and Claim Form; (4) approve the procedures set forth herein for Accountholders in the Settlement Class to opt-out from the Settlement Class or for Settlement Class Members to object to the Settlement and/or the Application for Approval of Attorneys' Fees, Costs, and Service Awards; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Navy Federal's Counsel, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's Application for Approval of Attorneys' Fees, Costs, and Service Awards.

VI. Discovery and Settlement Data

94. Class Counsel and Navy Federal have engaged in significant discovery related to liability and damages. Additionally, for purposes of effectuating the Settlement, Navy Federal has made available to Class Counsel and its expert certain data for the entirety of the Class Period such that Plaintiffs' expert identified the Accountholders on the Settlement Class List, and the amount of Actual ISA Fees paid by each Settlement Class Member who files a Valid Claim. Although not currently anticipated as needed, Navy Federal agrees to provide additional data to the extent

reasonably necessary to meet the terms of the Settlement, including Notice to the Settlement Class.

VII. Settlement Administrator

95. Plaintiffs have selected Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator, to which Navy Federal does not object. Epiq is a leading class action administrator in the United States who has handled dozens of account fee class action notice and settlement administrations. Epiq will implement the Notice Program, Claims Process, and oversee all Settlement Administration. The Parties shall jointly oversee the Settlement Administrator.

96. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement or ordered by the Court.

97. The duties of the Settlement Administrator are as follows:

- a. Use the Settlement Class List in connection with the Notice Program approved by the Court, for the purpose of sending the Email Notice and mailing the Postcard Notice or, upon request, the Long Form Notice; collecting and validating Claim Forms; and distributing Settlement Class Member Payments via Electronic Payment;
- b. Establish and maintain a post office box for requests to opt-out from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for Accountholders in the Settlement Class to call with Settlement-related inquiries, and answer the frequently asked questions of the Settlement Class who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Settlement Class inquiries;

- f. Process all opt-out requests from the Settlement Class;
- g. Oversee the Claims Process by sending paper Claim Forms when requested and receiving, reviewing, approving, and processing all Claim Forms;
- h. Provide weekly reports to Class Counsel and Navy Federal that summarize the number of Claim Forms received, approved, and rejected, along with the number of opt-out requests received that week, the total number of opt-out requests received to date, and other pertinent information;
- i. In advance of the Final Approval Hearing, prepare a declaration to submit to the Court: (i) confirming the Notice Program was completed; (ii) describing how the Notice Program was completed; (iii) providing the names of each Accountholder in the Settlement Class who timely and properly opted-out from the Settlement Class; (iv) identifying how many Valid Claims were received and processed when the declaration is completed; (v) providing whether there are any objections to the Settlement; and (vi) providing other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- j. If necessary, do the *pro rata* calculations required for distributions of the Settlement Class Member Payments from the Net Settlement Fund using the Settlement Class Transactional Data;
- k. Following the Effective Date, distribute Settlement Class Member Payments;
- l. If Residual Funds exist after all Settlement Class Member Payments are made, pay the *cy pres* recipient;
- m. Pay invoices, expenses, and costs approved by Class Counsel and Navy

Federal, as provided in this Agreement; and

n. Any other Settlement-administration-related function at the instruction of Class Counsel and Navy Federal, including, but not limited to, verifying that the Settlement Fund has been distributed.

98. The Settlement Administrator shall invoice Class Counsel for all Settlement Administration Costs, which on approval, shall be payable out of the Settlement Fund.

VIII. Notice to the Settlement Class; Opt-Outs and Objections

99. Beginning no later than 45 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice agreed to by the Parties and approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claims Deadline; a date by which Accountholders in the Settlement Class may opt-out of the Settlement Class; a date by which Settlement Class Members may object to the Settlement and/or to Class Counsel's Application for Approval of Attorneys' Fees, Costs, and Service Awards; the date and time the Final Approval Hearing is scheduled to occur; and the Settlement Website URL at which the Settlement Class may access this Agreement and other related documents and information. Class Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based on those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

100. The Settlement Administrator shall establish the Settlement Website no later than

the day before Email Notice and/or Postcard Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted electronically through the Settlement Website as well as a printable version of the Claim Form that can be sent by U.S. mail to the Settlement Administrator.

101. The Settlement Administrator shall commence sending the Notices to each Accountholder on the Settlement Class List no later than 45 days after entry of the Preliminary Approval Order.

102. The Long Form Notice shall include a procedure for Settlement Class Members to opt-out of the Settlement. A member of the Settlement Class who wishes to opt-out of the Settlement must send an opt-out request by U.S. Mail or private courier (e.g., Federal Express) to the Settlement Administrator, stating the wish to be excluded from the Settlement Class. The opt-out request must be personally signed by the Settlement Class member and contain the name, postal address, email address (if any), telephone number, last four digits of the current or past account number(s), a brief statement identifying membership in the Settlement Class, and a statement that indicates a desire to be excluded from the Settlement Class. The letter can simply say, "I hereby elect to opt-out of the Settlement in Morrow, et al. v. Navy Federal Credit Union class action." The opt-out request must be postmarked by the last day of the Opt-Out Period. If submitted by mail, the opt-out request shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

103. The Long Form Notice also shall include a procedure for Settlement Class

Members to make a written objection to the Settlement and/or to the Application for Approval of Attorneys' Fees, Costs, and Service Awards, which must be submitted no later than the last day of the Objection Period, as specified in the Long Form Notice. The objection must be filed with or mailed to the Clerk of the Court and mailed to the Settlement Administrator. If submitted by mail, a written objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

104. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
 - b. the objector's full name, address, email address (if any), and telephone number;
 - c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling on the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Application for Approval of Attorneys' Fees, Costs and

Service Awards;

f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling on counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Navy Federal may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure including taking a deposition.

105. Notice shall be provided to Accountholders on the Settlement Class List in three different ways: (a) Email Notice to Accountholders for whom Navy Federal has email addresses; (b) Postcard Notice to those Accountholders for whom Navy Federal does not have email

addresses, or for whom the Email Notice is returned undeliverable; and (c) Long Form Notice with greater detail than the Email Notice and Postcard Notice, which shall be available on the Settlement Website and/or via mail on request by an Accountholder on the Settlement Class List. The Long Form Notice will be translated to Spanish language and a Spanish language notation will be made on the Postcard Notice and Email Notice regarding the available translated Long Form Notice. The Notices will direct the Settlement Class to submit Claims via the Settlement Website or by mail. Each Email Notice and Postcard Notice will have a unique identifier for each Settlement Class member to use when submitting Claims. Not all Accountholders on the Settlement Class List will receive all three forms of Notice, as detailed herein.

106. The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court, and substantially similar to the notice forms attached hereto as *Exhibits 1-3*. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

107. Once the Settlement Administrator has the Settlement Class List, the Settlement Administrator shall send out Email Notice to all Accountholders on the Settlement Class List receiving Notice by that method. For those Accountholders on the Settlement Class List for whom Navy Federal does not have email addresses, or for whom the Email Notice is returned undeliverable, the Settlement Administrator shall run the physical addresses provided by Navy Federal through the National Change of Address Database and shall mail Postcard Notice to all such Accountholders on the Settlement Class List.

108. The Settlement Administrator shall perform reasonable address traces for Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned Postcard Notices through the Lexis/Nexis database that can

be utilized for such purpose. No later than 60 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Accountholders in the Settlement Class whose new addresses were identified as of that time through address traces. The Settlement Administrator shall also send Postcard Notice to all Accountholders in the Settlement Class whose emails were returned as undeliverable and complete such Notice pursuant to the deadlines described herein as they relate to the Notice re-mailing process.

109. The Notice Program shall be completed no later than 60 days before the original date set for the Final Approval Hearing.

110. The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration by the Settlement Administrator in advance of the Final Approval Hearing and in support of the Motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior to the Final Approval Hearing. The database maintained by the Settlement Administrator regarding the Notices shall be available to the Court on request. It shall otherwise be confidential and shall not be disclosed to any third party as it contains bank account information for each Accountholder in the Settlement Class. Protecting checking account information is in the best interest of the Settlement Class.

IX. Claims Process and Disbursement of Settlement Class Member Payments

111. The Notice and the Settlement Website will explain to Accountholders on the Settlement Class List that they may be entitled to a Settlement Class Member Payment and how to submit a Claim Form to receive the payment.

112. A Claim Form may be submitted online through the Settlement Website or in paper copy through U.S. mail by sending them to the Settlement Administrator at the post office box mailing address designated in the Notice no later than the Claims Deadline.

113. The Claim Form shall disclose that Settlement Class Member Payments will be in the form of an Electronic Payment and that Settlement Class Members with Valid Claims will be sent an email to the email address provided in the Claim Form following the Effective Date requiring a selection from alternative forms of Electronic Payment approved by the Parties.

114. The Settlement Administrator shall collect, review, de-duplicate, and assess each Claim Form received to determine whether the Claim Form is a Valid Claim. The Settlement Administrator shall examine the Claim Form to ensure the Claim is properly submitted.

115. The Settlement Administrator shall make the final determination as to whether a Claim Form is a Valid Claim. The Settlement Administrator shall establish a reasonable procedure to determine whether any duplicate Claim Forms are submitted. In the event any Settlement Class Members submit duplicate Claim Forms, provided that at least one of those Claim Forms is timely submitted and completed within the requirements of this Agreement, then the Settlement Administrator shall approve the Claim.

116. Base Settlement Class Member Payment Calculation. All Settlement Class Members who submit a Valid Claim shall be eligible to receive a \$4.00 Base Settlement Class Member Payment. If there are not enough funds in the Net Settlement Fund to pay \$4.00 to each Settlement Class Member who submits a Valid Claim, each Base Settlement Class Member Payment shall be reduced *pro rata*. The reduced *pro rata* amount for Base Settlement Class Member Payments will be determined by dividing the total amount in the Net Settlement Fund by the number of total Valid Claims.

117. Additional Settlement Class Member Payment Calculation. If there remain funds in the Net Settlement Fund after calculating the total amount of Base Settlement Class Member Payments, the remainder of the Net Settlement Fund shall be payable to the Settlement Class Members who submitted Valid Claims *and* had more than \$4.00 in Actual ISA Fee(s) during the Class Period as an Additional Settlement Class Member Payment. For example, if there is \$3,000,000.00 in the Net Settlement Fund, and 500,000 Settlement Class Members submit Valid Claims, the \$1,000,000.00 remaining in the Net Settlement Fund shall be used for Additional Settlement Class Member Payments to those eligible Settlement Class Members. Provided there are sufficient funds remaining in the Net Settlement Fund, the Additional Settlement Class Member Payment shall be the amount equal to (and no more than) each of their respective Actual ISA Fee(s) (as determined by the Settlement Class Transactional Data) subtracted by \$4.00. For example, an eligible Settlement Class Member who had an Actual ISA Fee of \$6.50 will receive the \$4.00 Base Settlement Class Member Payment and a \$2.50 Additional Settlement Class Member Payment. If there are insufficient funds in the Net Settlement Fund to pay Settlement Class Members eligible for an Additional Settlement Class Member Payment the full amount of their respective Actual ISA Fee(s), the Additional Settlement Class Member Payments shall be reduced *pro rata* to exhaust the Net Settlement Fund. For example, if there were \$2,000,000.00 left over in the Net Settlement Fund after the Base Settlement Class Member Payments, and there were \$2,500,000.00 in Actual ISA Fee(s) not yet paid to the Settlement Class Members eligible for an Additional Settlement Class Member Payment, each such Settlement Class Member would receive 80% of their total Actual ISA Fee(s) over \$4.00. In this example, a Settlement Class Member who incurred \$8.00 in Actual ISA Fee(s) would receive \$4.00 for the Base Settlement Class Member Payment and \$3.20 for the Additional Settlement Class Member Payment.

118. No Settlement Class Member shall have a claim against Navy Federal, Navy Federal's Counsel, Plaintiffs, Class Counsel, and/or the Settlement Administrator based on the determinations, distributions, or awards with respect to any Claim Form. For the avoidance of doubt, in no event shall Navy Federal, Navy Federal's Counsel, Plaintiffs, or Class Counsel, have any liability for any claims of wrongful conduct (whether intentional, reckless, or negligent) on the part of the Settlement Administrator or its agents.

119. Settlement Class Members who do not submit timely Claim Forms will release their claims and will not receive a Settlement Class Member Payment.

120. No later than 30 days after the Effective Date, the Settlement Administrator shall deliver to the Parties a complete list of all Settlement Class Members who submitted Valid Claims. The Parties will then deliver to the Settlement Administrator within 30 days a list that contains the Actual ISA Fee for each Settlement Class Member with a Valid Claim to allow for the calculation of each Settlement Class Member Payment.

121. The Parties agree the foregoing payment allocation formula is exclusively for purposes of computing, in a reasonable and efficient fashion, the amount of any Settlement Class Member Payment each Settlement Class Member should receive from the Net Settlement Fund. The fact that this payment allocation formula will be used for this Settlement is not intended and shall not be used for any other purpose or objective whatsoever.

122. Settlement Class Member Payments to Current Accountholders and Past Accountholders will be made by Electronic Payment. Electronic Payments will be initiated by the Settlement Administrator no later than 90 days after the Effective Date by sending Settlement Class Members with Valid Claims an email to select from alternative forms of Electronic Payment. Settlement Class Members will have a period of 180 days to select their Electronic Payment. For

jointly held Accounts, Electronic Payments will be payable to Accountholders, and the Electronic Payment will be emailed to the email address listed on the Claim Form. In the event of any complications arising in connection with the issuance of an Electronic Payment, the Settlement Administrator shall provide written notice to Class Counsel and Navy Federal's Counsel. Absent specific instructions from Class Counsel and Navy Federal's Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them.

123. The amount of the Net Settlement Fund attributable to unclaimed and undeliverable Electronic Payments shall be held by the Settlement Administrator for up to one year from the date that the Settlement Administrator sends the first Electronic Payment. After one year from the date that the Settlement Administrator sends the first Electronic Payment, the amount of the Net Settlement Fund attributable to unclaimed and undeliverable electronic payments shall be treated as Residual Funds.

X. Disposition of Residual Funds

124. Subject to Court approval, within one year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any Residual Funds shall be distributed to Feeding America, in support of their No Plate Left Behind campaign, as a *cy pres* recipient.

125. The Parties agree that the distribution of any Residual Funds to the *cy pres* recipient is reasonable. Unless a Settlement Class Member objects to the *cy pres* award during the Objection Period, Settlement Class Members waive their right to challenge the distribution of any Residual Funds to the *cy pres* recipient.

XI. Final Approval Order and Final Judgment

126. Plaintiffs shall file their Motion for Final Approval of the Settlement, including the Application for Approval of Attorneys' Fees, Costs, and Service Awards and proposed Final Approval Order and Final Judgment, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Approval of Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Approval of Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all of the requirements set forth in the Agreement.

127. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Final Judgment, and whether to approve the Application for Approval of Attorneys' Fees, Costs and Service Awards. Such proposed Final Approval Order and Final Judgment shall, among other things:

- a. Determine the Settlement is fair, adequate and reasonable;
- b. Award the amounts of Attorneys' Fees and Costs Payment;
- c. Award the amounts of any Service Awards;
- d. Finally certify the Settlement Class for settlement purposes only;
- e. Determine the Notice Program satisfies the Due Process requirements of the Constitution of the United States;
- f. Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final

Approval Order and Final Judgment; bar and enjoin all Releasing Parties from pursuing any Released Claims against any of the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order and Final Judgment; and retain jurisdiction over the enforcement of the Court's injunctions;

g. Release the Released Parties from the Released Claims; and

h. Reserve the Court's continuing and exclusive jurisdiction over the Parties, all Settlement Class Members, and all objectors, for the sole purpose of administering, supervising, construing, and enforcing this Agreement in accordance with its terms.

XII. Service Awards; Attorneys' Fees and Costs

128. In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel may request Service Awards for the Class Representatives in the amount of up to \$5,000.00 each. If approved, the Service Awards shall be payable out of the Settlement Fund within 10 days of Final Approval. The Service Awards shall be separate and apart from any Settlement Class Member Payment.

129. Class Counsel shall submit for Court approval an application for attorneys' fees and costs in the amount of \$2,000,000.00, and Navy Federal agrees not to take a position on an application for that amount, allowing the appropriate amount to be determined by the Court. Any Attorneys' Fees and Costs Payment shall be payable by the Settlement Administrator to Class Counsel within 10 days of Final Approval.

130. This Settlement is not contingent on approval of the Application for Approval of Attorneys' Fees, Costs, and Service Awards, and if the Court denies the requests or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force.

The provisions for attorneys' fees, costs, and the Service Awards were not negotiated until after the material Settlement terms, including the amount of the Settlement Fund and the means of allocation and distribution.

XIII. Releases

131. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based on, or relate to the Released Claims.

132. The Releasing Parties covenant and agree that they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, or whether individually or collectively, against any person or entity, including of the Released Parties, in any jurisdiction, on or after the Effective Date.

133. Accountholders in the Settlement Class who opt-out of the Settlement within the Opt-Out Period do not release their claims and will not obtain any benefits under the Settlement. Settlement Class Members who do not submit a Valid Claim will release their claims and will not be sent a Settlement Class Member Payment.

134. With respect to the Released Claims, the Releasing Parties expressly understand and acknowledge that it is possible that unknown economic losses or claims exist or that present

losses may have been underestimated in amount or severity. Each of the Releasing Parties explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between the Parties with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Releasing Parties shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code to the extent it is applicable, and any other similar provision under federal, state or local law, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

135. Releasing Parties may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the Released Claims, or the law applicable to such claims may change. Nonetheless, each of the Releasing Parties agree that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of the Releasing Parties agrees and acknowledges that he or she shall be bound by this Agreement, including by the

Releases herein, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement so long as the Notice Program is effectuated pursuant to the terms of this Agreement and/or never receives a Settlement Class Member Payment.

136. As of the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against any person or entity, including the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, or whether individually or collectively, in any jurisdiction, including in any federal, state, or local court or tribunal.

XIV. Termination of the Settlement

136. This Settlement may be terminated by either Plaintiffs or Navy Federal by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between the Parties) after any of the following occurrences:

- a. the Parties agree to termination;
- b. the Court rejects, materially modifies, materially amends, or changes, or declines to grant Preliminary Approval or Final Approval;
- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;

d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Plaintiffs or Navy Federal seeking to terminate the Settlement reasonably considers material;

e. the Effective Date does not occur; or

f. any other ground for termination provided for elsewhere in this Agreement.

137. Navy Federal also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 15 days after its receipt from the Settlement Administrator of any report indicating that the number of Accountholders in the Settlement Class who timely opt-out from the Settlement Class equals or exceeds 5% of the total Accountholders in the Settlement Class.

XV. Effect of Termination

138. The grounds on which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, and Navy Federal's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

139. In the event of termination, Navy Federal shall have no right to seek reimbursement from Plaintiffs, Class Counsel, or the Settlement Administrator, for Settlement Administration Costs paid by Navy Federal. After payment of any invoices or other fees or costs mentioned in this Agreement that have been incurred and are due to be paid from the Settlement Fund, to the extent any such fees or costs have been incurred, the Settlement Administrator shall return the balance of

the Settlement Fund to Navy Federal within 7 days of termination.

140. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

141. Certification of the Settlement Class shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional Settlement Class certification shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Agreement. Thereafter, Plaintiffs shall be free to pursue any claims available to them, and Navy Federal shall be free to assert any defenses available to it, including, but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims and defenses.

142. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XVI. No Admission of Liability; Reservations of Rights

143. This Agreement reflects the Parties' and Settlement Class Members' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Navy Federal has denied and continues to deny each of the claims and contentions alleged in the Complaint. Navy Federal specifically denies that a class could or should be certified in the Action for litigation purposes. Navy Federal does not admit any liability or wrongdoing of any kind, by this Agreement or

otherwise. Navy Federal has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action as to the Released Claims.

144. Plaintiffs and Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims and conducted discovery. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

145. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.

146. Neither the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim or assertion made by the Plaintiffs or Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

XVII. Miscellaneous Provisions

147. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

148. Binding Effect. This Agreement shall be binding on, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

149. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

150. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have so consulted.

151. Integration and No Reliance. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

152. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

153. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the Commonwealth of Virginia,

without regard to the principles thereof regarding choice of law.

154. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

155. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order and Final Judgment.

156. Notices. All notices provided for herein, shall be sent by email and a hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

Sophia Gold
KALIELGOLD PLLC

950 Gilman St., Suite 200
Berkeley, CA 94710
sgold@kalielgold.com

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1 W. Las Olas Blvd., Ste. 500
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11 N Market Street
Asheville, NC 28801
dwilkerson@vwlawfirm.com

If to Navy Federal Credit Union:

Michael Gottlieb
Meryl Goverski
WILLKIE FARR & GALLAGHER LLP
1875 K. Street, N.W.
Washington, DC 20006-1238

Nicholas Reddick
WILLKIE FARR & GALLAGHER LLP
One Front Street
San Francisco, CA 94111

The notice recipients and addresses designated above may be changed by written notice.

By the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, opt-out requests, or other submissions received as a result of the Notice Program.

157. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Navy Federal's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

158. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

159. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and Navy Federal's Counsel (for Navy Federal), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Navy Federal to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

160. Agreement Mutually Prepared. Neither Plaintiffs nor Navy Federal shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

161. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. The Parties agree that this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now

and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

162. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

163. Confidentiality Designations. All designations and agreements made, or orders entered during the course of the Action, relating to confidentiality of documents or information produced during the South Carolina Action and Virginia Action shall survive this Settlement.

164. Arm's-Length Negotiation. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations among the Parties and the Parties' respective counsel, and all Parties have contributed substantially and materially to the preparation of this Agreement.

165. Anti-Disparagement. While retaining their right to deny that the claims asserted in the Action were meritorious, Navy Federal and Navy Federal's Counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. While retaining their right to assert that the claims asserted in the Action had merit,

Plaintiffs and Class Counsel will not assert that the Action was defended in bad faith, shall not suggest that the Settlement constitutes an admission of any claim or defense alleged, and will not assert that Navy Federal's ISA Fee practices during the Class Period were made or effectuated in bad faith. In all events, Plaintiffs and Class Counsel and Navy Federal and Navy Federal's Counsel shall not make any accusations of wrongful or actionable conduct by either party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

Signature Page Follows

PLAINTIFFS

Siobhan Morrow
Siobhan Morrow (Nov 20, 2023 17:41 PST)

SIOBHAN MORROW

MARIA HART
MARIA HART (Nov 20, 2023 20:37 EST)

MARIA HART

Tracee Le Flore
Tracee Le Flore (Nov 20, 2023 19:33 CST)

TRACEE LE FLORE

CLASS COUNSEL

Sophia Gold
Sophia Gold (Nov 20, 2023 19:44 PST)

SOPHIA GOLD
KALIELGOLD PLLC

Jeffrey Ostrow
Jeffrey Ostrow (Nov 20, 2023 20:31 EST)

JEFF OSTROW
KOPELOWITZ OSTROW P.A.

Eddie Kim
Eddie Kim (Nov 20, 2023 17:38 PST)

EDDIE JAE K. KIM
LYNCH CARPENTER LLP

David Wilkerson
David Wilkerson (Nov 21, 2023 02:32 EST)

DAVID WILKERSON
THE VAN WINKLE LAW FIRM

NAVY FEDERAL CREDIT UNION

BY: _____
ITS: _____

DEFENDANT'S COUNSEL

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MARIA HART

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BY: *Olivia Miller*
ITS: D9BDEC8159CCAF5 Associate General Counsel

DEFENDANT'S COUNSEL

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Michael Gottlieb

MICHAEL GOTTLIEB
WILLKIE FARR & GALLAGHER LLP