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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

13 SHARLENE SANCHEZ, individually,
14 and on behalf of all others similarly
situated,

15 Plaintiff,

16 v.

17 NAVY FEDERAL CREDIT UNION,

18 Defendant.

Case No.

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

1 Plaintiff SHARLENE SANCHEZ (“Plaintiff”) brings this complaint, by and
2 through her attorneys and on behalf of all others similarly situated, against Defendant
3 Navy Federal Credit Union (“Navy Federal,” or “Defendant”) and alleges upon
4 information and belief as follows:

5 **INTRODUCTION**

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

11 2. But Navy Federal was eager to encourage its accountholders to sign up for and
12 use the new Zelle payment service, which allowed consumers to make Navy Federal
13 debit card transactions via Zelle. Aware that consumers like Plaintiff would be hesitant
14 to adopt a new payment methodology without assurances that the methodology could
15 be trusted, Navy Federal and Zelle marketed Zelle as trustworthy (“backed by the
16 banks” and “safe”) and made express contract promises that accountholders using Zelle
17 would have “Zero Fraud Liability” and all the same protections as exist for disputed
18 debit card transactions.

19 3. Navy Federal reneged on these promises.

20 4. Having lured Navy Federal accountholders to sign up for and use the Zelle
21 service with deceptive and incomplete marketing and contract promises, the Credit
22 Union has failed victims of Zelle fraud. When such victims make a claim for Zelle
23 fraud, Navy Federal denies the claim immediately without conducting a full and
24 reasonable investigation and often times without even offering access to the same
25 provisional credit and dispute resolution process applicable to all other debit card
26 transactions. As occurred with Plaintiff, Navy Federal summarily rejects fraud claims
27 without explanation or recourse.
28

1 5. These policies and practices contradict Navy Federal’s marketing promises,
2 contract promises, and duty of care owed.

3 6. These policies and practices also violate the Electronic Fund Transfer Act
4 (“EFTA”) a statute with the purpose of “provid[ing] a basic framework establishing
5 the rights, liabilities, and responsibilities of participants in electronic fund and
6 remittance transfer systems.” *Id.* § 1693(b). “The primary objective of [the EFTA] is
7 the provision of individual consumer rights.” *Id.*

8 7. Plaintiff and the Class members have been injured by signing up for and using
9 Zelle. Plaintiff brings this action on behalf of herself, and the putative Classes, because
10 Plaintiff should not be left “holding the bag” for fraudulent transactions.

11 8. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction
12 on behalf of the general public to prevent Navy Federal from continuing to engage in
13 its illegal practices as described herein.

14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over the subject matter of this action pursuant to 28
16 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000, exclusive
17 of interest and costs, and is a class action in which at least one member of the class is
18 a citizen of a different State than Navy Federal. The number of members of the
19 proposed Classes in aggregate exceeds 100 users. 28 U.S.C. § 1332(d)(5)(B).

20 10. This Court has personal jurisdiction over the Navy Federal because it regularly
21 conducts and/or solicits business in, engages in other persistent courses of conduct in,
22 and/or derives substantial revenue from products and/or services provided to persons
23 in this District.

24 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because
25 Navy Federal is deemed to reside in any judicial district in which they are subject to
26 personal jurisdiction and substantial part of the events or omissions giving rise to the
27 claims occurred in this District.

28 **PARTIES**

1 12. Plaintiff Sharlene Sanchez is, and at all times mentioned herein a natural person,
2 individual citizen and resident of Murrieta, California.

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

7 **ZELLE – THE FAVORITE APP OF FRAUDSTERS AND A MONEYMAKER FOR THE**
8 **CREDIT UNION**

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

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

16 16. Nearly 18 million people have been hit by "widespread fraud" on money transfer
17 apps, according to a letter sent in late April to Zelle's network operator Early Warning
18 Services by U.S. Sens. Elizabeth Warren of Massachusetts, Robert Menendez of New
19 Jersey, and Jack Reed of Rhode Island.³

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

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

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

³ Letter from Elizabeth Warren, Robert Menendez, Jack Reed, Sen., U.S. Cong., to Al Ko, CEO,
Early Warning Services (April 2, 2022).

1 18. The 1,700 banks and credit unions who are members of the Zelle network,
2 including Navy Federal, know full well that they have a widespread fraud problem on
3 their hands, but have misrepresented and failed to take steps to warn their
4 accountholders of these risks—or protect their accountholders who fall prey to fraud.

5 19. The rampant fraud on Zelle is only escalating, according to an October 2022
6 senate report. Data provided by several banks revealed the rapidly increasing extent of
7 fraud on the platform. The four banks that reported the relevant data received scam and
8 fraud claims in excess of \$90 million in 2020, and are on pace to receive scam and
9 fraud claims in excess of \$255 million in 2022.⁴

10 20. In short, and unbeknownst to average Zelle users, but fully known to Navy
11 Federal, the Zelle network has become a preferred tool for fraudsters like romance
12 scammers, cryptocurrency con artists and those who use social media sites to advertise
13 fake concert tickets and purebred puppies—or simply for those who steal phones and
14 computers and use their access to drain money from accounts via Zelle.

15 21. As one U.S. Senator said to CEOs of some of the banks that own Zelle: “Zelle
16 is not safe. You built the system, you profit from every transaction on the system and
17 you tell people that it is safe. But when someone is defrauded, you claim that’s the
18 customer’s problem,” said Senator Elizabeth Warren, during a Senate Banking
19 Committee hearing in September 2023.

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

25 23. Led by Idaho Attorney General Lawrence Wasden and Oregon Attorney General
26 Ellen Rosenblum, a bipartisan coalition of thirty-three (33) attorneys general wrote the
27

28 ⁴ “Facilitating Fraud: How Consumers Defrauded on Zelle are Left High and Dry by the Banks that Created It,” Office of Sen. Elizabeth Warren.

1 Consumer Financial Consumer Protection Bureau (“CFPB”), calling for stronger
2 consumer safeguards for money sharing platforms and apps like Zelle. The letter,
3 written in response to the CFPB’s request for comments on its inquiry into “Big Tech
4 Payment Platforms,” noted a rise in complaints against popular payment apps including
5 Zelle. The letter highlighted that: “[m]any consumers have been scammed out of
6 hundreds or thousands of dollars by other users of these payment platforms [like Zelle].
7 ***Scammers are attracted to real-time payment platforms, in large part, because they***
8 ***do not need to reveal their true identity to set up an account*” (emphasis added).**

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

13 25. A common version of the utility scam involves fraudsters, posing as utility
14 company employees, initially contacting customers via text message, then by phone
15 call and asking them to make missed payments via Zelle.

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

22 27. Zelle is plagued with fraud, including repeat, well-known, and common scams,
23 such as the ones mentioned above, that Navy Federal was aware of but never warned
24 its customers about.

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26
27 ⁵ Better Business Bureau, *BBB Scam Alert: Crafty New Scam Targeting Facebook Marketplace*
28 *Sellers* (June 24, 2022), <https://www.bbb.org/article/scams/27212-scam-alert-how-to-spot-shady-buyerson-facebook-marketplace> (last accessed November 21, 2022)

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

6 29. The unique, misrepresented, and undisclosed architecture of the Zelle payment
7 system and Navy Federal's own fraud policies means—unlike other payment options
8 commonly used by American consumers—that virtually any money transferred for any
9 reason via Zelle is gone forever, without recourse, reimbursement or protection for
10 victimized accountholders.

11 30. Banks and credit unions have a huge financial incentive to offer customers Zelle
12 as part of their wider suite of banking services. Indeed, Early Warning Services (which
13 operates Zelle) pitches Zelle to financial institutions with data claiming that “customers
14 using Zelle are more profitable and stay with the financial institution longer.”⁷

15 31. Zelle saves money for banks and credit unions as they spend less in other
16 transaction costs, for example, on stocking ATMs with cash, as the head of Enterprise
17 Payments at a national bank noted about Zelle.⁸

18 32. Zelle also saves participating financial institutions money by minimizing the
19 fees the banks and credit unions are charged for competitor digital payment apps and
20 helps reduce other costly physical services like paper checks.

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22
23 ⁶ *DTE impersonators drained Rochester Hills woman's checking account using Zelle app*, Detroit
24 Free Press (June 30, 2022), <https://www.freep.com/story/money/personal-finance/susan-tompor/2022/06/30/utility-shutoff-scam-stole-cash-via-zelle/7714138001/> (last accessed September 7, 2022).

25 ⁷ *Zelle® Closes 2020 with Record \$307 Billion Sent on 1.2 Billion Transactions*, (March 19, 2021)
26 <https://www.zellepay.com/press-releases/zeller-closes-2020-record-307-billion-sent-12-billion-transactions> (last accessed February 6, 2022).

27 ⁸ *What's Zelle? Banks hope commercials get customers to notice the app*, Reuters, (January 29,
28 2018) <https://www.reuters.com/article/us-usa-banks-payments-zelle/whats-zelle-banks-hope-commercials-get-customers-to-notice-the-app-idUSKBN1FI0GB> (last visited February 6, 2023).

1 33. Banks and credit unions also viewed Zelle as an entry point to drive members to
2 their mobile app to maintain a central role in their financial lives.

3 34. Ultimately, financial institutions offer Zelle to attract and retain customers, and
4 when their customers use it, banks and credit unions like Navy Federal profit.

5 **NAVY FEDERAL’S FALSE AND MISLEADING ZELLE MARKETING AND DECEPTIVE**
6 **SIGN-UP PROCESS EXPLOITED ACCOUNTHOLDERS’ TRUST AND LURED**
7 **ACCOUNTHOLDERS TO SIGN UP FOR AND USE ZELLE**

8 *Mass Marketing*

9 35. Zelle was introduced to the American public with a massive advertising blitz
10 starting in 2018. Navy Federal and partner financial institutions marketed Zelle as a
11 safer alternative to other instant payment apps and other payment methods “because
12 it’s backed by the banks.”

13 36. Marketing for Zelle is jointly designed and promulgated by Zelle and member
14 banks. The advertisements exploit accountholders’ existing trust in their financial
15 institutions and focus on reinforcing that it’s a trusted bank-backed app: “We do our
16 own campaigns and we also work closely with banks and credit unions to give them
17 materials and messaging to reach their customers.” Stated Melissa Lowry, Vice-
18 President of Marketing and Branding at Early Warning Services, “***People can hear***
19 ***about Zelle from their banks and credit unions that they already know and trust.***”⁹

20 37. Navy Federal and Zelle leveraged consumer trust of their existing financial
21 institution to attract users: “Trust is at the heart of the consumer payment relationship,”
22 said Ravi Loganathan, Head of Business Intelligence at Early Warning Services. “Our
23 research showed that new segments of consumers engaged in a P2P payment for the
24
25

26 _____
27 ⁹ *Zelle’s Melissa Lowry: ‘Beyond awareness, we’re trying to show how we make everyday better,’*
28 Tear Sheet (March 21, 2019), <https://tearsheet.co/podcasts/zelles-melissa-lowry-beyond-awareness-were-trying-to-show-how-we-make-everyday-better> (last accessed February 16, 2023).

1 first time because it was offered from their known and trusted mobile banking
2 environment[.]”¹⁰

3 38. Whether the consumer wants it or not, Zelle comes integrated into Navy
4 Federal’s app and online banking website, unlike other peer-to-peer payment apps
5 which require downloading a third-party app.

6 39. Moreover, Navy Federal’s embedding of Zelle into its mobile app and website
7 deceives consumers into perceiving Zelle as an extension of their traditional banking
8 services: “In our research, we learned that people who are peer-to-peer skeptics are
9 those resistant to using something outside traditional banking,” said Rose Corvo, Chief
10 Administrative Officer for Early Warning. “The fact that they have it in their banking
11 app — that gets through the safety barriers in mind.”

12 40. In other words, Zelle and Navy Federal marketed Zelle with a fundamental pitch:
13 we are your trusted financial institution, and we would not offer you a product that was
14 not as “safe” as other products offered by Navy Federal.

15 41. Aggressive marketing touted Zelle’s bank-backed safety and security. In one TV
16 commercial that aired in January 2018, performer Daveed Diggs from the Broadway
17 show *Hamilton* rapped, “You can send money safely cause that’s what it’s for / It’s
18 backed by the banks so you know it’s secure.”

19 42. Plaintiff recalls viewing this advertisement and understood the promise of
20 “safety” and “backed by the banks” to refer to fraud and dispute resolution protection
21 as existed with other Navy Federal payment methods like debit cards and credit cards.

22 43. The general public and its leaders also reasonable understood the Zelle “safety”
23 promises to refer to fraud protection. As Senator Elizabeth Warren said to CEOs of
24 some of the banks that own Zelle, during a Senate Banking Committee hearing in
25 September 2022: “Zelle is not safe. You built the system, you profit from every
26

27
28 ¹⁰ *Zelle® Study Finds Growing Use of Digital Payments Across Generations* (July 11, 2018),
<https://www.zellepay.com/press-releases/zelle-study-finds-growing-use-of-digital-payments-across-generations> (last accessed February 16, 2023).

1 transaction on the system and you tell people that it is safe. But when someone is
2 defrauded, you claim that's the customer's problem."

3 Marketing During the Use of the Navy Federal App and Website and During
4 Zelle Sign-up

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

7 45. Navy Federal's mobile app and online banking website feature numerous
8 invitations and advertisements to sign up for and use the Zelle service.

9 46. In its marketing about Zelle and during the Zelle signup process within the Credit
10 Union's mobile app and website, Navy Federal makes repeated promises that Zelle is
11 a "fast, **safe** and easy way to send and receive money" (emphasis added).

12 47. It also promises: "Move money in the moment. Simply and **Securely** – with lots
13 of people you know" (emphasis added).

14 48. Plaintiff recalls viewing both these statements prior to signing up for and using
15 Zelle and understood them to refer to fraud and dispute resolution protection as existed
16 with other Navy Federal payment methods like debit cards and credit cards.

17 49. At no time in its marketing or during the sign-up process does Navy Federal
18 warn potential users of the true security risks of using the Zelle service—including the
19 immediate and acute risk of fraud, the dangerous architecture of the system (described
20 above) and the risk that fraudulent losses will never be reimbursed by Navy Federal,
21 and the risk that Zelle debit card transactions are much less safe than other payment
22 methods offered by Navy Federal.

23 50. Navy Federal misrepresents (and omits facts about) the true nature, benefits, and
24 risks of the Zelle service, functioning of which means that users are at extreme and
25 undisclosed risk of fraud when using Zelle. *Had Plaintiff been adequately informed of*
26 *these risks, she would not have signed up for or used Zelle.*

27 51. Navy Federal's marketing representations about Zelle—including within its app
28 and website—misrepresent and never disclose these risks and material facts, instead

1 luring accountholders to sign up for and use the service with promises of ease, safety
2 and security.

3 52. These representations—which all users view, including Plaintiff, during the
4 sign-up process—are false and contain material omissions.

5 53. Navy Federal misrepresents the true nature, benefits and risks of the service,
6 which burden users with an extreme and undisclosed risk of Zelle causing losses due
7 to fraud. Plaintiff would not have used Zelle if she had been adequately informed of
8 the risks.

9 54. Navy Federal’s misrepresentations and omissions are especially pernicious
10 because Navy Federal alone knows material facts regarding Zelle—including rampant
11 fraud, the fact that fraud-induced Zelle transfers will almost never be reimbursed to
12 accountholders, and the fact that Zelle debit card transactions are verifiably less
13 protected and less safe than other payment methods offered by the credit union. Navy
14 Federal intentionally concealed those dangers and risks from Plaintiff and Class
15 members to induce them into signing-up for and using Zelle.

16 **NAVY FEDERAL HAS IGNORED REGULATORY GUIDANCE**

17 55. Navy Federal refuses to help when consumers send money to the wrong person
18 or the wrong account whether it was an accident or because they were tricked into
19 making the transfer.

20 56. Erroneous Electronic Fund Transfers (“EFT”) are easy to make with Zelle – a
21 service that prioritizes convenience and speed over safety and security, despite its
22 marketing promises.

23 57. Regulation E imposes the duty to investigate and resolve “errors” which includes
24 “an incorrect electronic fund transfer to or from the consumers account.” 12 C.F.R. §
25 1005.11(a)(1)(ii).

26 58. Nothing in the EFTA excludes consumer errors. *See id.*, (a)(2) (excluding as
27 “error” a routine inquiry about the consumer’s account balance, a request for
28

1 information for tax or recordkeeping purposes, or a request for duplicate copies of
2 documentation).

3 59. Errors are easy to make with Zelle when all that's needed to send money is
4 nothing more than an email or phone number.

5 60. Despite Navy Federal's duty to investigate and resolve "errors," Navy Federal
6 has failed to do so leaving Plaintiff and Class Members on the hook for hundreds or
7 even thousands of dollars.

8 61. On information and belief, Navy Federal does not reimburse consumers for
9 losses from incorrect EFTs, even where the losses are timely reported by consumers.

10 **NAVY FEDERAL BREACHES CONTRACT PROMISES THAT DEBIT CARD-LINKED**
11 **ZELLE TRANSACTIONS COME WITH ZERO FRAUD LIABILITY AND THE SAME**
12 **PROTECTIONS AS OTHER DEBIT CARD TRANSACTIONS, INCLUDING A ROBUST**
13 **DISPUTE RESOLUTION PROCESS**

14 62. In addition to marketing promises, Navy Federal makes strong contract promises
15 that Zelle transactions processed as debit card transactions will come with robust fraud
16 and dispute resolution protections.

17 63. For all accountholders like Plaintiff with an active debit card, Navy Federal
18 processes Zelle transactions as a debit card transaction.

19 64. Navy Federal expressly promises accountholders as much in the Zelle
20 Agreement, attached hereto as **Exhibit 1**:

21 This Agreement includes, and your use of the Zelle and Other Payment
22 Services is subject to, the terms of the Important Disclosures (NFCU 606);
23 Mobile Banking, Online Banking, and Bill Pay Terms and Conditions
24 (NFCU 652A); and Debit Card Disclosure (NFCU 210AB) that apply to
25 your use of the Zelle and Other Payment Services and the portion of the
Site through which the Zelle and Other Payment Services are offered.

26 By providing us with names, mobile phone numbers, and/or email
27 addresses of recipients to whom you wish to send a payment, you authorize
28 us to initiate a payment through the Zelle Payment Service. When we
initiate a payment on your behalf, you authorize us to debit your Eligible

1 Transaction Account for the amount of any such payment and to send funds
2 to the Eligible Person’s financial institution. If you have an activated Navy
3 Federal Debit Card, your payment will be processed as a debit card
4 transaction. If you do not have an activated Navy Federal Debit Card, your
5 payment will be sent as an ACH transaction.

6 Zelle Agreement at 8.

7 65. Navy Federal therefore reasonably promised that Zelle transactions processed as
8 debit card transactions would receive the same fraud and dispute resolution protections
9 as all other debit card transactions. Indeed, neither the Zelle Agreement nor the Debit
10 Card Agreement exclude Zelle transactions processed as debit card transactions from
11 the normal protections afforded all debit card transactions.

12 66. Debit card transactions at Navy Federal, as with all other banks and credit
13 unions, come with extensive fraud and dispute resolution protections.

14 67. The Debit Card Disclosure in effect at the time of Plaintiff’s alleged Zelle
15 transactions, attached as **Exhibit 2**, makes a simple, straightforward “Zero Liability”
16 promise for debit card transactions: “Navy Federal’s Zero Liability Policy for Fraud:
17 [I]f you notify us of suspected fraud within 60 days of the statement date on which the
18 fraudulent transactions first appear, *we will not hold you responsible for confirmed*
19 *fraudulent transactions.*” Debit Card Disclosure at para. 15 (emphasis added).

20 68. Navy Federal, however, never provided “Zero Liability for Fraud” protections
21 to Zelle debit card transactions, despite the fact that Plaintiff promptly notified Navy
22 Federal that she had been defrauded and that she “suspected fraud.”

23 69. Separately, the Debit Card Agreement in effect at the time of Plaintiff’s alleged
24 Zelle transactions also promises a robust resolution process for debit card transactions
25 that the accountholder “disputes”:

26 Disputed transactions that are not covered by our Error Resolution Process
27 such as defective, damaged, or non-receipt of merchandise or services, or
28 items received “not as described” will be handled at our discretion. Please

1 first make a good faith attempt to resolve discrepancies with the merchant.
2 If your good faith attempt is not successful, we may use our dispute
3 resolution process to act on your behalf and pursue recovery of funds from
4 the merchant, based on your statement supporting your claim, as well as
5 any documentation we may request. We may not be able to recover your
6 funds. We will report the results of the dispute resolution process to you
7 within 120 days; however, we are not obligated to issue a Provisional
8 Credit during the dispute resolution process.

7 *Id.*, at para. 17.

8
9 70. The Debit Card Agreement in effect prior to the 2021 update never stated that
10 Zelle transactions were not eligible for Zero Fraud Liability protection, purchase
11 protection or the dispute resolution process.

12 71. These provisions are and were reasonably understood by Plaintiff to mean that
13 Zelle transfers effectuated via a Navy Federal debit card would be treated in the same
14 manner as all other debit card transactions, with the same protections and same
15 resolution process procedures.

16 72. In addition to its promises of Zero Fraud Liability for debit card purchases, Navy
17 Federal also offers a robust dispute resolution and chargeback process for debit card
18 purchases. But it fails to provide that dispute resolution and chargeback process for
19 debit card-linked Zelle transactions.

20 73. Because Navy Federal's contract expressly states that Zelle transactions will be
21 processed as debit card transactions (as described above), Navy Federal reasonably
22 promised to treat disputed Zelle transactions made via debit card in the same manner
23 as other debit card transactions.

24 74. Plaintiff reasonably believed, therefore, that debit card-linked Zelle transactions
25 would provide her with the same protections as Navy Federal provides for other debit
26 card transactions. Those fraud and dispute protections for all other debit card
27 transactions are robust.

28 75. Navy Federal, like all banks and credit unions, offers a robust dispute resolution

1 and “chargeback” process for debit card and credit card purchases. It works like this: a
2 cardholder contacts their bank or credit union to dispute a transaction, claiming that it
3 resulted from fraud or abuse. The bank or credit union then pulls the funds from the
4 merchant’s account, and returns them to the cardholder’s account, or otherwise refunds
5 the accountholder.

6 76. In short, a debit card chargeback is a debit card charge that has been reversed by
7 a bank or credit union. Chargebacks offer a critical layer of consumer protection,
8 ensuring consumer confidence in payment card technology.

9 77. Navy Federal routinely “charges back” debit card transactions disputed by
10 accountholders, for any number of reasons, including shoddy or missing merchandise.
11 With respect to debit card transactions, Navy Federal’s policy and practice is to allow
12 consumers to dispute debit card transactions for numerous reasons.

13 78. In fact, Navy Federal goes to great lengths to recover their customers’ money, or
14 reimburse them for the loss even where recovery is impossible, for disputed debit card
15 transactions.

16 79. As part of this process, any Navy Federal member can dispute a debit card
17 purchase. Once a member notifies Navy Federal of a problem with a debit card
18 transaction, the credit union produces and provides the Form NFCU 628a for
19 accountholders to lodge a dispute, attached hereto as **Exhibit 3**.

20 80. As a reason for a debit card charge dispute, Form NFCU 628a allows
21 accountholders to select from numerous options including, “Cancellation,” “Returned
22 Merchandise,” “Non-Receipt of Goods or Services,” and “Quality of Services or
23 Goods.”

24 81. The dispute options, therefore, cover circumstances in which an accountholder
25 makes a purchase, but did not receive what was bargained for.

26 82. Upon information and belief, Navy Federal automatically issues provisional
27 credits and affirms those provisional credits for virtually all debit card transactions
28 disputed by accountholders. It does this routinely and as a matter of policy.

1 83. There is, however, one major exception that exists as a result of a secret policy
2 adopted by Navy Federal: the credit union refuses to issue provisional credits for Zelle
3 debit card transactions.

4 84. Without ever informing accountholders, Navy Federal also excludes Zelle debit
5 card transactions from the debit card dispute resolution process altogether.

6 85. Navy Federal never offered or provided a Form NFCU 628a for Plaintiff to fill
7 out when she disputed her Zelle debit card transaction. In fact, as explained below, it
8 immediately informed Plaintiff that any dispute claim would be rejected, it never asked
9 for support or for documentation, never performed any investigation, and never made
10 any attempt to recover her stolen money.

11 86. Despite contractual promises to the contrary (including the implied covenant of
12 good faith and fair dealing), Navy Federal completely failed to provide Zelle debit card
13 transactions the same protections and dispute resolution as all other debit card
14 transactions.

15 87. Nor did Navy Federal ever warn that debit card-linked Zelle transactions would
16 be excluded from debit card protections offered on all other purchases.

17 88. Indeed, not until late 2021 did Navy Federal ever even attempt to state in the
18 Debit Card Agreement what had been the truth all along: it had a corporate policy of
19 excluding Zelle debit card purchases from the dispute resolution process all along.

20 89. In late 2021, Navy Federal added a single paragraph to its Debit Card Agreement
21 stating:

22 Transaction(s) conducted through a person-to-person payment service
23 provider that transfers funds, such as the Zelle® network and Cash App, is
24 intended for use among friends and family. There are no protections or
25 warranties for the purchase of goods and services. Navy Federal is unable
26 to pursue these merchants or the 3rd party recipient for recovery on your
behalf through the dispute process.

27 90. This late attempt to quietly add an exclusion for Zelle debit card purchases
28

1 confirms that even Navy Federal believed prior versions of the Debit Card Agreement
2 never contained such an exclusion.

3 91. Moreover, Navy Federal did not reasonably notify existing accountholders of
4 this material change to the Debit Card Agreement in late 2021. It therefore did not
5 become effective for any existing Navy Federal accountholder.

6 92. Additionally, the Zelle Agreement also promises that Navy Federal will take
7 active steps to detect and prevent fraud, which it failed to do: “the [Zelle] transfer may
8 be blocked to prevent fraud or comply with regulatory requirements. If we delay or
9 block a payment that you have initiated, we will notify you by email or text message
10 and may request you or the recipient to take additional action.” *Zelle Agreement* at 10.

11 93. Navy Federal has adopted an investigations apparatus that almost always rejects
12 valid claims, in breach of the implied covenant.

13 **PLAINTIFF SANCHEZ’S FACTUAL ALLEGATIONS**

14 94. When Plaintiff Sanchez signed up for Zelle she was not informed that Zelle’s
15 service had a significant “catch” and that significant monetary losses could result from
16 signing up for the service—or that those losses almost never are reimbursed by Navy
17 Federal.

18 95. For example, on or about April and May, 2022, Plaintiff used her Navy Federal
19 debit card to transfer approximately \$3,500 from Plaintiff’s personal bank account
20 using the Zelle service.

21 96. Plaintiff was seeking employment opportunities online.

22 97. While browsing LinkedIn for potential roles, Plaintiff came across a job with a
23 company named, Appen purporting to be recruiting potential job candidates. Before
24 submitting a job application with Appen, Plaintiff reviewed its website and LinkedIn
25 page.

26 98. Plaintiff called Appen’s number on its website and spoke with its representative.

27 99. After conducting two interviews with Appen, she was purportedly extended an
28 offer of employment.

1 100. The position was a remote chat customer support role. Accordingly, Plaintiff
2 needed necessary equipment before commencing her job, such as laptops and phones.

3 101. Appen informed Plaintiff that she needed to pay her work equipment and
4 applicable shipping costs before starting her job, but assured her that Appen would
5 reimburse her.

6 102. Thus, over the span of a few weeks, Plaintiff made numerous debit-card linked
7 Zelle transfers to Appen under the impression that she would be receiving necessary
8 equipment for her future job.

9 103. Plaintiff received doctored invoices and tracking labels from Appen.

10 104. In total, Plaintiff sent more than \$3,500.00 to Appen via debit-card linked Zelle
11 transfers.

12 105. However, after a few weeks, Plaintiff grew weary as she never received any of
13 the equipment. When she began asking Appen about the status of her work equipment,
14 Appen always had an excuse.

15 106. Eventually, Plaintiff called a number from Appen she found online and spoke
16 with representatives at the real Appen who informed her that they had not hired anyone
17 recently and were not aware of Plaintiff's purported job offer.

18 107. At this point, Plaintiff realized that she was never going to receive the equipment
19 and that she fell victim to fraud at the hands of the purported Appen.

20 108. Plaintiff timely alerted Navy Federal of the erroneous and fraudulent transfers
21 who immediately informed Plaintiff that Navy Federal "can't do anything" to retrieve
22 her funds, but after Plaintiff insisted, it opened up a fraud claim on her behalf and
23 provisionally credited her account for the fraudulent Zelle transfers.

24 109. Navy Federal refused to reimburse her for the losses, refused to treat her Zelle
25 debit card transaction like every other disputed debit card transaction, and even refused
26 to conduct a reasonable investigation or attempt to recoup her money.

27 110. Navy Federal never offered or provided a Form NFCU 628a for Plaintiff to
28 report the disputed Zelle transactions.

1 111. For weeks, Plaintiff repeatedly requested updates and information regarding her
2 claim and Navy Federal’s investigation, but Navy Federal failed to update Plaintiff.

3 112. Indeed, after about four months, Plaintiff received a text message alert that her
4 account was over drafted. When she reviewed her account balance, she noticed that
5 Navy Federal debited all the Zelle transactions she disputed from her account,
6 reversing the provisional credits she had received.

7 113. On September 7, 2022, Navy Federal communicated the denial to Plaintiff by
8 letter, which stated in relevant part that: “Based on a thorough investigation of your
9 account activity, we have determined that no error has occurred.” Navy Federal failed
10 to provide the evidence it relied upon to reach its conclusions and failed to explain the
11 reasoning behind this conclusory statement.

12 114. Without providing any details of its “thorough investigation”, the Credit Union
13 denied Plaintiff’s claim and reversed the provisional credits on her account causing
14 Plaintiff’s account to overdraft.

15 115. Navy Federal informed Plaintiff that it could not return her funds and informed
16 her that it denied her claim.

17 **CLASS ALLEGATIONS**

18 116. Plaintiff brings this action on behalf of herself and on behalf of all other persons
19 similarly situated, on behalf of the below-defined Classes:

20 All persons who: a) had a bank account with Navy Federal
21 and were induced via fraud to perform a Zelle transfer; b)
22 alerted Navy Federal of the fraudulent transfer within 60
23 days; and c) did not have the fraudulent transfer amount(s)
credited by Navy Federal (the “Nationwide Class”)

24 All persons in California who: a) had a bank account with
25 Navy Federal and were induced via fraud to perform a Zelle
26 transfer; b) alerted Navy Federal of the fraudulent transfer
27 within 60 days; and c) did not have the fraudulent transfer
28 amount(s) credited by Navy Federal (the “California Class”)

1 117. Excluded from the Classes are Navy Federal’s officers, directors, and
2 employees; any entity in which Navy Federal has a controlling interest; and the
3 affiliates, legal representatives, attorneys, successors, heirs, and assigns of Navy
4 Federal. Further excluded from the Classes are members of the judiciary to whom this
5 case is assigned, their families, and members of their staff.

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

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

- 13 a. Whether Plaintiff and the Class Members lost money that was
14 transferred from their account via Zelle;
- 15 b. Whether Plaintiff and the Class Members were customers of Navy
16 Federal at the time they lost money;
- 17 c. Whether Navy Federal violated EFTA by failing to adequately
18 investigate the disputes of Plaintiff and the Class Members;
- 19 d. Whether Navy Federal violated EFTA by failing to correct errors
20 on the accounts of Plaintiff and the Class Members within 45 days of the
21 transaction being disputed;
- 22 e. Whether Plaintiff and the Class Members are entitled to maximum
23 statutory damages, costs, and fees under EFTA;
- 24 f. Whether Navy Federal’s conduct was “unlawful” as that term is
25 defined in the UCL;
- 26 g. Whether Navy Federal’s conduct was “unfair” as that term is
27 defined in the UCL;
- 28

1 h. Whether Navy Federal have been conferred an enrichment by
2 keeping funds that they were obligated to replace pursuant to Regulation
3 E's error resolution obligations;

4 i. Whether Navy Federal breached its contract;

5 and

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

7 120. **Typicality**: Plaintiff's claims are typical of those of other Class Members
8 because Plaintiff was a victim of the Zelle scam by a third party who caused a
9 withdrawal of funds from her Navy Federal account to occur through the Navy
10 Federal/Zelle mobile application, after disputing that Zelle transaction, Plaintiff was
11 informed by Navy Federal that the Zelle transaction would ultimately not be reversed.

12 121. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and
13 protect the interests of Class Members. Plaintiff's Counsel are competent and
14 experienced in litigating consumer class actions.

15 122. **Predominance**: Common questions of law and fact predominate over questions
16 that affect only individual members of the Classes. The common questions of law set
17 forth above are numerous and substantial and stem from Navy Federal's uniform
18 practices applicable to each individual Class member. As such, these common
19 questions predominate over individual questions concerning each Class member's
20 showing as to his or her eligibility for recovery or as to the amount of his or her
21 damages.

22 123. **Superiority**: A class action is superior to other available methods for the fair
23 and efficient adjudication of the controversy. Class treatment of common questions of
24 law and fact is superior to multiple individual actions or piecemeal litigation. Absent a
25 Class action, most Class Members would likely find that the cost of litigating their
26 individual claims is prohibitively high and would therefore have no effective remedy.
27 The prosecution of separate actions by individual Class Members would create a risk
28 of inconsistent or varying adjudications with respect to individual Class Members,

1 which would establish incompatible standards of conduct for Navy Federal. In contrast,
2 the conduct of this action as a Class action presents far fewer management difficulties,
3 conserves judicial resources and the parties' resources, and protects the rights of each
4 Class Member.

5 124. Navy Federal has acted on grounds that apply generally to the Classes, so that
6 class certification is appropriate.

7 125. All Members of the proposed Classes are readily ascertainable. Navy Federal
8 has access to consumer reporting of fraudulent and/or unauthorized transactions on
9 their books and records. Using this information, Class Members can be identified and
10 ascertained for the purpose of providing notice.

11 126. **The Proposed Class Satisfies the Prerequisites for Injunctive Relief.**

12 Defendant has acted or refused to act on grounds generally applicable to the Class,
13 thereby making appropriate final injunctive and equitable relief with respect to the
14 Class as a whole. Plaintiff remains interested in using Zelle to transfer account funds
15 in the future; there is no way for Plaintiff and the Class to know when or if Defendant
16 will cease deceptively misrepresenting the true risks of the Zelle service.

17 127. Specifically, Defendant should be ordered to (1) provide customers with
18 sufficient, prominent disclosures regarding fraud, common scams, and its policies
19 regarding reimbursement of fraudulent transfers *prior* to their decision to sign up for
20 and use Zelle; and (2) if a consumer reports an error related to an EFT and Navy Federal
21 determines no error occurred, it should be required to provide a report of the results of
22 their findings with a detailed, written explanation for their determination that complies
23 with Regulation E's procedures for resolving errors.

24 128. **Notice:** Plaintiff anticipates providing direct notice to the Class for purposes of
25 class certification, via U.S. Mail and/or email, based upon Navy Federal's and/or Navy
26 Federal's agents' records.

27 **FIRST CAUSE OF ACTION**
28 **CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"),**
CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*

1 **(On Behalf of Plaintiff and the Classes)**

2 129. Plaintiff Sanchez realleges and incorporates herein by reference the allegations
3 contained in all preceding paragraphs, and further allege as follows:

4 130. The UCL defines “unfair business competition” to include any “unlawful, unfair,
5 or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
6 advertising. Cal. Bus. & Prof. Code § 17200.

7 131. The UCL imposes strict liability. Plaintiff need not prove that Navy Federal
8 intentionally or negligently engaged in unlawful, unfair, or fraudulent business
9 practices—but only that such practices occurred.

10 ***“Deceptive” Prong***

11 132. A business act or practice is “fraudulent” under the UCL if it is likely to deceive
12 members of the public.

13 133. Navy Federal’s practices, as described herein, constitute “fraudulent” business
14 practices in violation of the UCL because, among other things, Navy Federal’s
15 marketing regarding Zelle indicates the Bank will protect against fraudulent losses
16 incurred using the Zelle service. Moreover, Navy Federal concealed the security risks
17 of using the Zelle service, including the risk of fraud and the risk that fraudulent losses
18 will never be reimbursed by Navy Federal as a matter of uniform policy, is a practice
19 that is likely to deceive a consumer acting reasonably under the circumstances, to the
20 consumer’s detriment.

21 ***“Unfair” Prong***

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

26 135. Navy Federal’s actions constitute “unfair” business practices because, as alleged
27 above, it declined to reverse fraudulent charges on the accounts of Plaintiff and Class
28

1 Members, despite marketing representations, contract promises, and statutory
2 obligations pursuant to EFTA.

3 136. The harm to Plaintiff and Class Members grossly outweighs the utility of Navy
4 Federal's practices as there is no utility to practices of Navy Federal.

5 ***“Unlawful” Prong***

6 137. A business act or practice is “unlawful” under the UCL if it violates any other
7 law or regulation.

8 138. Navy Federal's acts and practices alleged above constitute unlawful business
9 acts or practices as they have violated the plain language of EFTA as described in
10 Plaintiff's Sixth Cause of Action below.

11 139. The violation of any law constitutes as “unlawful” business practice under the
12 UCL.

13 140. These acts and practices alleged were intended to or did result in violations of
14 EFTA.

15 141. Navy Federal has and will continue to unlawfully deny the transaction disputes
16 of Plaintiff, the Classes, and the public by claiming that said disputed transactions are
17 “authorized,” even though said transactions are actually “unauthorized,” as that term
18 is defined by EFTA and applicable regulations. Consequently, the practices of Navy
19 Federal constitute unfair and unlawful business practices within the meaning of the
20 UCL.

21 142. Pursuant to the UCL, Plaintiff and the Classes are entitled to preliminary and
22 permanent injunctive relief and order Navy Federal to cease this unfair and unlawful
23 competition, as well as disgorgement and restitution to Plaintiff and the Classes of all
24 the revenues associated with this unfair and unlawful competition, or such portion of
25 said revenues as the Court may find applicable.

26 143. Pursuant to the UCL, Plaintiff and the Classes are entitled to preliminary and
27 permanent injunctive relief and an order requiring Navy Federal to cease this unfair
28 and unlawful competition, as well as disgorgement and restitution to Plaintiff and the

1 Classes of all revenues associated with this unfair and unlawful competition, or such
2 portion of said revenues as the Court may find applicable.

3 **SECOND CAUSE OF ACTION**

4 **Violation of California’s False Advertising Law (“FAL”)**

5 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

6 **(Asserted on Behalf of Plaintiff and the Classes)**

7 144. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

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

17 146. Navy Federal’s material misrepresentations and omissions alleged herein violate
18 Bus. & Prof. Code § 17500.

19 147. Navy Federal knew or should have known that its misrepresentations and
20 omissions were false, deceptive, and misleading.

21 148. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and
22 Class Members, on behalf of the general public, seeks an order of this Court enjoining
23 Navy Federal from continuing to engage, use, or employ their practice of
24 misrepresenting the Zelle service.

25 149. Further, Plaintiff and Class Members seek an order requiring Navy Federal to
26 disclose such misrepresentations, and additionally request an order awarding Plaintiff
27 restitution of the money wrongfully acquired by Navy Federal by means of said
28 misrepresentations.

1 150. Additionally, Plaintiff and the Classes seek an order requiring Navy Federal to
2 pay attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **Breach of Contract Including Breach of the Covenant of Good Faith and Fair
5 Dealing**

6 **(Asserted on Behalf of the Plaintiff and the Classes)**

7 151. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

8 152. Plaintiff and members of the Class contracted with Navy Federal for checking
9 account services, as embodied in the Deposit Agreement & Disclosures.

10 153. Navy Federal breached the terms of its contract with consumers when as
11 described herein, Navy Federal failed to fairly investigate reported erroneous and
12 fraudulent transactions on the Zelle money transfer service and failed to reimburse
13 accountholders for fraud losses incurred on debit-card linked Zelle transactions.

14 154. Further, under the law of each of the states where Navy Federal does business,
15 an implied covenant of good faith and fair dealing governs every contract. The
16 covenant of good faith and fair dealing constrains Navy Federal's discretion to abuse
17 self-granted contractual powers.

18 155. This good faith requirement extends to the manner in which a party employs
19 discretion conferred by a contract.

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

26 157. Subterfuge and evasion violate the obligation of good faith in performance even
27 when an actor believes his conduct to be justified. A lack of good faith may be overt
28 or may consist of inaction, and fair dealing may require more than honesty. Other
examples of violations of good faith and fair dealing are willful rendering of imperfect

1 performance, abuse of a power to specify terms, and interference with or failure to
2 cooperate in the other party's performance.

3 158. Navy Federal breached the covenant of good faith and fair dealing when it failed
4 to fairly investigate reported erroneous and fraudulent transactions on the Zelle money
5 transfer service, failed to reimburse accountholders for fraudulent losses incurred on
6 debit-card linked Zelle transactions.

7 159. Each of Navy Federal's actions were done in bad faith and was arbitrary and
8 capricious.

9 160. Plaintiff and members of the Classes have performed all of the obligations
10 imposed on them under the contract.

11 161. Plaintiff and members of the Classes have sustained monetary damages as a
12 result of Navy Federal's breaches of the contract and covenant of good faith and fair
13 dealing.

14 **FOURTH CAUSE OF ACTION**
15 **NEGLIGENCE**

16 **(On Behalf of Plaintiff and the Classes)**

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

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

24 164. 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 Navy Federal/Zelle
26 app, and to take appropriate steps in response to a known scams involving the app to
27 protect consumers from malicious third parties.

28 165. Navy Federal breached its obligations to Plaintiff and Class Members and was
otherwise negligent and/or reckless by at least:

- 1 a. Failing to maintain adequate data security measures to prevent or
2 reduce the risk of disclosure of the names, phone numbers, and bank
3 affiliation of Plaintiff and the Class to malicious third parties;
- 4 b. Failing to adequately protect the private information of Plaintiff
5 and the Class;
- 6 c. Failing to properly warn Plaintiff and the Class of the risks and/or
7 dangers associated with the Navy Federal/Zelle mobile app or informing
8 consumers about the Zelle-related scams;
- 9 d. Failing to adequately investigate and document findings from the
10 investigations of fraud-related EFT disputes of the unauthorized
11 transactions made on the accounts of Plaintiff and the Class using the
12 Navy Federal/Zelle payment platform.
- 13 e. Failing to take appropriate steps to avoid unauthorized transactions
14 through the Navy Federal/Zelle mobile application in response to known
15 scams and continuing with business as normal;
- 16 f. Failing to implement appropriate and sufficient safeguards against
17 scams of the nature alleged in the Complaint in light of the knowledge
18 that those scams have been rampant across the country;
- 19 g. Failing to review account agreements and disclosures to ensure
20 they do not attempt to diminish or limit consumers' rights under
21 Regulation E;
- 22 h. Permitting scammers to use Zelle's member banks to siphon funds
23 from Plaintiff's and Class Members' accounts using the Navy
24 Federal/Zelle payment platform;
- 25 i. Failing to reverse unauthorized transactions pursuant to Regulation
26 E error resolution requirements following disputes of Plaintiff and the
27 Class despite Navy Federal's knowledge that said transactions were
28 unauthorized as part of a scam that is well-known to Navy Federal; and

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

4 166. As a direct and proximate result of Navy Federal’s breach, Plaintiff and Class
5 Members lost funds from their Navy Federal bank accounts.

6 167. Plaintiff and Class Members are entitled to damages for their continuing and
7 increased risk of fraud and their loss of money.

8 **FIFTH CAUSE OF ACTION**
9 **UNJUST ENRICHMENT**

10 **(On Behalf of Plaintiff and the Classes)**

11 168. Plaintiff realleges and incorporates herein by reference the allegations contained
12 in all preceding paragraphs, and further alleges as follows:

13 169. Navy Federal has been conferred the benefit or enrichment by keeping funds that
14 they are otherwise obligated to replace for Plaintiff and Class Members pursuant to
15 Regulation E’s error resolution obligations.

16 170. Navy Federal knew and appreciated this benefit or enrichment and the detriment
17 or impoverishment to Plaintiff and Class Members.

18 171. It is inequitable for Navy Federal to retain the benefit or enrichment of keeping
19 these funds when they know that, as financial institutions, they are obligated to comply
20 with Regulation E and credit Plaintiff and putative Class Members’ accounts for the
21 amounts taken.

22 172. Plaintiff and Class Members have sustained a detriment or an impoverishment
23 from Navy Federal’s failure to remedy this inequity and are entitled to restitution for
24 the unjust enrichment to Navy Federal.

25 173. Plaintiff and Class Members are entitled to restitution and disgorgement of the
26 funds unjustly retained by Navy Federal in the absence of any legal relief.

27 **SIXTH CAUSE OF ACTION**
28 **VIOLATION OF THE ELECTRONIC FUND TRANSFER ACT (“EFTA”,
15 U.S.C. §§ 1693, *ET SEQ.***

(On Behalf of Plaintiff and the Classes)

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

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

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

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

178. Navy Federal is a financial institution. 12 C.F.R. § 1005.2(i).

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

180. A financial institution’s “review of its own records regarding an alleged error” satisfies § 1693f’s investigation requirement if “(i) [t]he alleged error concerns a transfer to or from a third party; and (ii) [t]here is no agreement between the institution and the third party for the type of electronic fund transfer involved.” 12 C.F.R. § 205.11(c).

1 181. The Official Interpretation explains further that a financial institution “must
2 review any relevant information within the institution’s own records for the particular
3 account to resolve the consumer’s claim.” 12 C.F.R. § 205, Supp. I. at 11(c)(4).

4 182. But “a financial institution may not limit its investigation solely to the payment
5 instructions where additional information within its own records pertaining to the
6 particular account in question could help to resolve a consumer’s claim.” *Id.*

7 183. After said investigation, the financial institution must determine whether an
8 error has occurred and report or mail the results of such investigation and determination
9 to the consumer within ten (10) business days. 15 U.S.C. § 1693f(a).

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

13 185. Pursuant to the EFTA, an error includes “an incorrect electronic fund transfer to
14 or from the consumer’s account.” *Id.* § 1693f(f).

15 186. An Electronic Fund Transfer (“EFT”) is any transfer of funds that is initiated
16 through an electronic terminal, telephone, computer, or magnetic tape for the purpose
17 of ordering, instructing, or authorizing a financial institution to debit or credit a
18 consumer’s account. 12 C.F.R. 1005.3(b)(1). Accordingly, Regulation E applies to any
19 P2P or mobile payment transactions that meet the definition of EFT. 12 C.R.F.
20 1005.3(b)(1)(v); *id.*, Comment 3(b)(1)-1ii.

21 187. Here, Plaintiff and Members of the Classes made incorrect electronic fund
22 transfers from their Navy Federal accounts to third-party fraudsters.

23 188. After the incorrect EFTs were made, the EFTs appeared on the bank statements
24 of Plaintiff and Class Members.

25 189. Plaintiff and Class Members notified Navy Federal of these errors within sixty
26 (60) days of their appearances on the accounts of Plaintiff and other Class Members.

1 190. After receiving notice of the incorrect EFTs on Plaintiff's and other Class
2 Members' accounts, Navy Federal erroneously concluded that that the incorrect EFTs
3 were not erroneous.

4 191. As a direct and proximate result of the conduct of Navy Federal, Plaintiff and
5 other Class Members were unable to reclaim funds that were incorrect and fraudulently
6 taken from their accounts with Navy Federal within the authorized period for error
7 resolution.

8 192. Upon information and belief, Navy Federal knowingly and willfully concluded
9 that the transfers of funds via Zelle on accounts of Plaintiff and other Class members
10 were not in error when such conclusions could not reasonably have been drawn from
11 the evidence available to the financial institutions at the time of the investigation. 15
12 U.S.C. § 1693f(e)(2).

13 193. Upon information and belief, Navy Federal intentionally determined that the
14 unwanted transfer of funds via Zelle on accounts of Plaintiff and Class Members were
15 not in error due to, at least in part, Navy Federal's financial self-interest as a member-
16 bank of Zelle, and to avoid its liability to Plaintiff and other Class members for the
17 incorrect transfers pursuant to Regulation E.

18 194. Navy Federal refused to reverse or refund funds to Plaintiff and Class members.

19 195. As such, Plaintiff and Class Members are each entitled to (i) actual damages; (ii)
20 treble damages; (iii) the lesser of \$500,000.00 or one percent (1%) of the net worth of
21 Navy Federal; and (iii) reasonable attorneys' fees and costs. *Id.* §§ 1693f(e)(2),
22 1693m(a)(2)(B)-(3).

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for relief and judgment against Navy Federal as
25 follows:

- 26
- Class certification of this action;
 - 27 • Appointment of Plaintiff as Class Representative;
 - 28 • Appointment of Plaintiff's attorneys as Class Counsel;

- 1 • An award of actual damages, in an amount to be determined at trial;
- 2 • An award of treble damages pursuant to the EFTA;
- 3 • An award of the lesser of \$500,000.00 or one percent (1%) of the net worth of
- 4 Navy Federal;
- 5 • Injunctive and other equitable relief against Navy Federal as necessary to protect
- 6 the interests of Plaintiff and other Class Members, and an order prohibiting Navy
- 7 Federal from engaging in unlawful and/or unfair acts described above, including
- 8 public injunctive relief;
- 9 • Disgorgement;
- 10 • An order of restitution from Navy Federal for unjust enrichment;
- 11 • An order declaring Navy Federal’s conduct as unlawful;
- 12 • Costs of Suit;
- 13 • Pre- and post-judgment interest;
- 14 • An award of reasonable attorneys’ fees; and
- 15 • Any other relief the Court may deem just and proper, including interest.

DEMAND FOR TRIAL BY JURY

16
17 Plaintiff, individually and on behalf of all others similarly situated, hereby
18 demands a jury trial on all claims so triable.

19 Dated: February 21, 2023

EDELSBERG LAW, PA.

/s/ Scott Edelsberg

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