

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

RUBY LAMBERT, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

NAVY FEDERAL CREDIT UNION,

Defendant.

CASE NO. 1:19-cv-103

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”)¹ is made and entered into this 5th day of October, 2020, by and among (1) Plaintiff, Ruby Lambert, individually, and on behalf of the Settlement Class, and (2) Navy Federal Credit Union, subject to Preliminary Approval and Final Approval as required by the Federal Rules of Civil Procedure. As provided herein, Plaintiff, Class Counsel and Navy Federal hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against Navy Federal in the action titled *Ruby Lambert v. Navy Federal Credit Union*, E.D. Va. Case No. 1:17-cv-103 (“Action”), shall be settled and compromised upon the terms and conditions contained herein.

I. Recitals

1. On January 28, 2019, Plaintiff filed her Complaint against Navy Federal alleging that it assesses \$29 insufficient funds fees (“NSF Fees”) for each returned debit item or check when the account lacks sufficient funds. After Navy Federal returns the debit item or check for

¹ All capitalized times herein have the same meanings as those as given to them in Section II below.

insufficient funds, the merchant may re-present that debit item or check for payment up to three times. Navy Federal is obligated to process each presented debit item or check, and each time it does so but returns a debit item or check due to insufficient funds, Navy Federal assesses a separate NSF Fee for each returned debit item or check. Plaintiff alleges that under the terms of her contract with Navy Federal, that Navy Federal was permitted to only charge one NSF stemming from the same underlying purchase, regardless of how many times the merchant presents the debit item or check for payment and the account lacks sufficient funds. The Complaint alleged claims for breach of contract and breach of the covenant of good faith and fair dealing and violation of the North Carolina Unfair and Deceptive Trade Practices Act. The Complaint alleged, *inter alia*, entitlement to monetary damages, interest, attorneys' fees, and costs.

2. On April 1, 2019, Navy Federal filed a Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). On April 15, 2019, Plaintiff filed her Opposition to Navy Federal's Motion to Dismiss, and on April 22, 2019, Navy Federal filed its Reply.

3. Following a May 24, 2019 hearing on the Motion to Dismiss, the Court issued its August 14, 2019 Memorandum Opinion and Order dismissing the Complaint with prejudice.

4. Thereafter, Plaintiff filed her Notice of Appeal to the United States Court of Appeals for the Fourth Circuit (the "Appeal").

5. Plaintiff filed her opening brief in the Appeal on December 23, 2019, Navy Federal filed its brief on February 12, 2020, and Plaintiff filed her reply brief on March 18, 2020. The Fourth Circuit permitted the amicus brief of the Credit Union National Association and National Association of Federally-Insured Credit Unions, which Plaintiff addressed in her reply brief.

6. During the pendency of the Appeal, and before the completion of appellate briefing, the Parties participated in an initial mediation session as part of the Fourth Circuit's mediation

program, which did not result in settlement.

7. Following completion of the briefing in the Appeal, the Parties' counsel met and conferred about settlement. The Parties jointly and successfully requested that Eastern District of Virginia Magistrate Judge John F. Anderson preside over a settlement conference between the Parties. At Judge Anderson's direction, the Parties exchanged detailed settlement conference statements on June 17, 2020, and submitted confidential settlement conference statements on June 24, 2020.

8. To aid settlement negotiations, Navy Federal informally produced sample account transaction data from which Plaintiff's expert extrapolated estimated class-wide damages for the class period.

9. An in-person settlement conference occurred on July 1, 2020 with Judge Anderson. The Action did not settle that day, but with the assistance of Judge Anderson in the days following, the Parties agreed to the material terms of Settlement on July 10, 2020, which they memorialized in a term sheet executed on July 24, 2020.

10. On August 20, 2020, the United States Court of Appeals for the Fourth Circuit entered its Order granting the Parties' Joint Motion to Stay Appeal and for Limited Remand, filed on July 21, 2020, to permit the District Court to obtain jurisdiction pending the Appeal to consider the Settlement for Preliminary Approval and Final Approval. Upon the Effective Date of the Settlement, the parties will dismiss the Appeal.

11. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. The Parties intend this Agreement to bind the Plaintiff, Navy Federal, and all Settlement Class Members.

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

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

12. “Account” means any member checking account maintained by Navy Federal.

13. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.

14. “Action” means *Ruby Lambert, et al. v. Navy Federal Credit Union*, E.D. Va., Case No. 1:19-cv-103.

15. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

TYCKO & ZAVAREEI, LLP
Hassan Zavareei, Esq.
Andrea Gold, Esq.
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KALIEL PLLC
Jeffrey Kaliel, Esq.
Sophia Gold, Esq.
1875 Connecticut Avenue, NW
10th Floor
Washington, DC 20009

and such other counsel as are identified in Class Counsel’s request for attorneys’ fees and costs.

16. “Class Period” means the period from January 28, 2014, through the date of Preliminary Approval.

17. “Class Representative” means Ruby Lambert.

18. “Court” means the United States District Court for the Eastern District of Virginia.

19. “Current Account Holder” means a Settlement Class Member who continues to have his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

20. “Effective Date” means the 5th day after which all of the following events have occurred:

a. The Court has entered without material change the Final Approval Order and Final Judgment; and

b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

21. “Final Approval” means the date that the Court enters an Order granting final approval to the Settlement and determines the amount of attorneys’ fees, costs, and expenses awarded to Class Counsel and the amount of any Service Award to the Class Representative. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and Navy Federal. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

22. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in Section IV below.

23. “Final Approval Hearing” means the hearing set by the Court to determine the fairness of the Settlement and whether to approve its terms.

24. “Final Approval Order” means the final order that the Court enters upon Final Approval, which shall be substantially in the form attached as an exhibit to the Motion for Final Approval. In the event that the Court issues separate Orders addressing the matters constituting Final Approval, then the Final Approval Order includes all such Orders.

25. “Former Account Holder” means a Settlement Class Member who no longer has his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

26. “Representment NSF Fees” means the second or third NSF Fee charged to an Account Holder when a Settlement Class member’s merchant has re-presented a debit item or check to Navy Federal for payment (after an initial return by Navy Federal for insufficient funds), and where the debit item or check is again returned by Navy Federal due to insufficient funds, resulting in an additional NSF Fee or NSF Fees.

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

28. “Net Settlement Fund” means the Settlement Fund, minus Court-approved attorneys’ fees, costs and expenses, and any Court-approved Service Award to Plaintiff.

29. “Notice” means the notices that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

30. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Postcard Notice, Email Notice and Long Form Notice (all defined herein below), which shall be substantially in the forms as the exhibits attached to the Motion for Preliminary Approval.

31. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed, and that ends no later than 30 days before the Final Approval

Hearing. The deadline for the Opt-Out Period will be specified in the Notice.

32. “Parties” means Plaintiff and the Settlement Class members on the one hand, and Navy Federal on the other hand.

33. “Plaintiff” means Ruby Lambert.

34. “Preliminary Approval” means the date that the Court enters, without material change, an Order preliminarily approving the Settlement.

35. “Preliminary Approval Order” means the Court’s order on Plaintiff’s Motion for Preliminary Approval approving the Notice Program and authorizing Notice, which shall be substantially in the form of the exhibits attached to the Motion for Preliminary Approval.

36. “Releases” means all of the releases contained in Section XIII hereof.

37. “Released Claims” means all claims to be released as specified in Section XIII hereof.

38. “Released Parties” means those persons released as specified in Section XIII hereof.

39. “Releasing Parties” means Plaintiff and all Settlement Class Members, and each of their respective heirs, assigns, beneficiaries and successors.

40. “Service Award” means any Court ordered payment to Plaintiff for serving as Class Representative, which is in addition to any payment due to Plaintiff as a Settlement Class Member.

41. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.

42. “Settlement Administration Costs” means all costs of the Settlement Administrator regarding notice and settlement administration, including notices required by the Class Action Fairness Act.

43. “Settlement Administrator” means JND Legal Administration.

44. “Settlement Class” means all current and former Navy Federal members in the United States who were charged Representment NSF Fees during the Class Period. 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.

45. “Settlement Class Member” means any person included in the Settlement Class who does not opt-out of the Settlement.

46. “Settlement Class member” means all members of the Settlement Class.

47. “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement.

48. “Settlement Fund” means the \$16,000,000.00 common cash fund for the benefit of the Settlement Class that Navy Federal is obligated to pay under the Settlement. The Settlement Fund will be used to pay Settlement Class Member Payments, any award of attorneys’ fees, litigation costs and expenses and Service Award to Plaintiff ordered by the Court, and any *cy pres* payment required under this Agreement. Except as specified in this paragraph, Navy Federal is not required to place all or any of Settlement Fund into a separate bank account and will not relinquish control of any funds until payments are due, as required by the Settlement. Navy Federal shall not be responsible for any payments or obligations other than those specified in this Agreement. To the extent the Final Approval Order and Final Judgment is not entered or Final Approval does not occur, Navy Federal will be entitled to a refund of any amounts paid in trust to the Settlement

Administrator that have not been spent or incurred toward the costs of Settlement Administration, including but not limited to costs of providing Notice.

49. “Settlement Website” means the website that the Settlement Administrator will use as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the Preliminary Approval Order approving this Settlement, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.lambertnsffeelitigation.com, or such other URL as Class Counsel and Navy Federal agree upon in writing.

III. Certification of the Settlement Class

50. For Settlement purposes only, Plaintiff and Navy Federal agree to ask the Court to certify the Settlement Class under the Federal Rules of Civil Procedure.

IV. Settlement Consideration and the Escrow Account

51. Subject to approval by the Court, under the Settlement, the total cash consideration to be provided by Navy Federal shall be \$16,000,000.00, inclusive of the amount paid to Settlement Class Members, any and all attorneys’ fees, costs and expenses awarded to Class Counsel, any Service Award to the Class Representative, and any *cy pres* payment. Except as otherwise specified in this Agreement, Navy Federal shall not be responsible for any other payments under this Agreement. If there are no objections to the Settlement, then within 15 days after Final Approval, or if there are objections to the Settlement, then within 15 days of the Effective Date, Navy Federal shall deposit into the Escrow Account \$16,000,000.00, minus the amount of the Settlement Class Member Payments to be credited to the Accounts of Settlement

Class Members who are Current Account Holders.

52. As a result of the Action, Navy Federal shall make revisions to its Account Agreement and related documents to clarify when Representment NSF Fees may be assessed.

Navy Federal shall adopt the following, or substantially similar language:

Navy Federal may return debits (e.g., ACH payments) submitted for payment against the checking account if the amount of the debit exceeds the funds available in the checking account. Each time we return a debit for insufficient funds, we will assess an NSF fee in the amount shown on Navy Federal's current Schedule of Fees and Charges for each returned debit item. The entity that submitted the debit may submit another debit to Navy Federal even if we have already returned the prior debit for insufficient funds in the checking account. If the resubmitted debit again exceeds the funds available in the checking account, Navy Federal again will return the debit, resulting in an additional NSF fee. Thus, you may be charged multiple NSF fees in connection with a single debit that has been returned for insufficient funds multiple times.

53. 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 upon Navy Federal, Navy Federal's Counsel, Plaintiff 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 (collectively "Taxes"), shall be paid out of the Escrow Account. Navy Federal and Navy Federal's Counsel and Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Navy Federal and Navy Federal's Counsel and Plaintiff and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

V. Settlement Approval

54. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Navy Federal. 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 the Federal Rules of Civil Procedure for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein below for Settlement Class members to exclude themselves from the Settlement Class or to object to the Settlement; (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 counsel for Navy Federal, 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 attorneys' fees, costs, and expenses, and for a Service Award to the Class Representative.

VI. Discovery and Settlement Data

55. Class Counsel and Navy Federal already have engaged in informal discovery related to liability and damages. Additionally, for purposes of effectuating this Settlement, Navy Federal will use its best efforts to provide to Class Counsel and its expert by August 31, 2020 (or as soon thereafter as is reasonably possible) data for the entirety of the Class Period sufficient for Plaintiff's expert to determine Settlement Class membership and ultimately each Settlement Class Member Payment. Because Plaintiff's expert will not have access to Settlement Class member

names or complete account numbers, Plaintiff's expert will provide results to Navy Federal, who will then create a list of Settlement Class members and their electronic mail or postal addresses and provide that list to the Settlement Administrator to provide Notice to the Settlement Class of the terms of the Settlement. Navy Federal will bear the expense of extracting the necessary data to make available to Class Counsel's expert for analysis, while Class Counsel shall be responsible for paying Class Counsel's expert, who will analyze the data provided to determine Settlement Class membership as well as the amount of each Settlement Class Member's damages.

VII. Settlement Administrator

56. Class Counsel, in consultation with Navy Federal, has selected the Settlement Administrator. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed and Email Notice to Settlement Class members and distributing the Settlement Fund as provided herein.

57. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

a. Use the name and address information for Settlement Class members provided by Navy Federal in connection with the Notice process approved by the Court, for the purpose of mailing the Mailed Notice and sending the Email Notice, and later mailing distribution checks to Former Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Navy Federal to make the payment by a credit to the Settlement Class Members' Accounts;

- b. Establish and maintain a Post Office box for the receipt of opt-out requests and objections;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Settlement Class member inquiries;
- f. Process all requests for exclusion from the Settlement Class;
- g. Provide weekly reports to Class Counsel and Navy Federal that summarize the number of requests for exclusion and/or objections received that week, the total number of exclusion requests and/or objections received to date, and other pertinent information;
- h. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, that the Class Action Fairness Notice requirements have been met, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly opted-out from the Settlement Class, as well as those Settlement Class Members that timely filed objections, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- i. Identify to Navy Federal the amount of the Net Settlement Fund required to make Settlement Class Member Payments to Current Account Holders by a credit to those Settlement Class Members' Accounts, as well as the amount that shall be paid into the Escrow Account;
- j. Perform all tax-related services for the Escrow Account as provided in the Agreement;

k. Pay invoices, expenses and costs upon approval by Class Counsel and Navy Federal, as provided in this Agreement; and

l. 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.

VIII. Notice to Settlement Class Members

58. Within 30 days after Preliminary Approval of the Settlement, at the direction of Class Counsel and Navy Federal’s Counsel, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from, or “opt-out” of, the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Navy Federal shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the Navy Federal logo or trademarks or the return address of Navy Federal, or otherwise be styled to appear to originate from Navy Federal.

59. The Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last

day of the Opt-Out Period. Any Settlement Class member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

60. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or a Service Award to the Class Representative. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, Navy Federal's counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an 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.

61. 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 and telephone number;
 - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
 - d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - e. the number of times in which 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

upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

f. 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 fee application;

g. a copy of any orders related to or ruling upon 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;

h. 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;

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

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

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

l. 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.

62. Notice shall be provided to Settlement Class members in three different ways: email notice to Account Holders for whom Navy Federal has email addresses ("Email Notice"); postcard notice sent by U.S. mail to Account Holders for whom Navy Federal does not have valid

email addresses (“Postcard Notice”); and long form notice, which will be written in both English and Spanish, and shall be available on the Settlement Website and/or via mail upon a Settlement Class member’s request (“Long Form Notice”). Email Notice and Postcard Notice shall collectively be referred to as “Mailed Notice.” Not all Settlement Class members will receive all forms of Notice, as detailed herein.

63. As detailed above in Section VI, Navy Federal will cooperate with Class Counsel and its expert to make available the necessary data to Class Counsel’s expert to determine Settlement Class membership. Once the Settlement Administrator has the Settlement Class membership list, the Settlement Administrator shall run the physical addresses through the National Change of Address Database and shall mail to all such Settlement Class members Postcard Notice. The Settlement Administrator shall also send out Email Notice to all Settlement Class members receiving Notice by that method. The initial Mailed Postcard and Email Notice shall be referred to as “Initial Mailed Notice.”

64. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. A “reasonable” tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces (“Notice Re-mailing Process”). The Settlement Administrator shall also send Postcard Notice to all Settlement Class members 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.

65. The Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 60 days before the Final Approval Hearing.

66. All costs and expenses related to the Notice Program shall be paid by Navy Federal directly to the Settlement Administrator.

67. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Navy Federal.

IX. Final Approval Order and Judgment

68. Plaintiff's Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file her Motion for Final Approval of the Settlement, and application for attorneys' fees, costs, and expenses and for Service Award for the Class Representative, no later than 45 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses, and for the Service Award for the Class Representative. 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 or to Class Counsel's application for attorneys' fees, costs, expenses, or the Service Award application, provided the objector(s) submitted timely objections that meet all of the requirements listed in the Agreement.

69. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses, and a Service Award. The proposed Final Approval Order shall be in a form agreed

upon by Class Counsel and Navy Federal. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Enter judgment dismissing the Action with prejudice;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims

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

- f. Release Navy Federal and the Released Parties from the Released Claims; and

- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Navy Federal, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. Distribution of Net Settlement Fund

70. Within 7 days after Final Approval, the Settlement Administrator shall identify to Navy Federal the full amount of Settlement Class Member Payments, along with the amount of each Settlement Class Member's Payment to be credited to Current Account Holders' Accounts, as well as the remaining amount of the \$16,000,000.00 Settlement Fund that shall be paid by Navy Federal into the Escrow Account.

71. Within 15 days after Final Approval if there are no objections to the Settlement or 10 days after the Effective Date if there are objections or an appeal, Navy Federal shall wire to the Escrow Account the remainder of the \$16,000,000.00 Settlement Fund.

72. Within 30 days after the Effective Date, Navy Federal shall deposit the Settlement Class Member Payments into Current Account Holders' Accounts.

73. Within 30 days after the Effective Date, the Settlement Administrator shall pay from the Escrow Account Former Account Holders their Settlement Class Member Payments by check.

XI. Calculation of Automatic Distributions from Settlement Fund

74. The calculation and implementation of allocations of the Settlement Fund contemplated by this section shall be done by Class Counsel and its expert for the purpose of compensating Settlement Class Members. Navy Federal shall have the right but not the obligation to review and challenge the accuracy of this calculation. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain credit union security and protect its members' private financial information, Navy Federal shall make available such additional data and information as may reasonably be needed by Class Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Class Counsel shall confer with Navy Federal's counsel concerning any such additional data and information. All such data and information produced by Navy Federal for the purpose of confirming and/or effectuating the calculations and allocations contemplated by this Agreement shall be returned to Navy Federal's counsel or destroyed.

75. The amount of the Settlement Class Member Payment from the Settlement Fund to which each Settlement Class Member is entitled for the Class Period (subject to the availability of

data) is to be determined using the following methodology or such other methodology as would have an equivalent result:

- a. All Accounts held by Settlement Class Members will be identified for which Navy Federal assessed Representment NSF Fees during the Class Period.
- b. Representment NSF Fees will be totaled for each Account (“Relevant NSF Fees”).
- c. The Net Settlement Fund will be allocated pro rata to the Settlement Class Members based on their number of Relevant NSF Fees.

76. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members’ Relevant NSF Fees. This calculation shall yield the “Pro Rata Percentage.”

77. Each Settlement Class Member’s Pro Rata Percentage will be multiplied by the amount of the Net Settlement Fund, which yields a Pre-Adjustment Payment Amount for each Settlement Class Member.

78. If any Settlement Class Member’s Pre-Adjustment Amount is less than \$5.00, the Settlement Class Member’s Payment amount shall be adjusted to \$5.00. The remainder of the Net Settlement Fund shall then be apportioned pro rata to all other Settlement Class Members by multiplying those Settlement Class Members’ Pro Rata Percentage by the remaining amount of the Net Settlement Fund.

79. The Parties agree the foregoing 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 allocation formula will be used is not intended (and shall not be used) for any other purpose or objective whatsoever.

80. Settlement Class Member Payments to Current Account Holders shall be made first by crediting those Account Holders' Accounts, or by mailing a standard size check if it is not feasible or reasonable to make the payment by a credit. Navy Federal shall notify Current Account Holders of any such credit on the Account statement on which the credit is reflected by stating "Lambert class settlement" or something similar. Navy Federal will bear any costs associated with implementing the Account credits and notification discussed in this paragraph.

81. Settlement Class Member Payments to Former Account Holders shall be made by mailing a standard size check. Such mailing shall be accomplished by the Settlement Administrator.

82. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall be held by the Settlement Administrator one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of settlement funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

XII. Disposition of Residual Funds

83. Within 1 year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks ("Residual Funds") shall be distributed as follows:

a. Any Residual Funds remaining after distribution shall be distributed on a *pro rata* basis to participating Settlement Class Members who received Settlement Class Member Payments, to the extent feasible and practical in light of the costs of administering such subsequent payments unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.

b. In the event the costs of preparing, transmitting and administering such subsequent payments pursuant to this Section are not feasible and practical to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair, Class Counsel and Navy Federal shall seek the Court's approval to distribute the Residual Funds to a *cy pres* recipient or recipients. The Parties shall propose as a *cy pres* recipient or recipients an entity or entities that work to promote financial literacy, including for members of the military or veterans.

c. All costs of any second distribution, including Navy Federal's internal costs of crediting Settlement Class Member Accounts, will come from the Residual Funds, and Navy Federal is not required to pay those costs as Settlement Administration Costs.

XIII. Release

84. As of the Effective Date, Plaintiff and each Settlement Class Member, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and successors ("Releasing Parties"), shall automatically be deemed to have fully and irrevocably released and forever discharged 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, predecessors, successors and assigns of each of them (“Released Parties”), of and from 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 result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Action (“Released Claims”) relating to the assessment of Representment NSF Fees.

85. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against Navy Federal in any forum, action, or proceeding of any kind.

86. With respect to all Released Claims, Plaintiff and each of the other Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law (a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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

and (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of the California Civil Code.

87. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/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 herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release 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/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

88. Nothing in this Agreement shall operate or be construed to release any claims or rights that Navy Federal has to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with Navy Federal, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiff or any Settlement Class Member has, other than with respect to the claims expressly Released by this Agreement, in the event Navy Federal and/or its assigns seeks to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with Navy Federal, pursuant to the terms and conditions of such accounts, loans, or any other debts.

XIV. Payment of Attorneys' Fees, Costs, and Service Awards

89. Navy Federal agrees not to oppose Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund, and not to oppose Class Counsel's request for reimbursement of reasonable costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

90. If there are no objections to the Settlement, all Court-approved attorneys' fees, cost and expenses shall be payable from the Escrow Account by the Settlement Administrator to Class Counsel within 15 days of entry of a Final Approval Order. If there are objections to the Settlement, or any appeals as to the propriety of the Settlement, any Court-awarded attorneys' fees, costs and expenses, shall be payable from the Escrow Account by the Settlement Administrator within 30 days of the Effective Date.

91. The payment of attorneys' fees, costs, and expenses of Class Counsel shall be made as designated by Class Counsel. After the fees, costs and expenses have been paid, Class Counsel shall be solely responsible for distributing each Plaintiff's firm's allocated share of such fees, costs, and expenses to that firm. Navy Federal shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments from the Settlement Fund not specifically described herein.

92. In the event the Effective Date does not occur, or the attorneys' fees or the cost award is reduced following an appeal, each counsel and their law firms who have received any payment of such fees or costs shall be jointly and severally liable for the entirety. Further, each

counsel and their law firm consents to the jurisdiction of the Court for the enforcement of this provision.

93. Class Counsel will ask the Court to approve a Service Award to the Plaintiff in the amount of \$5,000.00. The Service Award is to be paid by the Settlement Administrator from the Escrow Account within 30 days of the Effective Date. The Service Award shall be paid to the Class Representative in addition to the Settlement Class Member Payment. Navy Federal agrees not to oppose Class Counsel's request for the Service Award. The Parties agree that the Court's failure to approve the Service Award, in whole or in part, shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

94. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

XV. Termination of Settlement

95. This Settlement may be terminated by either Class Counsel 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 Class Counsel and Navy Federal) after any of the following occurrences:

- a. Class Counsel and Navy Federal agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- 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 Class Counsel 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.

96. 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 14 days after its receipt from the Settlement Administrator of any report indicating that the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Class Counsel and Navy Federal. The number or percentage shall be confidential except to the Court, which shall upon request be provided with a copy of the letter for *in camera* review.

XVI. Effect of a Termination

97. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Navy Federal's obligations under the Settlement shall cease to be of any force and effect; any amounts in the Escrow Account shall be returned to Navy Federal; 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.

98. In the event of termination, Navy Federal shall have no right to seek reimbursement from Plaintiff, Class Counsel, or the Settlement Administrator for Settlement Administration Costs paid by Navy Federal.

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

100. 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 class certification shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Settlement Agreement. Thereafter, Plaintiff shall be free to pursue any claims available to her, 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.

101. 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.

XVII. No Admission of Liability

102. Navy Federal continues to dispute its liability for the claims alleged in the Action, and maintains that its NSF Fee assessment practices and representations concerning those practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its members. 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.

103. 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, conducted significant informal discovery, and conducted independent investigation of the challenged practices. 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 members.

104. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with 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.

105. 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 made by the Plaintiff or Settlement Class members, 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.

106. In addition to any other defenses Navy Federal may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

XIX. No Press Release or Publicity

107. Each Party agrees not to make any statements, written or oral, or cause or encourage others to make any statements, written or oral, that defame, disparage or in any way criticize the personal or business reputation, or conduct of the other party, including affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them. Before entry of Final Judgment by the Court, neither Plaintiff nor Class Counsel shall directly or indirectly issue or cause to be issued any statements to the media or engage in any other press, publicity or disclosure regarding this Settlement Agreement or the settlement of the Action. If contacted by the media after the entry of Final Judgment by the Court, the Party may respond generally by stating that they are happy that the Settlement was reached and that it is a fair and reasonable result. Neither Party shall issue any press release or shall otherwise initiate press coverage of the Settlement.

XX. Miscellaneous Provisions

108. 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.

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

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

111. 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 consulted.

112. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

113. 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.

114. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Virginia, without regard to the principles thereof regarding choice of law.

115. 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 or electronic signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

116. 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. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the 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 Navy Federal or its affiliates at any time, including during any appeal from the Final Approval Order.

117. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow
1 West Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Email: ostrow@kolawyers.com
Class Counsel

TYCKO & ZAVAREEI LLP
Andrea Gold, Esq.
1828 L Street Northwest
Suite 1000
Washington, DC 20036
Email: agold@tzlegal.com
Class Counsel

KALIEL PLLC
Jeffrey Kaliel, Esq.
1875 Connecticut Avenue Northwest
10th Floor
Washington, DC 20009
Email: jkaliel@kaliellpc.com

Class Counsel

DAVIS WRIGHT TREMAINE LLP
Fred Burnside, Esq.
920 Fifth Avenue
Suite 3300
Seattle, Washington 98104
Email: fredburnside@dwt.com

Counsel for Navy Federal Credit Union

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

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

119. 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.

120. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), and counsel for Navy Federal (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 Plaintiff 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.

121. Agreement Mutually Prepared. Neither Navy Federal nor Plaintiff, nor any of

them, 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.

122. 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. Navy Federal has provided and is providing information that Plaintiff reasonably requested to identify Settlement Class members and the alleged damages they incurred. Both Parties recognize and acknowledge that they and their experts reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable 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.

123. Settlement Purpose of Agreement. This Settlement Agreement is governed by the terms of Federal Rule of Evidence 408 and is for settlement purposes only, and neither the fact of, nor any provision contained in this Settlement Agreement or any attachments, nor any action taken

hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim, defense or any fact alleged by any of the Parties in the Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or admission by any Party of any claim, defense or allegation made in the Action or any other action, nor as an admission by any of Navy Federal, Plaintiff, or Settlement Class Members of the validity of any fact or defense asserted against them in the Action or any other action. If the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form described in this Settlement Agreement, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Final Approval Order or Final Judgment are reversed or rendered void, then (a) this Settlement Agreement shall be considered null and void, (b) neither this Settlement Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court. Invalidation of any portion of this Settlement Agreement shall invalidate this Settlement Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect. This includes that the provisional 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 class certification shall be vacated by its terms, and the Action shall revert to the status that existed before the execution of this Settlement Agreement. Upon nullification of this Settlement Agreement, Plaintiff shall be free to pursue any claims available to her, 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 asserting such claims or defenses. In the event the Court should for any reason fail to approve this Settlement Agreement in the form agreed to by the Parties, decline to enter the Final Approval Order or Final Judgment in the form described in this Settlement Agreement, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Final Approval Order or Final Judgment are reversed or rendered void, the Parties will negotiate in good faith to address the issues raised by said events.

124. Assignment; Third Party Beneficiaries. None of the rights, commitments, or obligations recognized under this Settlement Agreement may be assigned by any member of the Settlement Class without the express written consent of the other Parties.

125. Communications. Any communications to the Parties relating to this Settlement Agreement shall be sent to all counsel signing this Agreement on behalf of the Parties.

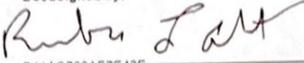
126. Calculation of Time. All time listed in this Agreement is in calendar days. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

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

Signature Page to Follow

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Dated: 10/8/2020 _____

DocuSigned by:

D411AG790AF7E43F
RUBY LAMBERT
Plaintiff

Dated: _____

Jeff Ostrow, Esq.
KOPELOWITZ OSTROW P.A.
Class Counsel

Dated: _____

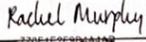
Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
Class Counsel

Dated: _____

Jeffrey Kaliel, Esq.
KALIEL PLLC
Class Counsel

Dated: 10/6/2020 _____

NAVY FEDERAL CREDIT UNION

DocuSigned by:

By: Rachel Murphy
ITS Assistant General Counsel

Fred Burnside

Digitally signed by: Fred Burnside
DN: CN = Fred Burnside email =
fredburnside@dwt.com C = US O = DWT
OU = DWT
Date: 2020.10.08.14:17:17 -0700

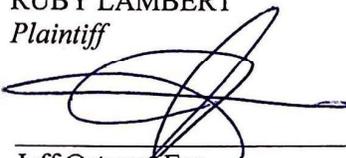
Dated: _____

Fred Burnside, Esq.
DAVIS WRIGHT TREMAINE LLP
Counsel for Navy Federal Credit Union

Dated: _____

RUBY LAMBERT
Plaintiff

Dated: 10/6/2020



Jeff Ostrow, Esq.
KOPELOWITZ OSTROW P.A.
Class Counsel

Dated: 10/6/2020



Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
Class Counsel

Dated: 10/7/2020

DocuSigned by:


Jeffrey Kaliel, Esq.
KALIEL PLLC
Class Counsel

Dated: _____

NAVY FEDERAL CREDIT UNION

By: _____
ITS _____

Dated: _____

Fred Burnside, Esq.
DAVIS WRIGHT TREMAINE LLP
Counsel for Navy Federal Credit Union