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8 *Counsel for Plaintiffs and Proposed Classes*

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

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14 JEFFREY STEPHENSON and BILLY  
SMITH II, individually, on behalf of  
himself and all others similarly situated,

15 Plaintiffs,

16 vs.

17 NAVY FEDERAL CREDIT UNION,

18 Defendant.  
19

Case No. **3:23-CV-01851-WQH-KSC**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND PROVISIONAL CLASS  
CERTIFICATION**

Hon. William Q. Hayes  
Hon. Karen S. Crawford

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiffs Jeffrey Stephenson and Billy Smith II submit this Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification (the “Motion”). Defendant Navy Federal Credit Union does not oppose the relief sought. The terms and conditions of the proposed class action settlement are set forth in the Parties’ Class Action Settlement Agreement<sup>1</sup> (the “Agreement”), a copy of which is attached as Exhibit 1 to the Declaration of Class Counsel (“Class Counsel Decl.”).

Plaintiffs filed this Action after Stephenson reported unauthorized charges on his son’s debit card, Billy Smith II reported unauthorized charges made through the Navy Federal app on his phone, and Navy Federal denied their claims. They allege Navy Federal’s policy and practice of denying consumers’ claims with letters stating “no error occurred” violates the Electronic Fund Transfer Act (the “EFTA”), 15 U.S.C. §§ 1693, *et seq.* and Regulation E of the EFTA, 12 C.F.R. §§ 1005.1, *et seq.*, which require financial institutions to comply with specific error resolution procedures and limit consumer liability for reported unauthorized transactions.<sup>2</sup> Plaintiffs further allege Navy Federal’s conduct breaches the express terms of its Account Disclosures, including the Debit Card Disclosure, and violates the implied covenant of good faith and fair dealing. Navy Federal denies the allegations in the Action. But given the risks, uncertainties, and burdens of continued litigation, the Parties agreed to settle according to the terms of the Agreement.

<sup>1</sup> The capitalized terms used herein are defined and have the same meaning as those used in the Agreement unless otherwise stated.

<sup>2</sup> These statutes require financial institutions to reimburse accountholders for unauthorized transfers, 15 U.S.C. §§ 1693g(a), (b); to investigate in good faith reported claims of error; *id.* § 1693f(c), 12 C.F.R. § 1005.11(c)(4); to provide “a written explanation of the institution's findings” upon denying account-holders’ claims, *id.* § 1693f(d), 12 C.F.R. §§ 1005.11(d)(4)(ii); and, upon request, to provide the “documents that the institution relied on in making its determination” in connection with those denials, 15 U.S.C. §§ 1693f(d), 12 C.F.R. § 1005.11(d)(1).

1 The Settlement achieved by the Parties through experienced counsel—reached  
2 via arm’s-length negotiations with the assistance of a respected mediator—guarantees  
3 substantial benefit for the Settlement Class Members. In exchange for a release of  
4 certain claims against Navy Federal, the Parties agree that Navy Federal will:

- 5 • provide \$1,700,000 to Settlement Class Members to fund (a) payments or  
6 Account credits to Settlement Class Members who file a valid and timely  
7 Claim Form; and (b) any award of attorneys’ fees, costs, and expenses. Settlement Class Members will receive a *pro rata* share of the Net Settlement  
8 Fund (with the opportunity for a second *pro rata* share for Settlement Class  
9 Members who also are members of the Document Request Settlement  
10 Subclass);
- 11 • separately pay \$5,000 to each Plaintiff to settle their individual claims for  
12 actual damages and \$5,000 Service Awards to Plaintiffs for serving as Class  
13 Representatives; and
- 14 • Settlement Administration Costs paid to the Settlement Administrator, to be  
15 reimbursed in whole or in part if there are uncashed checks after payments to  
16 Settlement Class Members.

17 An additional benefit to all Settlement Class Members, and current and future  
18 Navy Federal accountholders is that Defendant has agreed to revise its written  
19 explanation sent to members whose claims are denied and to bolster its procedures  
20 for responding to member requests for documents in connection with such denials.  
21 Navy Federal’s promise to implement changes to its policies and procedures for  
22 handling account-holders’ claims for unauthorized transfers promotes EFTA  
23 compliance and adds meaningful Settlement value.

24 The Settlement does not release Settlement Class Members’ actual-damages  
25 claims based on Navy Federal’s purported improper denial of a claim of unauthorized  
26 transfers. Instead, Settlement Class Members release claims of statutory damages  
27 only, which are capped under the EFTA. 15 U.S.C. § 1693m(a)(2)(B).

28 The Parties have agreed to a robust direct Notice Program designed to afford  
all Settlement Class Members due process and advise them of their rights.

As such, Plaintiffs respectfully request that this Court enter the Preliminary  
Approval Order submitted herewith that would, among other things:

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- Grant preliminary approval of the Agreement, finding the terms to be fair, adequate, and reasonable;
- Provisionally certify the Settlement Classes under Rule 23(a) and (b)(3) for settlement purposes only;
- Appoint the law firms of Edelsberg Law, P.A., Shamis & Gentile, P.A., and Kaliel Gold PLLC as Class Counsel, and appoint Plaintiffs as Class Representatives for the Settlement Classes;
- Approve the Claim Form and the form and content of the Notices, and direct that the Settlement Administrator provide Notice to the Settlement Classes;
- Establish deadlines for members of the Settlement Class to file claims, object to, or exclude themselves from the Settlement; and
- Set a Final Approval Hearing date per the schedule below.

Plaintiffs ask the Court to grant the Motion because the Agreement meets all requirements for preliminary approval and certifying the Settlement Classes.

**II. BACKGROUND OF THE LITIGATION**

**A. Litigation History**

On October 10, 2023, Stephenson filed his putative class action complaint in this Court against Navy Federal arising out of its handling of electronic fund transfers disputed by members as unauthorized and/or fraudulent. Class Counsel Decl. ¶ 7. The Complaint alleged claims on behalf of a nationwide class for breach of contract, breach of the implied covenant of good faith and fair dealing, violations of the EFTA, and violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the “UCL”). *Id.* Stephenson filed his First Amended Complaint on January 22, 2024, in lieu of responding to Defendant’s motion to dismiss. *Id.*

On February 21, 2024, Defendant filed a motion to dismiss the First Amended Complaint under Rule 12(b)(6). *Id.* ¶ 8. After briefing, the Court entered its order denying in part and granting in part Defendant’s motion to dismiss, allowing Plaintiffs’ EFTA and breach of contract claims to proceed. *Id.* Plaintiffs filed their Second Amended Complaint (SAC), which added Smith II to the Action; Defendant filed its answer to the SAC, asserting seven affirmative defenses. *Id.*

1 The Parties began written discovery, which included the exchange of Rule  
2 26(a)(1) initial disclosures, requests for production and interrogatories, engaging in  
3 meet-and-confer conferences regarding the same, issuing third-party subpoenas, and  
4 production of documents. *Id.* ¶ 9.

5 On December 11, 2024, the Parties participated in an Early Neutral Evaluation  
6 with Magistrate Judge Karen S. Crawford, which did not result in settlement. *Id.* ¶  
7 10. Then, on February 26, 2025, the Parties requested, and the Court granted a stay  
8 of the case to allow the Parties to participation in a mediation to see if they could  
9 resolve the case without further litigation. *Id.* On June 4, 2025, the Parties attended a  
10 full-day in-person mediation before Judge Diane M. Welsh (Ret.), which resulted in  
11 an agreement to the material terms of this Settlement. *Id.* ¶ 11. On June 6, 2025, the  
12 Parties notified the Court that they had reached an agreement to settle in principle on  
13 a class-wide basis and stipulated to stay the case. *Id.* The Parties then negotiated the  
14 Agreement now pending preliminary approval. *Id.*

### 15 **B. Settlement Negotiations**

16 The Settlement was aggressively negotiated with the assistance of retired Judge  
17 Welsh, a well-respected mediator experienced in mediating class actions alleging  
18 EFTA claims. Class Counsel Decl. ¶ 11. Judge Welsh presided over an arm’s-length  
19 mediation between capable and experienced class action counsel on both sides. *Id.* ¶¶  
20 2–6, 15. The Parties engaged in a significant amount of informal and formal discovery  
21 to assist Class Counsel in assessing the Settlement Class claims and Navy Federal’s  
22 defenses before reaching this Agreement. *Id.* ¶¶ 13–14, 21. This information included  
23 documents regarding Navy Federal’s internal policies and practices on handling  
24 account-holders’ claims of unauthorized or fraudulent transactions and efforts to  
25 comply with federal error resolution requirements; letters denying claims during the  
26 Class Period; each Plaintiff’s transaction history; and the approximate number of  
27 accountholders whose claims were denied (a subset of which claim not to have  
28 received supporting documentation upon request). *Id.* ¶ 21. The Parties did not

1 discuss attorneys' fees and costs, nor any potential service awards, until they first  
2 agreed on the material Settlement terms, including the Settlement Class definitions,  
3 the Notice and Notice Program, the claims process and Claim Form, benefits for  
4 Settlement Class Members, and scope of the Releases. *Id.* ¶ 17.

5 **III. THE SETTLEMENT**

6 **A. The Settlement Agreement**

7 The Agreement, which resolves the Action in its entirety, includes the  
8 following pertinent terms:

9 **1. The Settlement Classes**

10 Plaintiffs propose, for settlement purposes only, that this Court certify  
11 Settlement Classes defined as:

12 **Written Explanation Settlement Class:** All Accountholders whose  
13 claims of unauthorized electronic fund transfers were denied by Navy  
14 Federal Credit Union between October 10, 2022, and the date the Court  
grants preliminary approval of the Settlement.

15 **Document Request Settlement Subclass:** All Accountholders in the  
16 Written Explanation Settlement Class who requested documents Navy  
Federal relied on in making its determination and who did not receive  
17 them.

17 Agreement §§ 1.42(a), (b).

18 **2. Settlement Benefits**

19 Class Counsel believes that the contemplated benefits addressed below  
20 adequately compensate the Settlement Classes for the claims they are releasing and,  
21 in light of the risks of continued litigation, represent an excellent result for the  
22 Settlement Classes. Class Counsel Decl. ¶ 12.

23 **i. Injunctive Relief**

24 Navy Federal has agreed to provide prospective relief to the Settlement Classes  
25 by implementing changes to its policies and procedures relating to the handling of  
26 claims concerning unauthorized electronic fund transfers. *See* Agreement, 2.2(a).  
27 Specifically, Navy Federal has agreed to revise its written explanation sent to  
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1 members whose claims are denied and enhance its procedures for responding to  
2 member requests for documents in connection with such denials. *Id.*

3 **ii. Settlement Class Member Payments and Plan of**  
4 **Allocation**

5 Navy Federal shall deposit the \$1,700,000 Settlement Fund less the amount of  
6 Settlement Class Member Payments to be credited to the accounts of Current  
7 Accountholders. Agreement § 2.1(a). The Settlement Fund shall be used to pay any  
8 Fee Award to Class Counsel as well as payments and Account credits to Settlement  
9 Class Members. *Id.*

10 Each Settlement Class Member may submit a Claim Form to request a  
11 Settlement Class Member Payment in the amount of a *pro rata* portion of the Net  
12 Settlement Fund. *Id.* § 2.1(b). The Net Settlement Fund will be allocated based on  
13 class membership as follows: Settlement Class Members who are members of the  
14 Written Explanation Class will be assigned one (1) Approved Claim, while  
15 Settlement Class Members who are also members of the Document Request  
16 Settlement Subclass will be assigned two (2) Approved Claims. *Id.* The value of each  
17 *pro rata* portion of the Net Settlement Fund will be calculated by dividing the total  
18 number of Approved Claims by the amount of the Net Settlement Fund. *Id.*

19 **iii. Claims Process and Distribution.**

20 The Settlement provides an easy claim-submission process. The Claim Forms  
21 are accessible via one click in the Email Notice and Settlement Website, as well as  
22 available in paper format, pre-filled with a unique claim ID and the Settlement Class  
23 Member name provided as part of the Postcard Notice with return postage prepaid.  
24 Agreement §§ 4.1(g), (h); 1.35. The Claim Forms do not require Settlement Class  
25 Members to submit any supporting documentation. *See* Agreement, Ex. A. Settlement  
26 Class Members can check a box to indicate that they are also members of the  
27 Document Request Settlement Subclass to be assigned an additional Approved  
28 Claim. *Id.* § 2.1(b)(ii).

1 To receive a Settlement Class Member Payment, Settlement Class Members  
2 must submit a valid Claim Form postmarked or submitted online by the Claims  
3 Deadline. *Id.* § 1.6. The Claims Deadline will be clearly set forth in the Preliminary  
4 Approval Order, as well as in the Notice and the Claim Form, and will be no later  
5 than sixty (60) days after the Notice Date. *Id.*

6 Upon the Effective Date, within ten (10) business days of receipt of funds from  
7 Navy Federal, the Settlement Administrator will mail Settlement Class Member  
8 Payments to Former Accountholders via check and Navy Federal will credit accounts  
9 of Current Accountholders. *Id.* § 2.1(d). After the check cashing deadline (stated on  
10 the checks), the Settlement Administrator will attempt to identify updated addresses  
11 and re-mail or re-issue a distribution check. *Id.* If any Remaining Residual Funds  
12 exist at that time, such funds will be payable for reimbursement of Settlement  
13 Administrative Costs, and if any remain, next to a *cy pres* recipient proposed by the  
14 Parties (subject to Court approval). *Id.* § 2.1(j).

15 **3. Settlement of Plaintiffs’ Individual Claims.**

16 To settle Plaintiff Stephenson and Smith’s individual claims for actual  
17 damages (alleged in the SAC), Navy Federal has agreed to pay each Plaintiff \$5,000  
18 in exchange for a general release of claims. Agreement § 2.1(a)(i). The General  
19 Release and waiver of California Code Section 1542 relate to the Plaintiffs’  
20 individual claims. *Id.* §§ 3.3; 1.31, 1.48.

21 **4. The Notice Program**

22 The Parties retained Kroll Settlement Administration LLC (“Kroll”) to serve  
23 as the Settlement Administrator. Agreement § 1.41. No later than sixty (60) days  
24 following entry of the Preliminary Approval Order, the Settlement Administrator will  
25 provide direct Email Notice and Postcard Notice via the e-mail addresses and mailing  
26 addresses identified in the Settlement Class List, respectively. *Id.* § 4.1.

27 In the event any Email Notices and/or Postcard Notices are returned as  
28 undeliverable within thirty (30) days after the Initial Mailed Notice is completed, the

1 Settlement Administrator shall complete the Notice Re-Mailing Process by mailing a  
2 Postcard Notice to those Settlement Class Members whose new addresses were  
3 identified during the reasonable tracing procedure. *Id.* § 4.1(f). No later than thirty  
4 (30) days after the Notice Date, the Settlement Administrator shall also send a second  
5 Email Notice to those Settlement Class Members who have not yet made a claim,  
6 requested to opt out, or made an objection. *Id.* § 4.1(g).

7 The Settlement Administrator will also establish and maintain the Settlement  
8 Website, which will include the Long Form Notice, the Claim Form (including the  
9 ability to file Claim Forms online), the Agreement, the Preliminary Approval Order,  
10 Plaintiff’s Application for Fees and Costs and for Service Awards, and the date of the  
11 Final Approval Hearing. *Id.* § 4.1(h). The Settlement Administrator shall also  
12 maintain a toll-free telephone system containing recorded answers to frequently  
13 asked questions as agreed to by the Parties and the ability to reach a live operator,  
14 including to request a copy of the Claim Form or the Long-Form Notice. *Id.* § 4.1(i).

15 The Long Form Notice includes: a) a description of the case, Settlement Class  
16 Members’ legal rights and options, answers to frequently asked questions, the  
17 Agreement and the Settlement benefits, contact information for Counsel, and the  
18 attorneys’ fees and costs that Class Counsel intends to request and the Service Awards  
19 to be sought by Plaintiffs; b) instructions on how to opt out of or object to the  
20 Settlement; and c) information about the Final Approval Hearing. *Id.* at Ex. D.

21 **5. Settlement Releases**

22 The Agreement includes a narrow release by Plaintiffs and all Settlement Class  
23 Members of the Released Claims that reasonably arise out of or relate to the claims  
24 alleged in the Action regarding Navy Federal’s improper denial of a claim for  
25 reimbursement of unauthorized electronic fund transfers. Agreement § 3.2. The  
26 Released Claims exclude any claims for actual damages based on or related to Navy  
27 Federal’s purported improper denial of a claim of unauthorized electronic transfer(s).

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**6. Class Counsel’s Attorneys’ Fees and Reimbursement of Expenses, Plaintiffs’ Service Awards, and Settlement Administration Costs**

Subject to Court approval, Plaintiffs will request the following payments from the Settlement Fund: Class Counsel’s attorneys’ fees of up to one-third of the Settlement Value and reimbursement of expenses. Agreement § 9.1. Subject to Court approval, Plaintiffs will also request \$5,000 Service Awards to each Plaintiff for serving as Class Representative.

**IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL**

Rule 23(e)(2) requires that class action settlements be “fair, reasonable, and adequate.” The Ninth Circuit recognizes the “strong judicial policy that favors settlement, particularly where complex class action litigation is concerned.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019). Approval of a class action settlement “involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted.” *Morey v. Louis Vuitton N. Am., Inc.*, 2013 WL 12069021, at \*4 (S.D. Cal. 2013) (Hayes, J.).<sup>3</sup> At the preliminary approval stage, the focus is on whether the “proposed settlement falls within the range of possible judicial approval.” *Grant v. Capital Mgmt. Services, L.P.*, 2013 WL 6499698, at \*2 (S.D. Cal. 2013) (Hayes, J.). “Essentially, the court is only concerned with whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys.” *Morey*, 2013 WL 12069021, at \*7. Indeed, “[t]he court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned

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<sup>3</sup> Unless otherwise stated herein, all internal citations, quotation marks, and alterations are omitted, and all emphasis is added.

1 judgment that the agreement is not the product of fraud or overreaching by, or  
2 collusion between, the negotiating parties, and that the settlement, taken as a whole,  
3 is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv.*  
4 *Comm’n of City and County of San Francisco*, 668 F.2d 615, 625 (9th Cir. 1982).

5 Ultimately, the standard inquiry the trial court explores is whether the proposed  
6 settlement “is fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler*  
7 *Corp.*, 150 F.3d 1101, 1026 (9th Cir. 1998); Fed. R. Civ. P. 23(e). “It is the settlement  
8 taken as a whole, rather than the individual component parts, that must be examined  
9 for overall fairness.” *Hanlon*, 150 F.3d at 1026. Accordingly, the court does not have  
10 “the ability to delete, modify or substitute certain provisions.” *Id.* In other words, the  
11 “settlement must stand or fall in its entirety.” *Id.*

12 Rule 23(e)(2) permits a district court to approve a class action settlement upon  
13 considering whether: “(A) the class representatives and class counsel have adequately  
14 represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief  
15 provided the class is adequate ... and (D) the proposal treats class members equitably  
16 relative to each other.” *Martinez v. University of San Diego*, No. 3:20-cv-01946-  
17 RBM-VET, 2024 WL 4713891, at \*10 (S.D. Cal. Nov. 7, 2024). In addition to the  
18 Rule 23(e)(2) requirements, courts in the Ninth Circuit generally assess a settlement’s  
19 fairness in weighing several factors, as set forth in *In re Bluetooth Headset Prods.*  
20 *Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill. v. Gen. Elec.*,  
21 361 F.3d 566 (9th Cir. 2004)) (the “Churchill factors”). The *Churchill* factors, which  
22 largely overlap with the Rule 23(e)(2) factors, include:

- 23 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity,  
24 and likely duration of further litigation; (3) the risk of maintaining class  
25 action status throughout the trial; (4) the amount offered in settlement;  
26 (5) the extent of discovery completed and the stage of the proceedings;  
27 (6) the experience and views of counsel; (7) the presence of a  
28 governmental participant; and (8) the reaction of the class members of  
the proposed settlement.

1 *Bluetooth*, 654 F.3d at 946.<sup>4</sup> For the reasons set forth in detail below, the proposed  
2 Settlement is fundamentally fair, adequate, and reasonable—thereby, falling squarely  
3 into the range of preliminary approval.

4 **V. PRELIMINARY SETTLEMENT APPROVAL IS WARRANTED**

5 Plaintiffs and the Settlement Classes faced significant risks in this case. Given  
6 these risks, highly experienced counsel for the parties diligently engaged in arm’s-  
7 length negotiations, conducted in good faith, and driven by a substantial amount of  
8 discovery and investigation, as well as significant and complex motion practice. A  
9 settlement that provides Settlement Class Members with a valuable cash benefit and  
10 meaningful injunctive relief falls within the range of possible approval. Accordingly,  
11 each of the Rule 23(e)(2) factors, as well as the *Churchill* factors, weigh in favor of  
12 finding that the proposed Settlement is fair, adequate, and reasonable.

13 **A. The Proposed Settlement is Fair, Adequate, and Reasonable**

14 **1. The Rule 23(e)(2) Requirements**

15 Plaintiffs and Class Counsel have adequately and vigorously represented the  
16 Settlement Classes throughout the 2.5-year litigation, which involved significant  
17 formal and informal discovery, contentious motion practice, and settlement  
18 negotiations with the assistance of a third-party neutral mediator. Class Counsel Decl.  
19 ¶ 13. Further, Plaintiffs, through their counsel, engaged in a lengthy, independent  
20 investigation of their claims, as well as the potential claims of other Settlement Class  
21 Members, to properly weigh the pros and cons of continued litigation versus the  
22 proposed nationwide settlement of all claims for statutory damages. *Id.* ¶ 14.  
23 Additionally, the entire settlement process was negotiated in good faith and at arm’s-  
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25 \_\_\_\_\_  
26 <sup>4</sup> As this Court explained, “the Court need not conduct a full settlement fairness  
27 appraisal before granting preliminary approval” and in fact, “cannot fully assess  
28 many of these factors prior to notice and an opportunity for objection.” *Morey*, 2013  
WL 12069021 at \*7. This Motion does not discuss the seventh *Churchill* factor—  
presence of a governmental participant—because it is inapplicable. And the eighth  
*Churchill* factor—reaction of the settlement class—will be revisited at final approval.

1 length by highly knowledgeable counsel experienced in complex class action  
2 litigation, including consumer disputes against financial institutions. *Id.* ¶ 15. *See*  
3 *Grant*, 2013 WL 6499698, at \*5 (finding “the procedure reaching the settlement was  
4 fair and reasonable” where it “was the product of arms-length negotiations” and  
5 “reached with the assistance of” a mediator).

6 Next, the adequacy of the relief provided to the Settlement Class Members is  
7 substantial and each Settlement Class Member is treated equitably relative to all other  
8 members of the Settlement Classes based on the *pro rata* distribution amongst the  
9 number of Approved Claims as set forth in the Agreement § 2.1. *See Morgan v. Rohr,*  
10 *Inc.*, 2025 WL 1285830, at \*14 (S.D. Cal. May 1, 2025) (finding “there is little risk  
11 of unequal treatment” where each settlement class member payment is “calculated  
12 pro rata”). And the scope of the Release applies equally to all Settlement Class  
13 Members and does not affect the apportionment of relief. *Id.* § 3.2. The Release is  
14 tailored to the Released Claims as defined in the Agreement and protects Settlement  
15 Class Members’ rights to individually pursue claims for actual damages. *Id.* § 1.36.

16 Lastly, Class Counsel has not been paid for their extensive efforts or  
17 reimbursed for litigation costs incurred over the last two and a half years. Class  
18 Counsel Decl. ¶ 16. Under the Agreement, Class Counsel are entitled to request  
19 attorneys’ fees representing up to one-third of the value of the Settlement, as well as  
20 reimbursement of litigation costs incurred in the Action. Agreement § 9.1. The Parties  
21 negotiated and reached agreement regarding fees and costs only after agreeing to the  
22 material terms of the Settlement. Class Counsel Decl. ¶ 17. That award remains  
23 subject to this Court’s approval and will compensate Class Counsel for the time, risk,  
24 and expenses incurred in pursuing claims on Settlement Class Members’ behalf.  
25 Accordingly, this Court should find that this factor will weigh in favor of granting  
26 final approval and should reserve a full analysis of this factor for final approval.  
27 *Kendall v. Odonate Therapeutics, Inc.*, 2022 WL 188364, at \*7 (S.D. Cal. Jan. 18,

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1 | 2022) (33.33% of the settlement “is within the range of acceptable attorneys’ fees in  
2 | Ninth Circuit cases”).

3 | At this stage, there is no reason to doubt that the proposed Fee Award supports  
4 | settlement approval. Class Counsel’s fees and costs will be paid from the same  
5 | Settlement Fund as Settlement Class Member Payments and thus, Class Counsel were  
6 | incentivized to negotiate the largest fund possible. Agreement § 9.1. Further, the Fee  
7 | Award is subject to final Court approval, and if any requested fees are not approved  
8 | by the Court, those funds will be distributed to Settlement Class Members. *Id.*

9 | **2. The *Churchill* Factors**

10 | **i. Strength of Plaintiffs’ Case and Further Litigation Risk**

11 | As this Court has noted, “the Court must balance against the risks of continued  
12 | litigation (including the strengths and weaknesses of Plaintiff’s case), the benefits  
13 | afforded to members of the Class, and the immediacy and certainty of a substantial  
14 | recovery.” *Morey v. Louis Vuitton N.A.*, No. 11cv1517 WQH (BLM), 2014 WL  
15 | 109194, at \*5 (S.D. Cal. Jan. 9, 2014) (Hayes, J.).

16 | The SAC alleges claims for statutory damages under the EFTA and actual  
17 | damages for the EFTA and breach of contract. Plaintiffs believed their EFTA claims  
18 | for statutory damages were meritorious based on both the alleged facts and court  
19 | decisions involving similar claims challenging financial institutions’ error resolution  
20 | procedures like Navy Federal’s alleged here. *See, e.g., Garcia v. Navy Federal Credit*  
21 | *Union*, No. 23-cv-2017-MMA-BLM, 2025 WL 1100898, at \*19 (S.D. Cal. Apr. 14,  
22 | 2025) (denying Defendant’s motion for summary judgment as to whether Navy  
23 | Federal complied with the EFTA’s reasonable investigation provision); *Nguyen v.*  
24 | *Wescom Central Credit Union*, No. SACV 22-01520-CJC (JDEx), 2023 WL  
25 | 9019022, at \*4 (C.D. Cal. Nov. 15, 2023) (“Summary judgment is inappropriate on  
26 | Plaintiff’s EFTA claim because a reasonable jury could determine that Defendant’s  
27 | investigation of Plaintiff’s claim was not reasonable.”); *see also Sparkman v.*  
28 | *Comerica Bank*, No. 23-CV-02028-DMR, 2023 WL 5020269, at \*10 (N.D. Cal. Aug.

1 4, 2023) (denying motion to dismiss based on allegations of insufficient form letters  
2 denying fraud claims and facts showing transactions were unauthorized).

3 But “in the case of a class action ... the total recovery” for statutory damages  
4 under the EFTA “shall not be more than the lesser of \$500,000 or 1 per centum of the  
5 net worth of the defendant[.]” 15 U.S.C. § 1693m(a)(2)(B)(ii). Thus, even if the  
6 EFTA claims for alleged insufficient denial letters and failure to provide documents  
7 upon request were meritorious, they provide a limited ground for recovery of putative  
8 class damages. Further, while Plaintiffs believe in the merits of their EFTA and  
9 breach of contract claims for actual damages, they recognize that certification of such  
10 claims under Rule 23(b)(3) was risky due to Navy Federal’s arguments that the  
11 elements of causation and damages could not be determined on a class-wide basis.  
12 *See, e.g., Moriarty v. Am. Gen. Life Ins. Co.*, No. 3:17-CV-1709-BTM-WVG, 2022  
13 WL 6584150, at \*5 (S.D. Cal. Sept. 27, 2022) (denying motion for class certification  
14 on claim for breach of contract in part due to “substantial concerns as to whether the  
15 issues of the individual claims such as actual damages and causation would  
16 predominate”).

17 The parties weighed these considerations when they agreed to settle only the  
18 statutory damages claims, but to not release Settlement Class Members’ claims for  
19 actual damages under the EFTA, their contracts, or any other legal theory. This is like  
20 other settlements that recently received final approval from district courts, where only  
21 statutory claims under the EFTA were released in exchange for a settlement payment.  
22 *See Almon v. Conduent Bus. Servs., LLC*, No. 5:19-cv-01075-XR, ECF No. 110  
23 (W.D. Tex. Nov. 1, 2024) (granting final approval of class action settlement regarding  
24 EFTA claims); *Shelby v. Two Jinns, Inc.*, No. CV 15-03794-AB (GJSx), 2017 WL  
25 6347090 (C.D. Cal. Aug. 2, 2017) (same)

26 While Plaintiffs are confident in their claims’ merits, establishing liability is  
27 challenging, as shown by the dispute over whether Navy Federal’s procedures satisfy  
28 the EFTA requirements, the discovery needed, and challenges in determining whether

1 Navy Federal erred in denying any particular claim. Navy Federal maintains that its  
2 practices and procedures related to the investigation and determination of claimed  
3 fraudulent electronic transfers, including explanations for denial and provision of  
4 documents to members upon request, complied with all applicable laws and  
5 regulations, including the terms of its Deposit Account Agreement with consumers.  
6 Indeed, “[t]here is limited guidance as to what constitutes a reasonable investigation  
7 under § 1693f.” *Nguyen*, 2023 WL 9019022 at \*3 (citing cases).

8 Although the Court allowed Plaintiffs’ EFTA and contract claims to proceed  
9 on the motion to dismiss, the risks in prosecuting a class action through trial cannot  
10 be disregarded. Plaintiffs’ claims would need to survive additional forthcoming  
11 motion practice, and they would have to succeed in certifying a class. Class Counsel  
12 Decl. ¶ 18. The delay in continuing to litigate this case also favors approval of the  
13 Settlement. *Id.* Significant time and additional costs would be required for the Parties  
14 and the Court to complete discovery, brief and rule on class certification, participate  
15 in pre-trial proceedings, brief and rule on summary judgment, etc. *Id.* And the Parties  
16 could appeal the Court’s class certification and summary judgment decisions as well  
17 as any verdict at trial, which could take years to resolve and could result in reversal  
18 on appeal. *Id.* Plainly, litigation “would likely continue for many years, especially  
19 given that EFTA law is not well settled.” *Granados v. OnPoint Community Credit*  
20 *Union*, 2025 WL 1640204, at \*7 (D. Or. June 10, 2025). Given that the Settlement  
21 provides immediate compensation for the Settlement Classes now, in light of the risks  
22 and delay of receiving any monetary relief at all, these considerations support  
23 approval of the Settlement.

24 **ii. The Risk of Maintaining Class Action Status**  
25 **Throughout Trial**

26 The third *Churchill* factor, which considers the risk of Plaintiffs maintaining  
27 class status through the duration of the case, also supports preliminary approval. At  
28 the time this Settlement was reached, no class was certified. As discussed above, there

1 are undoubtedly risks involved in pursuing this case as a class action, especially given  
2 that “the type of fraud that generates these claims on a broad scale is a new  
3 phenomenon.” *Nelipa v. TD Bank, N.A.*, No. 21-CV-1092, 2024 WL 3017141 at \*8  
4 (E.D.N.Y. June 17, 2024). This risk is especially acute regarding claims for actual  
5 damages, which Navy Federal argued could never be certified due to a lack of  
6 predominance on the elements of breach and damages. Class Counsel Decl. ¶ 19. And  
7 even if the Court were to grant class certification, the real risk of later decertification  
8 supports settlement approval. *See In re Netflix Privacy Litig.*, No. 5:11-cv-00379  
9 EJD, 2013 WL 1120801, at \*6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district  
10 court could decertify a class at any time is one that weighs in favor of settlement”).

11 **iii. The Amount Offered in the Settlement**

12 The Settlement provides exceptional monetary benefits. Settlement Class  
13 Members who submit a timely and valid Claim Form will receive payment of their  
14 *pro rata* share of a \$1,700,000 Settlement Fund net of attorneys’ fees and Service  
15 Awards awarded by the Court. The Net Settlement Fund will be distributed to  
16 Settlement Class Members based on the number of Approved Claims divided by the  
17 Net Settlement Fund.

18 This Settlement does not release any Settlement Class Members’ claims for  
19 actual damages based on Navy Federal’s alleged improper denial of claims. Class  
20 Counsel Decl. ¶ 20. Instead, the Agreement reflects a settlement of statutory damages  
21 claims, which do not require proof of actual damages, but are capped under the EFTA.  
22 *See* 15 U.S.C. § 1693m(a)(2)(A)-(B). Although the recovery for each Settlement  
23 Class Member will depend on the number of Approved Claims, the Settlement Fund  
24 is more than three times the maximum class recovery if successful in litigation. This  
25 sizable monetary recovery weighs in favor of preliminary approval. *See e.g.*,  
26 *Greenley v. Mayflower Transit, LLC*, No. 21-cv-339-WQH-MDD2022 WL 3161908,  
27 at \*3 (S.D. Cal. Aug. 8, 2022) (Hayes, J.) (approving settlement fund of 41.9% of  
28 maximum potential statutory damages under CIPA as “fair and reasonable”).

1 The substantial amount offered in this Settlement is also an excellent recovery  
2 when compared with the limited universe of similar EFTA class action settlements  
3 that have received approval. *See, e.g., Almon*, No. 5:19-cv-01075-XR, ECF No. 110  
4 (granting final approval to class action settlement that certified three classes—each  
5 relating to a different alleged violation of the EFTA—in exchange for a \$1,200,000  
6 cash fund); *Shelby*, 2017 WL 6347090, at \*2 (approving \$475,000 common fund for  
7 EFTA violations). The reasonableness of the \$1,700,000 common fund is strongly  
8 supported by the fact that statutory damages under the EFTA for class actions are  
9 capped at \$500,000. Moreover, while prior cases only obtained cash funds, here Navy  
10 Federal has agreed to implement changes to its policies and procedures relating to the  
11 handling of claims concerning unauthorized transfers that will benefit Settlement  
12 Class Members (and many other Navy Federal customers) for years to come.

13 **iv. The Extent of Discovery and Stage of the Proceedings**

14 In assessing sufficiency of discovery, “a court need not possess evidence to  
15 decide the merits of the issues, because compromise is proposed in order to avoid  
16 further litigation.” Newberg & Conte, *Newberg on Class Actions*, § 11.45 (4th ed.  
17 2008). Rather, a court needs only sufficient information “to raise its decision above  
18 mere conjecture.” *Id.* In analyzing this factor, the Court evaluates “whether the parties  
19 have sufficient information to make an informed decision about settlement.” *Hunter*  
20 *v. Nature’s Way Products, LLC*, No. 3:16-cv-532-WQH-AGS, 2020 WL 71160, at  
21 \*5 (S.D. Cal. Jan. 6, 2020) (Hayes, J.).

22 Here, the Parties engaged in both formal and informal discovery prior to  
23 settling, which included Defendant’s production of information regarding Navy  
24 Federal’s policies and procedures and training. Class Counsel Decl. ¶ 21. The Parties  
25 aggressively litigated this case through contentious motion practice and settlement  
26 negotiations driven by the exchange of discovery, including with the assistance of a  
27 mediator. *Id.* ¶ 22. Thus, the Parties had sufficient information to assess the merits  
28 and weigh the settlement benefits before entering into the Agreement. *See e.g.,*

1 *Hunter*, 2020 WL 71160 at \*5 (finding “parties’ extensive investigation, discovery,  
2 and subsequent settlement discussions” supported approval).

3 **v. The Experience and Views of Counsel**

4 The Ninth Circuit “has long deferred to the private consensual decision of the  
5 parties.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). “Parties  
6 represented by competent counsel are better positioned than courts to produce a  
7 settlement that fairly reflects each party’s expected outcome in litigation.” *Id.* at 967.  
8 Class Counsel are highly experienced in complex class action litigation, including  
9 consumer disputes against financial institutions. Class Counsel Decl. ¶¶ 2–6, 25–26,  
10 Exs. 2–4 (firm resumes). Collectively, Class Counsel have secured hundreds of  
11 millions of dollars on behalf of consumers because of their efforts in evoking large-  
12 scale reform of unlawful and unfair business practices through class action  
13 settlements nationwide. *See id.* Counsel for both Parties, as highly experienced trial  
14 attorneys and class counsel, are confident in the terms of the Settlement after  
15 engaging in informed negotiations. *Id.* Thus, Class Counsel’s experience and  
16 considered judgment weighs heavily in favor of finding the Settlement to be fair,  
17 adequate, and reasonable. *See e.g., Grant*, 2013 WL 6499698 at \*5.

18 In sum, all factors weigh in favor of finding that the proposed Settlement is  
19 fair, reasonable, and adequate, and therefore, a grant of preliminary approval of the  
20 Settlement is warranted.

21 **VI. THE PROPOSED CLASSES SHOULD BE PROVISIONALLY**  
22 **CERTIFIED FOR SETTLEMENT PURPOSES**

23 Settlement approval under Rule 23(e) requires certification of a settlement  
24 class for settlement purposes only. *Greenley*, 2022 WL 3161908 at \*3. The Ninth  
25 Circuit recognizes the propriety of certifying a settlement class to resolve consumer  
26 lawsuits. *See Hanlon*, 150 F.3d at 1019. At the preliminary approval stage, the  
27 Court’s threshold task is to determine whether the proposed class satisfies the Rule  
28 23(a) requirements: (1) numerosity, (2) commonality, (3) typicality, and (4)

1 adequacy, and the requirements set forth in Rule 23(b)(3). *Id.* Here, the provisional  
2 certification of the proposed Classes for settlement purposes is warranted because  
3 Plaintiffs satisfy all requirements set forth in Rule 23.

4 **A. The Proposed Settlement Classes Satisfy Rule 23(a)**

5 **1. Numerosity**

6 Numerosity is satisfied if “the class is so numerous that joinder of all members  
7 is impracticable.” Fed. R. Civ. P. 23(a)(1). “Joinder need not be impossible, as long  
8 as potential class members would suffer a strong litigation hardship or inconvenience  
9 if joinder were required.” *Rannis v. Rechhia*, 380 Fed. Appx. 646, 651 (9th Cir. May  
10 27, 2010). Numerosity is clearly established here as there are approximately 350,000  
11 Settlement Class Members (as of a date before the mediation). Class Counsel Decl. ¶  
12 23. Accordingly, because the Settlement Class Members are certainly too numerous  
13 to join as plaintiffs, the numerosity requirement is met.

14 **2. Commonality**

15 Commonality is satisfied if “there are any questions of law or fact common to  
16 the class.” Fed. R. Civ. P. 23(a)(2). The inquiry regarding commonality involves  
17 whether Plaintiffs can show a common contention such that “determination of its  
18 truth or falsity will resolve an issue that is central to the validity of each one of the  
19 claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). “The  
20 existence of shared legal issues with divergent factual predicates is sufficient, as is a  
21 common core of salient facts coupled with disparate legal remedies within the class.”  
22 *Hanlon*, 150 F.3d at 1019. All Settlement Class Members suffered the same statutory  
23 injury and assert claims depending on the same contention: that Defendant’s denial  
24 letters were inadequate and that Defendant failed to provide all relevant records upon  
25 request. *See Beaver v. Omni Hotels Mgmt. Corp.*, 2023 WL 6120685, at \*5 (S.D. Cal.  
26 2023). Thus, the commonality requirement is readily satisfied.

27 **3. Typicality**

28

1 Typicality is satisfied if the class representatives’ claims or defenses are typical  
2 to those of the settlement class. Fed. R. Civ. P. 23(a)(3). The Ninth Circuit applies  
3 the typicality requirement liberally: “representative claims are typical if they are  
4 reasonably coextensive with those of absent class members; they need not be  
5 substantially identical.” *Hanlon*, 150 F.3d at 1020. The “typicality” requirement is  
6 essential to ensure that the claims of the class representative is aligned with those of  
7 the class as a whole. *Wolin v. Jaguar Land Rover N.A., LLC*, 617 F.3D 1168, 1175  
8 (9th Cir. 2010). Here, Plaintiffs’ claims are typical to those of the absent Settlement  
9 Class Members because they are based upon materially similar facts and identical  
10 legal and remedial theories. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984  
11 (9th Cir. 2011) (typicality exists when the class representative and the class are  
12 injured by the same course of conduct).

#### 13 4. Adequacy

14 Adequacy is satisfied if the class representatives “will fairly and adequately  
15 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Two questions determine  
16 legal adequacy: “(1) do the named plaintiffs and their counsel have any conflicts of  
17 interest with other class members and (2) will the named plaintiffs and their counsel  
18 prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020.  
19 Plaintiffs are adequate class representatives because they share the common goal to  
20 ensure Navy Federal meets its investigative obligations under the EFTA. *See e.g.*,  
21 *Hoffman v. Dutch LLC*, 317 F.R.D. 566, 574 (S.D. Cal. 2016) (finding adequacy met  
22 where class representatives and members “share a common goal of protecting  
23 consumer’s rights”). Neither Plaintiff harbors interests antagonistic to the interests of  
24 the Settlement Class. *See* Class Counsel Decl. ¶ 24. Plaintiffs have stayed abreast of  
25 the proceedings, attended the Early Neutral Evaluation, and if necessary, would sit  
26 for depositions and participate in discovery. *Id.* Further, Class Counsel are highly  
27 experienced consumer class action attorneys, have litigated many cases involving  
28 breach of contract and EFTA actions against financial institutions, and have

1 vigorously investigated and prosecuted this case since its inception. *Id.* ¶ 25.  
2 Therefore, the adequacy requirement is satisfied.

3 **B. The Proposed Settlement Classes Satisfy Rule 23(b)(3)**

4 Class actions under Rule 23(b)(3) must also satisfy the “predominance” and  
5 “superiority” requirements: (1) “the questions of law and fact common to class  
6 members predominate over any questions affecting only individual members, and”  
7 (2) “that a class action is superior to other available methods for fairly and efficiently  
8 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Plaintiffs satisfy both.

9 **1. Common Questions Predominate**

10 Predominance inquires “whether proposed classes are sufficiently cohesive to  
11 warrant adjudication by representation.” *Hanlon*, 150 F.3d at 1022. Although  
12 predominance is inherently related to commonality it that it assumes a prerequisite of  
13 common issues of law and fact, “Rule 23(b)(3) focuses on the *relationship* between  
14 the common and individual issues.” *Id.* Where the core question driving the litigation  
15 “would require the separate adjudication of each class member’s individual claim or  
16 defense, a Rule 23(b) action would be inappropriate.” *Zinser v. Accufix Research*  
17 *Institute, Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001). But “[w]hen common questions  
18 present a significant aspect of the case and they can be resolved for all members of  
19 the class in a single adjudication, there is clear justification for handling the dispute  
20 on a representative rather than on an individual basis.” *Hanlon*, 150 F.3d 1022. This  
21 Court has found predominance satisfied where the “claims have the potential be  
22 proven based upon Defendant’s uniform [ ] policy, without the need for  
23 individualized proof.” *Greenley*, 2022 WL 3161908 at \*4.

24 As to Plaintiffs’ EFTA claim, the predominant common question is whether  
25 Navy Federal’s denial letters and procedures for providing documents upon request  
26 violated the EFTA, which can be proven with common evidence, including the letters  
27 themselves and Navy Federal’s procedures. *See Almon v. Conduent Bus. Servs., LLC*,  
28 No. No. 5:19-cv-01075-XR, 2022 WL 4545530, at \*15 (W.D. Tex. Sept. 28, 2022)

1 (finding predominance satisfied on EFTA claim because “individual inquiries are not  
2 necessary to determine whether an investigation was timely completed, whether a  
3 provisional credit was properly given, or whether or not Defendants timely provided  
4 a cardholder with their investigative documents”); *Shelby*, 2017 WL 6347090, at \*4  
5 (“Common factual and legal issues predominate because the single claim at issue here  
6 depends on Defendant's electronic withdrawal of funds from Class members’  
7 accounts, and whether the EFTA permits that conduct.”). Predominance is met here.

8 **2. A Class Action is the Superior Method of Adjudication.**

9 Superiority examines whether the class action device “is superior to other  
10 available methods for fairly and efficiently adjudicating the controversy.” Fed. R.  
11 Civ. P. 23(b)(3). In evaluating superiority, courts consider the following factors: “(A)  
12 the class members’ interests in individually controlling the prosecution or defense of  
13 separate actions; (B) the extent and nature of any litigation concerning the  
14 controversy already begun by or against class members; (C) the desirability or  
15 undesirability of concentrating the litigation of the claims in the particular forum; and  
16 (D) the likely difficulties in managing a class action.” *Id.* “Where recovery on an  
17 individual basis would be dwarfed by the cost of litigating on an individual basis, this  
18 factor weighs in favor of class certification.” *Wollin*, 617 F.3d at 1175-76. In the  
19 settlement context, manageability of the class action device is not a concern. *See*  
20 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

21 Because each Settlement Class Member’s claim is common to the class and  
22 relatively small in amount given the cap on statutory damages in the EFTA, a class  
23 action is the superior method for efficiently adjudicating Plaintiffs’ claims for  
24 statutory damages and injunctive relief.

25 **VII. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE**  
26 **AND NOTICE PROGRAM**

27 Rule 23(e) requires the trial court to “direct notice in a reasonable manner to  
28 all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).

1 Class notice must be “reasonably calculated to adequately apprise Class Members of  
2 (a) the pending lawsuit, (b) the proposed settlement, and (c) their rights, including the  
3 right to either participate in the settlement, exclude themselves from the settlement,  
4 or object to the settlement.” *Morey*, 2013 WL 12069021 at \*9. A class action  
5 settlement notice is “satisfactory if it generally describes the terms of the settlement  
6 in sufficient detail to alert those with adverse viewpoints to investigate and to come  
7 forward and to be heard.” *Churchill*, 361 F.3d at 575. “However, Rule 23(e) ‘does  
8 not require a detailed analysis of the statutes or causes of action forming the basis for  
9 the plaintiff class’s claims, and it does not require an estimate of the potential value  
10 of those claims.’” *In re Online DVD-Rental*, 779 F.3d at 946.

11 The content of the Email Notice, Postcard Notice, and Long Form Notice  
12 provides sufficient information to meet these standards. *See* Agreement Exs. B–D.  
13 Each Notice clearly and conspicuously describes: who is a Settlement Class Member;  
14 the factual background of the litigation and the Parties; Settlement Class legal rights,  
15 including to participate, opt out, or object, and deadlines for each option; the benefits  
16 and details of the relief; the requested percentage of the value of the Settlement  
17 Plaintiff will seek in attorneys’ fees and the Service Award amount; how to contact  
18 the Settlement Administrator. *Id.*

19 The Long Form Notice uses a “frequently asked questions” format and  
20 includes answers to questions such as, “How do I know if I’m a Member of the  
21 Settlement Classes?”; “If I am a Settlement Class Member, What Are My Options?”;  
22 and “If I Do Not Exclude Myself from the Settlement, What Claims Am I Giving  
23 Up?” *See* Settlement Agreement, Exhibit D. This format constitutes adequate notice.  
24 4 Newberg on Class Actions § 11:53, at p. 167 (4th ed. 2013) (“[N]otice is adequate  
25 if it may be understood by the average class member.”).

26 Moreover, the method of providing Notice is adequate and reasonably likely  
27 to ensure members of the Settlement Class apprised of the Settlement and given an  
28 opportunity to be heard. Within sixty (60) calendar days after entry of the Preliminary

1 Approval Order, the Settlement Administrator will post and/or send Email Notice if  
2 Navy Federal has a valid email address, Postcard Notice if Navy Federal does not  
3 have a valid email address. The Long Form Notice will be available on the Settlement  
4 Website and upon request.

5 In addition, the Settlement Administrator will maintain a toll-free number and  
6 a Settlement Website where class members can obtain further information and copies  
7 of key documents. *See* Agreement at § 4.1.

8 Accordingly, both the procedure and content of the Notice constitutes the best  
9 notice practicable under the circumstances. *See In re Online DVD-Rental*, 779 F.3d  
10 at 946 (describing adequate notice); *See e.g., Morey*, 2013 WL 12069021 at \*9  
11 (finding that disseminating notice via methods including email, postcard, and a  
12 settlement website constituted proper forms and methods of notice).

13 **VIII. THE COURT SHOULD APPOINT PLAINTIFFS AS CLASS**  
14 **REPRESENTATIVES AND PLAINTIFFS' COUNSEL AS CLASS**  
15 **COUNSEL FOR SETTLEMENT PURPOSES**

16 Plaintiffs also request that the Court designate Plaintiffs Stephenson and Smith  
17 II as Class Representatives. As detailed above, Plaintiffs will fairly and adequately  
18 represent and protect the interests of the Settlement Classes.

19 Plaintiffs also seek to appoint Scott Edelsberg and Adam Schwartzbaum of  
20 Edelsberg Law, P.A.; Edwin E. Elliott of Shamis & Gentile, P.A.; and Sophia Gold  
21 and Jeffrey D. Kaliel of Kaliel Gold PLLC as Class Counsel for the Settlement  
22 Classes. In appointing Class Counsel pursuant to Rule 23(g), the Court “must  
23 consider: (i) the work counsel has done in identifying or investigating potential claims  
24 in the action; (ii) counsel’s experience in handling class actions, other complex  
25 litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of  
26 the applicable law; and (iv) the resources that counsel will commit to representing the  
27 class.” Fed. R. Civ. P. 23(g)(1)(A). Class Counsel is experienced and knowledgeable  
28 in complex consumer class action litigation and well-equipped to vigorously and  
efficiently represent the proposed Settlement Class. *See* Class Counsel Decl. ¶ 26.

Moreover, Class Counsel has expended a substantial amount of time investigating Navy Federal’s handling of unauthorized electronic fund transfers disputed by members and researching the viability of Plaintiffs’ claims. *Id.* Accordingly, the Court should appoint Class Counsel for the Settlement Classes.

**IX. THE PROPOSED SETTLEMENT ADMINISTRATION SCHEDULE THROUGH FINAL APPROVAL HEARING**

Based on the date of entry of the Preliminary Approval Order and the date the Court sets for the Final Approval Hearing, the following represents the Parties’ anticipated Settlement-related deadlines:

Event	Date
Deadline for Navy Federal to provide Settlement Class List to Class Counsel and the Settlement Administrator	No later than 30 calendar days after entry of the Preliminary Approval Order
Deadline for commencing emailing and mailing of the Notice to Settlement Class Members and posting the Notice and Claim Form on the Settlement website (the “Notice Date”)	No later than 60 calendar days after entry of the Preliminary Approval Order
Deadline for Plaintiffs to file application for attorneys’ fees and expenses and Service Awards	30 calendar days after the Notice Date (up to 90 calendar days after entry of the Preliminary Approval Order)
Deadline for submitting of exclusion requests or objections	Postmarked no later than 45 calendar days after the Notice Date (up to 105 calendar days after entry of the Preliminary Approval Order)
Deadline for submitting Claim Forms	Postmarked or electronically filed no later than 60 calendar days after the Notice Date (up to 120 calendar days after entry of the Preliminary Approval Order)
Deadline for any response to any timely and valid objections and any supplemental brief re: final approval	70 days after the Notice Date (up to 130 calendar days after entry of the Preliminary Approval Order)
Deadline for Settlement Administrator to Submit Declaration Identifying Opt Outs and Confirming Compliance with Notice Plan	At least 10 days before Final Approval Hearing.
Final Approval Hearing	At least 5 months after entry of the Preliminary Approval Order

**X. CONCLUSION**

Plaintiffs respectfully request that the Court grant Plaintiffs’ unopposed Motion and enter the proposed Preliminary Approval Order, attached to the Agreement as Exhibit E and submitted with this Motion.

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Dated: July 22, 2025

Respectfully submitted,

/s/ Scott Edelsberg  
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*\*Admitted Pro Hac Vice*

***Counsel for Plaintiffs and the  
Proposed Class***

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of July 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF.

Respectfully submitted,  
/s/ Scott Edelsberg