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*and the Proposed Class*  
7

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SIOBHAN MORROW, on Behalf of  
Herself and All Others Similarly Situated,  
11 Plaintiff,  
12  
13 v.  
14 NAVY FEDERAL CREDIT UNION,  
15 Defendant.

Case No. '20CV1636 LAB JLB  
**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMANDED**

16 Plaintiff Siobhan Morrow, on behalf of herself and all persons similarly situated,  
17 alleges the following based on personal knowledge as to allegations regarding the  
18 Plaintiff and on information and belief as to other allegations.

19 **NATURE OF ACTION**

20 1. Plaintiff brings this action on behalf of herself and a class of all similarly  
21 situated consumers against Defendant Navy Federal Credit Union (“NFCU” or  
22 “Defendant”), arising from its unlawful assessment of International Service Assessment  
23 Fees (“ISAF”) on purchases which took place in the United States. NFCU assesses  
24 hidden ISAF charges to its debit cardholders for purchases made online within the  
25 United States from retailers based abroad.

26 2. NFCU’s checking account and debit card services are governed by NFCU’s  
27 standard account agreement, which incorporates NFCU’s Schedule of Fees and Charges  
28

1 (the “Schedule”).<sup>1</sup> The Schedule provides that a “1% per transaction” ISAF applies only  
2 to “Point-of-sale and ATM transactions made in foreign countries.” Ex. A at p. 3.  
3 However, nothing in the Schedule or any other NFCU checking account document  
4 authorizes NFCU to apply the 1% ISAF to online purchases made from within the United  
5 States. In fact, the Schedule’s prohibition of such charges is confirmed by NFCU’s  
6 website and debit card disclosures, discussed below. At the very least, the Schedule is  
7 ambiguous as to whether “transactions made in foreign countries” means in-person  
8 transaction made on foreign soil. Accordingly, NFCU breached its contract with  
9 Plaintiff and Class Members each time it applies its 1% ISAF to online purchases made  
10 within the United States.

11 3. Plaintiff and other NFCU customers have been injured by NFCU’s  
12 wrongful assessment of ISAFs on internet purchases made within the United States  
13 during the statute of limitations period. Therefore, on behalf of herself and the proposed  
14 Classes (defined below), Plaintiff brings this proposed class action seeking damages and  
15 other relief against NFCU for breach of contract, breach of the implied covenant of good  
16 faith and fair dealing, and conversion.

### 17 JURISDICTION AND VENUE

18 4. This Court has original jurisdiction of this action under the Class Action  
19 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has  
20 original jurisdiction because the aggregate claims of the putative class members exceed  
21 \$5 million, exclusive of interest and costs, and at least one of the members of the  
22 proposed classes is a citizen of a different state than NFCU.

23 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because NFCU  
24 is subject to personal jurisdiction here and regularly conducts business in this District,  
25 and because the Plaintiff resides in this District and the events giving rise to Plaintiff’s  
26 claims occurred in this district.

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<sup>1</sup> A true and accurate copy of the Schedule is attached hereto as Exhibit A.

## PARTIES

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2           6. Plaintiff is a resident of San Diego, California. Plaintiff has a checking  
3 account with NFCU. On or about July 9, 2020, Plaintiff used her NFCU checking  
4 account to make a purchase of \$137.56 from Chicme.com, an online retailer of women’s  
5 clothing based in the Cyprus, from her home in San Diego. Plaintiff was unaware that  
6 Chicme.com was based outside the United States. NFCU then charged Plaintiff an ISAF  
7 of \$1.38 in connection with the purchase—approximately 1% of the total. Under the  
8 terms of the Schedule, NFCU was not entitled to assess any ISAF on Plaintiff’s purchase  
9 because the purchase occurred within the United States.

10           7. Defendant NFCU is a national bank with its headquarters and principal  
11 place of business located in Vienna, Virginia. Among other things, NFCU is engaged in  
12 the business of providing retail banking services to consumers, including Plaintiff and  
13 members of the putative class, which includes the issuance of debit cards for use by its  
14 customers in conjunction with their checking accounts. NFCU operates banking centers,  
15 and thus conducts business, throughout the State of California and the United States

## FACTUAL ALLEGATIONS

### **I. Extensive Prior Litigation Regarding Undisclosed International Transaction Fees<sup>2</sup>**

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18  
19           8. While international transaction fees appear at first to be a small, negligible  
20 amount, hidden and inflated international transaction fees have been the subject of  
21 substantial litigation due to the significant harm they cause banking customers, in  
22 aggregate, throughout the country. Indeed, costly undisclosed international transaction  
23 fees have resulted in tremendous harm to consumers. In 2001, a multidistrict litigation  
24 was established in the Southern District of New York, entitled *In Re: Currency*  
25 *Conversion Fee Antitrust Litigation*, MDL No. 1401. The plaintiffs alleged that credit  
26 card agreements and statements poorly disclosed international transaction fees and that  
27 credit card companies colluded in fixing the fees at an inflated amount. Specifically, the  
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<sup>2</sup> Or International Service Assessment fees, under NFCU’s nomenclature.

1 complaints alleged that VISA and MasterCard charged a collusively set base  
2 international transaction fee equal to 1% of the amount of the foreign currency  
3 transaction.<sup>3</sup>

4 9. Though the 1% amount is seemingly small, the fees add up for banks and  
5 credit card companies. The 1% currency exchange fees gave VISA International  
6 \$424 million in revenue in 2004, only one of the years covered in the lawsuit, making  
7 up nearly 30% of its revenue that year.<sup>4</sup> Many banks charged an even higher percent on  
8 top of VISA's 1% fee. Ultimately, the MDL resulted in a class-wide settlement of  
9 \$336 million in 2006. In 2012, settlement checks were disseminated to over 10 million  
10 banking customers.<sup>5</sup>

11 10. This action, unlike *In Re: Currency Conversion Fee Antitrust Litigation*,  
12 does not concern the assessment of international transaction fees on credit card holders,  
13 but instead concerns a very similar practice by NFCU that is equally pernicious and  
14 pervasive: the assessment of hidden ISAF charges on debit cardholders such as Plaintiff  
15 who are assessed fees unsuspectingly as a result of online shopping contrary to the terms  
16 of NFCU's account disclosures.

## 17 **II. NFCU's Schedule Prohibits the Assessment of ISAFs On Internet Purchases** 18 **Made Within the United States**

19 11. NCFU sets forth the terms of the ISAF on page 3 of the Schedule:  
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22 <sup>3</sup> In addition, the MDL defendant banks tacked on an additional collusively set  
23 international transaction fee of their own, generally 2%. The plaintiffs alleged that VISA  
24 and MasterCard networks actively colluded with their member banks and assisted in  
25 implementing and facilitating these "second tier" foreign transaction fees by amending  
26 their rules and procedures to accommodate these fees, and by colluding with the MDL  
27 defendant banks to charge these fees. *See Ross v. American Express Company*, Case  
28 No. 1:04CV05723, 2010 WL 6500949 (S.D.N.Y.) (first amended class action  
complaint).

<sup>4</sup> <https://www.latimes.com/archives/la-xpm-2008-jan-06-tr-insider6-story.html>

<sup>5</sup> <https://topclassactions.com/lawsuit-settlements/lawsuit-news/1468-credit-card-foreign-transaction-fee-settlement-checks-arrive/>; <https://www.bigclassaction.com/settlement/currency-conversion-fee-settlement.php?ref=rss>

## 1 Navy Federal Debit Card/GO Prepaid Card/CUCARD/Visa Buxx Card

2 International Transactions—Non-Navy Federal ATMs and Point-of-Sale	
3 Point-of-sale and ATM transactions made in foreign countries	4 1% per transaction

5 12. It is evident from the express terms of this provision that “made in foreign  
6 countries” means transactions performed by the cardholder while physically outside the  
7 United States. Nowhere does the disclosure state that the ISAF will be applied to online  
8 purchases made from the United States. Indeed, this is the only reasonable interpretation  
9 of the provision, especially considering that in describing the ISAF, NFCU’s website  
10 provides:

11 Any time you use your Navy Federal Debit Card or CUCARD *overseas*,  
12 you’ll be charged a 1% International Service Assessment (ISA) fee.<sup>6</sup>

13 13. Lest there be any doubt, NFCU’s debit card disclosure document, which  
14 also forms the basis of the account agreement, provides unequivocally:

15 **Foreign/International Transactions:** Transactions using your DC [debit  
16 card] *made in foreign countries* will post to your account in U.S. dollars  
17 and will be charged an International Service Assessment Fee. This fee will  
be identified as a separate transaction on your statement. The fee will be  
assessed on purchases and ATM transactions as follows:

18 a. **Transactions made in foreign countries will be charged 1.0% of**  
19 **the transaction amount.**

20 14. The debit card disclosure uses the phrase “transactions made in foreign  
21 countries” synonymously with the Schedule’s “Point-of-sale [] transactions made in  
22 foreign countries” and applies the same 1% ISAF fee to those transactions. This can  
23 only mean that the 1% ISAF is assessed on purchases made physically outside the United  
24 States.

25 \_\_\_\_\_  
26 <sup>6</sup> <https://www.navyfederal.org/products-services/cards/cards-overseas.php#debitcard3-accord-0>

27 <sup>7</sup> See [https://www.navyfederal.org/pdf/debitcards/NFCU\\_210AB.pdf](https://www.navyfederal.org/pdf/debitcards/NFCU_210AB.pdf), at ¶ 7. A true and  
28 accurate copy of the Debit Card Disclosure is attached hereto as Exhibit B. An identical  
provision exists in NFCU’s Business Debit Card Agreement and Disclosure. See  
[https://www.navyfederal.org/pdf/disclosures/NFCU\\_210B.pdf](https://www.navyfederal.org/pdf/disclosures/NFCU_210B.pdf), at ¶ 7.

1           15. From a policy standpoint, this reading of the contract makes the most sense.  
 2 NFCU accountholders will always know (or at least should know) if they are making an  
 3 in-person purchase outside the United States, and so can rightly expect to be charged the  
 4 1% ISAF. However, the same cannot be said for NFCU accountholders making  
 5 purchases from online vendors, many of whom do not conspicuously disclose (or in  
 6 some cases, not at all) that they are based outside the United States. Indeed, Plaintiff  
 7 herself was not aware that Chicme.com was based in the Cyprus—a fact that could only  
 8 be learned from combing the website’s terms and conditions.

9           16. Indeed, other instances of the term “Point-of-Sale” in the Schedule only  
 10 support Plaintiff’s plain reading of the ISAF provision. The fine print at the bottom of  
 11 page 3 of the Schedule, directly under the ISAF provision, reads: “Navy Federal Gift  
 12 Cards cannot be used to *obtain cash from the ATM or cash back at the Point-of-Sale.*”  
 13 Here, the Schedule first refers to an *ATM* as the physical machine from which a customer  
 14 attempts to “obtain cash.” Then, in the same sentence using the same parallel structure,  
 15 the Schedule refers to the *point of sale* as the physical location where the customer  
 16 attempts to obtain “cash back.” Obviously, ATM withdrawals can only occur in person  
 17 at the physical location of the ATM, and likewise, obtaining cash back can only occur  
 18 at the physical location of the store cashier.<sup>8</sup>

19  
 20  
 21 <sup>8</sup> Further uses of the term “point-of-sale” in other NFCU account disclosures are  
 consistent with the term’s meaning as in-person transactions only:

22           Visa Check Card—You can use your Check Card to pay for goods and  
 23 services **at millions of merchants worldwide** wherever the Visa Debit  
 24 Card is accepted. The amount of the purchase will automatically be debited  
 25 from your checking account. When using your Check Card for purchases,  
 26 **it is never necessary to enter your PIN. Simply select the “credit”**  
**button and sign the receipt.** Navy Federal’s daily transaction limits *for*  
*these point-of-sale (POS) transactions* are \$5,000 for Flagship Checking,  
 \$2,500 for Active Duty Checking®, and \$2,500 for Everyday Checking,  
 e-Checking, and Campus Checking.

27 [https://www.navyfederal.org/pdf/ebrochures/1184e.pdf?TB\\_iframe=true#:~:text=Navy](https://www.navyfederal.org/pdf/ebrochures/1184e.pdf?TB_iframe=true#:~:text=Navy%20Federal's%20daily%20transaction%20limits,that%20your%20money%20is%20safe,)  
 28 [%20Federal's%20daily%20transaction%20limits,that%20your%20money%20is%20safe,](https://www.navyfederal.org/pdf/ebrochures/1184e.pdf?TB_iframe=true#:~:text=Navy%20Federal's%20daily%20transaction%20limits,that%20your%20money%20is%20safe,)  
 “24-Hour Account Access”, accessed August 6, 2020. The same published disclosure also  
 refers to “Point-of-sale cash back”, which can only occur in-person. *See id.* at p. 3.

1           17. Other distinct uses of the verbs “made” and “processed” throughout the  
2 Schedule also support this reading. For instance, the Schedule uses the verb “made” or  
3 “make” to refer to actions performed at the customer’s physical location. *See, e.g.*, Ex. A  
4 at p. 3, row 11 (“Deposits can be *made* at Navy Federal-owned ATMS ...”); *id.* (“Loan  
5 payments can only be *made* at Navy Federal-owned ATMs”); p. 1, col. 2 (“For deposits  
6 *made* at CO-OP Network ATMS ...”); p. 1, col. 2 (“an item is unsigned by the *maker* .  
7 . .”). But when the Schedule wants to denote a more remote action performed away  
8 from the customer, it uses the verb “processed.” *See, e.g.*, Ex. A at p. 1, col. 2 (“the ATM  
9 owner will impose a fee per item if an adjustment is *processed* due to one of the  
10 following discrepancies . . .”); *id.* (“For each adjustment initiated for deposit items  
11 *processed* and subsequently returned by the financial institution ...”); *id.* (“the ATM  
12 owner will impose a fee per item at the time the adjustment is *processed*”). Here, the at-  
13 issue provision states NFCU will assess ISAFs for “Point-of-sale and ATM transactions  
14 *made* in foreign countries.” If NFCU wanted to charge fees for international transactions  
15 *processed* in foreign countries, it would have said “processed” but instead chose to say  
16 “made.” Therefore, the only reasonable reading of the provision, which is consistent  
17 with the Schedule’s syntax, is that “transactions made in foreign countries” mean the  
18 customer’s physical presence abroad.

19           18. Though it easily could have, NFCU failed to state in the Schedule that it  
20 would assess the ISAF on internet transactions with foreign merchants. For instance, in  
21 describing its own International Transaction Fee, Bank of America’s Fee Schedule  
22 provides that “Foreign Transactions include internet transactions made in the U.S. but  
23 with a merchant who processes the transaction in a foreign country.”<sup>9</sup> This language  
24 adequately puts accountholders on notice that online transactions made in the U.S. may  
25 incur international transaction fees. But NFCU wholly fails to incorporate any such  
26 language in its contract, to the detriment of its customers, like Plaintiff, who find  
27 themselves unwitting victims of bank fees to which they did not knowingly subscribe.  
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<sup>9</sup> <https://www.bankofamerica.com/deposits/resources/personal-schedule-fees.go> (p. 10).

1 As Bank of America did, NFCU easily could have included language in its contract of  
2 adhesion providing that internet purchases made within the United States to foreign  
3 merchants would incur ISAFs.

4 19. Therefore, NFCU breaches its account agreement with customers when it  
5 assesses the 1% ISAF on internet purchases made from within the United States.

6 **III. The Contract Term “Made in Foreign Countries” is, at Best, Ambiguous**

7 20. NFCU does not define anywhere in the Schedule or any other document  
8 constituting its operative account agreement with debit cardholders, including Plaintiff,  
9 what it means for NFCU customers to engage in “transactions made in foreign  
10 countries.” The term “made in foreign countries”, is therefore ambiguous at best as to  
11 what it encompasses. In the absence of an explicit definition or disclosure, the Schedule  
12 reasonably discloses to accountholders, including Plaintiff, that they will only be  
13 charged an ISAF if they make a purchase while in a foreign country.

14 21. By failing to define the term “made in foreign countries” NFCU has  
15 opportunistically abused this silence and surreptitiously charged ISAFs when they could  
16 not be reasonably expected based on the contract.

17 22. NFCU also breaches the implied covenant of good faith and fair dealing to  
18 the extent it exercises any contractual discretion to take opportunistic advantage of such  
19 ambiguity in the Schedule by unilaterally defining “made in foreign countries” to include  
20 online transactions made from within the United States.

21 **CLASS ALLEGATIONS**

22 23. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 and all other  
23 applicable laws and rules, individually, and on behalf of all members of the following  
24 Classes:

25 **Nationwide Class**

26 All NCFU checking accountholders who, within the applicable statute of  
27 limitations, were assessed an International Service Assessment Fee for an  
28 internet purchase made from within the United States. (The “National  
Class”).



1           **California Class**

2           All NCFU checking account holders within California who, within the  
3           applicable statute of limitations, were assessed an International Service  
4           Assessment Fee for an internet purchase made from within the United  
5           States. (The “California Class”).<sup>10</sup>

6           24.   Excluded from the Classes are NFCU, its parents, subsidiaries, affiliates,  
7           officers, and directors; any entity in which NFCU has a controlling interest; all  
8           customers who make a timely election to be excluded; governmental entities; and all  
9           judges assigned to hear any aspect of this litigation, as well as their immediate family  
10          members.

11          25.   Plaintiff reserves the right to modify or amend the definition of the  
12          proposed Classes before the Court determines whether certification is appropriate.

13          26.   Numerosity. The members of the Classes are so numerous that joinder is  
14          impractical. The Classes consist of thousands of members, the identity of whom is  
15          within the knowledge of and can be ascertained only by resort to NFCU’s records.  
16          NFCU collectively have the administrative capability through its computer systems and  
17          other records to identify all members of the Classes, and such specific information is not  
18          otherwise available to Plaintiff.

19          27.   Common Questions Predominate. There are numerous questions of law  
20          and fact common to the Classes and those common questions predominate over any  
21          questions affecting only individual Class members. Among the questions of law and  
22          fact common to the Classes are:

23               a.   Whether NFCU charged ISAFs on amounts exceeding the  
24               permissible transaction amount;

25               b.   Whether NFCU breached its contract with consumers by charging  
26               ISAFs on internet purchases within the United States;

27  
28          

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<sup>10</sup> The “National Class” and “California Class” are hereinafter collectively referred to as  
the “Classes.”

1 c. Whether NFCU’s conduct violated of the implied covenant of good  
2 faith and fair dealing;

3 d. Whether NFCU converted money belonging to Plaintiff and Class  
4 members through its ISAF policies and practices;

5 e. Whether NFCU reserved discretion in defining the circumstances  
6 constituting “transactions made in foreign countries”; and, if so, whether NFCU  
7 failed to exercise such discretion in good faith.

8 f. Whether Defendant’s unlawful conduct, as alleged herein, was  
9 intentional and knowing;

10 g. Whether Plaintiff and Classes are entitled to damages, and in what  
11 amount;

12 h. Whether Plaintiff and the Classes are entitled to declaratory relief;

13 i. Whether Plaintiff and the Classes are entitled to an award of  
14 reasonable attorneys’ fees, interest, and costs of suit.

15 28. Typicality. The claims of the representative Plaintiff are typical of the  
16 claims of the Classes in that the representative Plaintiff, like all Class members, was  
17 charged a hidden ISAF by NFCU. The representative Plaintiff, like all Class members,  
18 has been damaged by NFCU’s uniform misconduct of assessing unfair and  
19 unconscionable fees in breach of its account agreement. Further, the factual basis of  
20 NFCU’s misconduct is common to all Class members and represents a common thread  
21 of unfair and unconscionable conduct resulting in injury to all Class members.  
22 Plaintiff’s claims arise out of the same wrongful ISAF policies and practices and  
23 breaches of NFCU’s Schedule.

24 29. Adequacy. Plaintiff is an adequate representative of each of the Classes in  
25 that Plaintiff has suffered harm and been damaged as a result of NFCU’s improper  
26 business practices. Additionally, (1) Plaintiff is committed to the vigorous prosecution  
27 of this action and has retained competent counsel experienced in the prosecution of class  
28 actions and, in particular, class actions on behalf of consumers and against financial

1 institutions; (2) Plaintiff has no interests antagonistic to the interests of any other Class  
2 member; (3) Plaintiff anticipates no difficulty in the management of this litigation as a  
3 class action; and (4) Plaintiff's legal counsel has the financial and legal resources to meet  
4 the substantial costs and legal issues associated with this type of litigation. Accordingly,  
5 Plaintiff is an adequate representative and will fairly and adequately protect the interests  
6 of the Class.

7 30. Superiority. A class action is superior to other available methods for the  
8 fair and efficient adjudication of this controversy. Since the amount of each individual  
9 Class member's claim is small relative to the complexity of the litigation, and due to the  
10 financial resources of NFCU, no Class member could economically seek legal redress  
11 individually for the claims alleged herein. Therefore, absent a class action, the Class  
12 members will continue to suffer losses and NFCU's misconduct will proceed without  
13 remedy. Even if Class members themselves could afford such individual litigation, the  
14 court system could not. Given the complex legal and factual issues involved,  
15 individualized litigation would significantly increase the delay and expense to all parties  
16 and to the Court. Individualized litigation would also create the potential for inconsistent  
17 or contradictory rulings. By contrast, a class action presents far fewer management  
18 difficulties, allows claims to be heard which would otherwise go unheard because of the  
19 relative expense of bringing individual lawsuits, and provides the benefits of  
20 adjudication, economies of scale and comprehensive supervision by a single court.

21 **FIRST CLAIM FOR RELIEF**

22 **Breach of Contract**  
23 **(On behalf of the Classes)**

24 31. Plaintiff incorporates the preceding allegations by reference as if fully set  
25 forth herein.

26 32. Plaintiff and the Classes have contracted with NFCU for bank account  
27 deposit, checking, ATM, and debit card services, agreeing that Virginia law applies.  
28

1 33. No contractual provision authorizes NFCU to assess an ISAF of 1% of the  
2 transaction amount for internet purchases made from within United States.

3 34. On the contrary, NFCU and Class members, including Plaintiff, contracted  
4 for terms that include that NFCU is only permitted to impose a fee of 1% “transactions  
5 made in foreign countries.” Ex. A at p. 3.

6 35. Therefore, by imposing fees beyond those it was contractually permitted to  
7 impose, NFCU breached the terms of its account agreement.

8 36. Plaintiff and Class members have performed all, or substantially all, of the  
9 obligations imposed on them under the account agreement.

10 37. Plaintiff and Class members have sustained damages as a result of NFCU’s  
11 breach of the account agreement.

12 38. As California and Virginia law on breach of contract is the same or  
13 substantially the same with respect to all other states in which NFCU does business,  
14 Plaintiff asserts this claim on behalf of the National Class and California Class.

15 **SECOND CLAIM FOR RELIEF**

16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**  
17 **(On behalf of the Classes)**

18 39. Plaintiff incorporates the preceding allegations by reference as if fully set  
19 forth herein.

20 40. Plaintiffs and members of the Class and NFCU have contracted for bank  
21 account deposit, checking, ATM, and debit card services, agreeing that Virginia law  
22 applies.

23 41. Under Virginia law, and the laws of the states where NFCU does business,  
24 every contract carries with it an implied covenant of good faith and fair dealing.  
25 Whether by common law or statute, all such contracts impose upon each party a duty of  
26 good faith and fair dealing. Good faith and fair dealing, in connection with executing  
27 contracts and discharging performance and other duties according to their terms, means  
28 preserving the spirit—not merely the letter—of the bargain. Put differently, the parties

1 to a contract are mutually obligated to comply with the substance of their contract in  
2 addition to its form. Evading the spirit of the bargain and abusing the power to specify  
3 terms constitute examples of bad faith in the performance of contracts.

4 42. Subterfuge and evasion violate the obligation of good faith in performance  
5 even when an actor believes their conduct to be justified. Bad faith may be overt or may  
6 consist of inaction, and fair dealing may require more than honesty. Examples of bad  
7 faith are evasion of the spirit of the bargain, willful rendering of imperfect performance,  
8 *abuse of a power to specify terms*, and interference with or failure to cooperate in the  
9 other party's performance.

10 43. NFCU has breached the implied covenant of good faith and fair dealing in  
11 the Schedule through its ISAF policies and practices, as alleged herein, of charging its  
12 customers hidden ISAFs on internet purchases made from within the United States.  
13 Specifically, NFCU harms consumers by exercising its contractual discretion in bad  
14 faith—even though that discretion is only vested in NFCU—in a number of ways which  
15 no reasonable consumer would anticipate. First, the term “made in foreign countries” is  
16 undefined (though it can only reasonably have the meaning Plaintiff ascribes to it), and  
17 the NFCU uses its discretion to define “made in foreign countries” in a manner contrary  
18 to any reasonable, common sense understanding of that term. In NFCU's definition,  
19 transactions are “made in foreign countries” even if they are made by NFCU  
20 accountholders within the United States.

21 44. NFCU uses these contractual discretion points to extract ISAFs on  
22 transactions that no reasonable consumer would believe could cause ISAFs.

23 45. Plaintiff and Class members have performed all, or substantially all, of the  
24 obligations imposed on them under the contract in good faith.

25 46. Plaintiff and Class members have sustained damages as a result of NFCU's  
26 breach of the implied covenant of good faith and fair dealing.

27 47. As California and Virginia law on breach of the implied covenant of good  
28 faith and fair dealing is the same or substantially the same with respect to all other states

1 in which NFCU does business, Plaintiff asserts this claim on behalf of the National Class  
2 and California Class.

3 **THIRD CLAIM FOR RELIEF**

4 **Conversion**  
5 **(On behalf of the Classes)**

6 48. Plaintiff incorporates the preceding allegations by reference as if fully set  
7 forth herein.

8 49. NFCU had and continues to have a duty to maintain and preserve its  
9 customers' checking accounts and to prevent their diminishment through its own  
10 wrongful acts.

11 50. NFCU has wrongfully collected inflated ISAFs from Plaintiff and the Class  
12 members, and has taken specific and readily identifiable funds from their accounts in  
13 doing so.

14 51. NFCU has assumed and exercised ownership and possession over these  
15 funds in hostility to the rights of Plaintiff and Class members without proper  
16 authorization or legal justification.

17 52. NFCU continues to retain these funds unlawfully without Plaintiff's or  
18 Class members' consent.

19 53. NFCU intends to permanently deprive Plaintiff and Class members of these  
20 funds, which are properly owned by Plaintiff and Class members, and not NFCU, which  
21 now claims that it is entitled to their ownership and possession, contrary to the rights of  
22 Plaintiff and the Class members.

23 54. Plaintiff and Class members have a right to ownership and possession of  
24 these funds superior to any right of NFCU and are entitled to the immediate possession  
25 of these funds.

26 55. NFCU has wrongfully converted these specific and readily identifiable  
27 funds.

28 56. NFCU's wrongful conduct is continuing.

1 57. As a direct and proximate result of this wrongful conversion, Plaintiff and  
2 the Class members have suffered and continue to suffer damages.

3 58. By reason of the foregoing, Plaintiff and the Class members are entitled to  
4 recover from NFCU all damages and costs permitted by law, including all amounts that  
5 NFCU has wrongfully converted.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays on behalf of herself and all others similarly  
8 situated, for judgment against Defendant as follows:

- 9 1. declaring NFCU’s International Service Assessment Fee policies and
- 10 practices to be wrongful, unfair, and unconscionable and in breach of the Schedule and
- 11 NFCU’s account agreement;
- 12 2. actual damages in an amount according to proof;
- 13 3. punitive and exemplary damages;
- 14 4. pre-judgment interest at the maximum rate permitted by applicable law;
- 15 5. costs and disbursements assessed by Plaintiff in connection with this action,
- 16 including reasonable attorneys’ fees pursuant to the account agreement, Code of Civil
- 17 Procedure § 1021.5, and other applicable law; and
- 18 6. such other relief as this Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury trial for all of the claims so triable.

21 Dated: August 21, 2020

**CARLSON LYNCH LLP**

22 By: /s/Todd D. Carpenter

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 tcarpenter@carlsonlynch.com  
 24 SCOTT G. BRADEN (305051)  
 sbraden@carlsonlynch.com  
 1350 Columbia St., Ste. 603  
 San Diego, CA 92101  
 25 Tel.: 619-762-1900  
 26 Fax: 619-756-6991

27 *Attorneys for Plaintiff*  
28 *and the Proposed Class*

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*Attorneys for Plaintiff  
and the Proposed Class*

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

SIOBHAN MORROW, on Behalf of  
Herself and All Others Similarly Situated,  
  
Plaintiff,  
  
v.  
  
NAVY FEDERAL CREDIT UNION,  
  
Defendant.

Case No.  
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**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

SIOBHAN MORROW, on Behalf of Herself and All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

CARLSON LYNCH, LLP,  
1350 Columbia St. Ste. 603, San Diego, California 92101  
(619) 762-1900

**DEFENDANTS**

NAVY FEDERAL CREDIT UNION,

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'20CV1636 LAB JLB**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			LABOR	
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. §§ 1332(d)(2) and (6) & 28 U.S.C. § 1391

Brief description of cause:

Breach of Contract; Breach of the Implied Covenant of Good Faith and Fair Dealing, and Conversion

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

8/21/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd D. Carpenter

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

# EXHIBIT A



# SCHEDULE OF FEES AND CHARGES

1-888-842-6328

For toll-free numbers when overseas, visit [navyfederal.org](http://navyfederal.org).

Collect internationally  
1-703-255-8837

TDD for the hearing impaired  
1-888-869-5863

Online at [navyfederal.org](http://navyfederal.org)

Or visit a branch

## Checks, Checkbook Covers and Accessories

Pricing varies depending on style and quantity selected. Visit us online at [navyfederal.org](http://navyfederal.org) to see our product line and pricing.

## Checking Accounts

### Flagship Checking

- > Monthly service fee..... \$10.00  
(if average daily balance is less than \$1,500.00 during the statement period)

### Miscellaneous Checking, Checking Protection and Money Market Savings Account Fees

- > Non-sufficient funds fee for checks and ACH debit ..... \$29.00
- > Optional Overdraft Protection Service transaction ..... \$20.00
- > Stop payment for a single item ..... \$20.00  
For a series of items ..... \$25.00
- > Copy of, or information from, a paid or deposited item  
One request per month ..... No charge  
More than one (per copy) ..... \$1.00
- > Repeated checkbook balancing assistance (per 1/2 hour) ..... \$5.00
- > Payment of a Checking Line of Credit check that exceeds the approved credit limit ..... \$10.00
- > Money Market Savings Account excessive transactions (per item) ..... \$10.00
- > Bill Pay "Rush Delivery" (per transaction) ..... \$5.00

## Checking or Savings

- > Returned checks, deposited or cashed ..... \$15.00
- > Cashier's checks, more than two checks per day (per check) ..... \$5.00
- > Inactive Member fee assessed on savings accounts of members age 24 and over with less than \$50.00, no activity in 12 months and no other Navy Federal products (per quarter) ..... \$3.00
- > Dormant Checking Account fee assessed on checking accounts of members age 24 and over with a combined savings and checking balance less than \$50.00, no activity in 12 months and no other Navy Federal products (per quarter) ..... \$3.00
- > Account number reassignments (more than once in the same calendar year)..... \$25.00

## Adjustment to a CO-OP ATM

### Check Deposit

- > For deposits made at CO-OP Network® ATMs, the ATM owner will impose a fee per item if an adjustment is processed due to one of the following discrepancies in the deposit: the currency appears to be counterfeit; the currency is foreign; the deposit contents do not equal the deposit amount in U.S. dollars as entered into the ATM; an item is unsigned by the maker; an item is dated more than six months prior to the date of deposit; the numerical and written amounts do not agree; the deposit is over \$1,000.00 and contains an obvious alteration ..... \$2.00

### Returned CO-OP ATM Check Deposit

- > For each adjustment initiated for deposit items processed and subsequently returned by the financial institution, the ATM owner will impose a fee per item at the time the adjustment is processed ..... \$6.00



# SCHEDULE OF FEES AND CHARGES

CONTINUED

## Money Transfers

- > Bank wire transfer
  - Incoming ..... No charge
  - Outgoing—Domestic ..... \$14.00
  - Outgoing—International ..... \$25.00
- > Domestic and international cash transfer (maximum per order is \$10,000.00) ..... \$14.50
- > Western Union Quick Collect® ..... \$12.95

## Navy Federal Debit Card/CUCARD®

### Mailing Fees

- > First-Class USPS, new or replacement card\* ..... Free
- > First-Class USPS, system-generated PIN\* ..... Free
- > FedEx, new or replacement card + UPS, system-generated PIN ..... \$17.45
- > FedEx, new or replacement card with self-selected PIN ..... \$11.50
- > UPS, PIN only ..... \$5.95

\*The date of delivery depends on the postal service in your area.

## GO Prepaid Card

- > Visa/PLUS® System ATM domestic and foreign cash withdrawal and balance inquiry ..... \$1.00 per transaction
- > Lost/stolen or replacement fee ..... \$5.00
- > Express delivery fee ..... \$5.00

## Visa Buxx Card

- > Inactive fee (after 6 consecutive months with no transactions, the card will be charged until the balance is depleted or the cardholder makes another transaction) ..... \$1.00 per month
- > Visa/PLUS System ATM domestic and foreign cash withdrawal and balance inquiry ..... \$1.00 per transaction
- > Lost/stolen or replacement fee ..... \$5.00
- > Express delivery fee ..... \$5.00

## Visa Gift Card

- > Inactive fee (after 12 consecutive months with no transactions, the card will be charged until the balance is depleted or the cardholder makes another transaction) ..... \$5.00 per month
- > Lost/stolen or replacement fee ..... \$5.00
- > Express delivery fee ..... \$5.00

Cards sold in branches in AZ, CT, HI, LA, ME, NH, NJ, RI and VT do not incur inactivity fees.

## Miscellaneous Account Services

- > Address research/unclaimed shares fee (per quarter) ..... No charge

## Notary Public Service

- > Navy Federal-related document ... No charge
- > Non-Navy Federal document First two per week ..... No charge

Each additional document, not to exceed the local jurisdiction fee maximum ..... \$5.00 per

Notary Public Service is applicable in all jurisdictions except California and Louisiana. In California, Notary Public Service is limited to Navy Federal-related documents only. Navy Federal does not offer Notary Public Service in Louisiana. Members in Louisiana need to seek the advice of an attorney. Due to the potential legal ramifications, Navy Federal does not notarize wills. Wills should be notarized by an attorney authorized to do so.



# SCHEDULE OF FEES AND CHARGES

CONTINUED

Current ATM and Point-of-Sale (POS) Fees Fees are subject to change.				
TRANSACTION TYPE	NAVY FEDERAL ATM	CO-OP NETWORK ATM	VISA/PLUS SYSTEM ATM	INTERLINK®/ MAESTRO®
Cash withdrawal <sup>1</sup>	None	None	\$1.00	Not Applicable
Transfer	None	None	\$1.00	Not Applicable
Inquiry	None	None	\$1.00	Not Applicable
Purchase cash back	Not Applicable			Some merchants may impose a cash back fee.
Deposit <sup>2</sup>	None	None	Not Applicable	Not Applicable
Rejected transactions Result from account-related problems such as non-sufficient funds, request exceeds limit, etc.	None	None	\$1.00	Not Applicable
Invalid PIN attempts	None	None	\$1.00	Not Applicable
Point-of-sale purchases	Not Applicable			Some merchants in some states may impose a surcharge.
<p><b>Reminders:</b></p> <ul style="list-style-type: none"> <li>▶ Please ensure that you have sufficient funds in your account to cover the withdrawal and the fee.</li> <li>▶ All checks and cash deposits to non-Navy Federal ATMs are subject to a 5-business-day hold beginning the date the check is posted.</li> <li>▶ Deposits can be made at Navy Federal-owned ATMs and CO-OP Network ATMs.</li> <li>▶ Loan payments can only be made at Navy Federal-owned ATMs.</li> <li>▶ You cannot transfer funds to another member's account, including family members, via the ATM.</li> <li>▶ Some financial institutions, for example in the Visa/PLUS System network, may charge you a convenience fee for using their ATMs.</li> </ul>				

### Navy Federal Debit Card/GO Prepaid Card/CUCARD/Visa Buxx Card

International Transactions—Non-Navy Federal ATMs and Point-of-Sale	
Point-of-sale and ATM transactions made in foreign countries	1% per transaction

Federally insured by NCUA. <sup>1</sup>Navy Federal Gift Cards cannot be used to obtain cash from the ATM or cash back at the Point-of-Sale. <sup>2</sup>GO Prepaid, Visa Buxx Cards and Gift Cards are not eligible for deposits at the ATM.  
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State Employees' Credit Union\*

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5 Tel: 619-762-1910  
Fax: 619-756-6991

6 *Attorneys for Plaintiff*  
7 *and the Proposed Class*

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SIOBHAN MORROW, on Behalf of  
Herself and All Others Similarly Situated,  
11 Plaintiff,  
12  
13 v.  
14 NAVY FEDERAL CREDIT UNION,  
15 Defendant.

Case No.

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# EXHIBIT B

## Navy Federal Credit Union Debit Card Disclosure

As used in this Agreement, the words "you" and "your" mean each and every person signing, using, or having a Debit Card (DC) with Navy Federal Credit Union, referred to as "we," "us," or "Navy Federal." Navy Federal business days are Monday through Friday, excluding federal holidays. Navy Federal may change and amend this Agreement at any time. This Agreement, including any claim or dispute arising under it, shall be governed by federal law and the laws of the Commonwealth of Virginia.

To report your DC lost or stolen, or for service inquiries, please call 1-888-842-6328, from overseas at 1-800-0-842-6328, or collect at 1-703-255-8837. Calls may be monitored and/or recorded to provide improved member service. All other correspondence relating to this Agreement should be addressed to Navy Federal, P.O. Box 23603, Merrifield, VA 22119-3603. Information concerning Navy Federal DCs may also be obtained at [navyfederal.org](http://navyfederal.org).

**1. Accepting This Agreement/Signing the Card:** Use of your DC means you agree to all terms in this Agreement. Please read this Agreement carefully and keep a copy for your records. Upon receipt of your Navy Federal DC, immediately sign the signature panel on the back of the card. Your DC must be activated prior to use. Should you choose to not use your DC, you may cancel it at any time for any reason, by contacting us using the information above. Then immediately and securely destroy the card by cutting it in half or shredding it.

**2. Membership:** You must be a Navy Federal Member or joint owner, have an open checking account, and be at least 14 years old or an emancipated minor to obtain a DC. You understand that any joint owner has access to funds in your savings and checking accounts, as well as access to any Checking Protection options you enroll in (Optional Overdraft Protection Service (OOPS) or Checking Line of Credit (CLOC)). You understand that you remain responsible for repayment of any credit extensions, overdraft amounts, and/or fees incurred by either you or any joint owner(s).

**3. How Transactions Are Authorized and Posted to Your Account:** It is important to understand that your checking account has two kinds of balances: the Available Balance and the Current Balance.

**a. Available Balance.** The Available Balance indicates the amount of funds available for withdrawal or use at that moment. The Available Balance includes pending transactions that have been authorized but may not yet have been processed (posted), such as DC Point of Sale (POS) transactions, online transfers, automated teller machine (ATM) transactions, or pending deposits, but does not include items such as scheduled Bill Pay transactions, deposits with holds on them, and checks that you have written but that have not yet cleared your account.

**b. Current Balance.** The Current Balance is calculated after all transactions have posted to your account after the end of the business day (Eastern Time). We first process (post) all money coming in to your account (credits, deposits, etc.). After those are processed, we process (post) all money coming out of your account (debits, withdrawals, etc.) in a pre-determined order. The following frequently-used debit transactions are processed in groups in this order: 1) Branch withdrawals; 2) ATM withdrawals; 3) DC or POS transactions that merchants have presented to us for payment; 4) Transfers from one Navy Federal account to another; 5) ACH; and 6) Checks. When more than one transaction from a group is processed on the same day, the items will be processed in the order of lowest to highest amount within that group of transactions.

**c. DC Transaction Authorization.** When using your DC to make a purchase, the transaction is authorized based on your Available Balance plus any Checking Protection option (OOPS or CLOC) you have enrolled in at the time of the purchase. Once a transaction is authorized, a temporary hold is placed on your account for the amount of the purchase; you will see this hold reflected in your Available Balance. This hold does not affect or otherwise adjust your Current Balance. This hold will be removed when the transaction posts to your account or after 3 business days, whichever comes first. Although the hold may be removed after 3 business days, the merchant has up to 180 calendar days to present the transaction for posting. In some cases, the hold may exceed or be less than the amount of the transaction; for example, for some purchases made at gas stations, restaurants, or hotels, or for car rentals. Funds subject to a hold are not necessarily the same funds that are ultimately used to pay for a transaction. Ordinarily, we will not authorize DC transactions unless you have sufficient funds available in your checking account plus any Checking Protection option you may have. If we previously authorized a DC transaction, or placed a hold that is less than the final transaction amount, we will pay the transaction even if you have insufficient funds and even if you did not opt in to a Checking Protection option for DC transactions.

Please note, however, that even though a transaction has been authorized, it still might result in an overdraft if you initiate other transactions that are processed before it. So, do not consider a transaction authorization as a guarantee there will be sufficient funds in your account to cover the transaction when it posts.

On the day a DC transaction is processed/posts (which may not be the day of purchase or use), if the transaction exceeds your Current Balance after all items have posted, your account will be overdrawn, and you will be responsible for the negative balance. To avoid overdrafts, you should ensure that your Current Balance (which may differ from your Available Balance) has sufficient funds to cover transactions at the time those transactions post to your account. If you have enrolled in a Checking Protection option, you may be assessed fees or interest.<sup>2</sup> If your checking account goes into an overdrawn status (including OOPS fees) and funds are available in the linked savings account, we will transfer all or some of the funds from the savings account to the overdrawn checking account to reduce or eliminate the overdrawn amount, as permitted by law. Federal regulations limit the number of certain types of transfers and/or withdrawals that can be made from your savings account to 6 per calendar month, including transfers by us to cover overdrafts.<sup>3</sup> You agree that we have the right to collect funds owed to us from all your accounts, as well as the available balance on your Checking Protection option (if any), including all accounts of joint owner(s). This does not apply to shares in an Individual Retirement Account. The failure to deposit funds to eliminate an account's negative balance may result in the overdrawn balance being charged off as a loss to Navy Federal. Such action could result in the checking account being closed and restriction of your membership privileges, including revocation of your DC.

**4. Transactions and Limits:** Your DC may be used to purchase goods and services wherever the card is accepted. You may use your DC for the following: balance inquiries, funds transfers, cash withdrawals, deposits to your checking account, Money Market Savings Account, and savings account, and receive cash back with a purchase at participating Interlink® or Maestro® merchants. Cash back with a purchase is only offered from your available checking account balance plus any Checking Protection option you may have. The daily transaction limit for purchases is \$3,000 for all types of checking accounts with the exception of Flagship Checking, which has a daily purchase transaction limit of \$5,000. The daily cash limit is \$600, which includes withdrawals at an ATM, manual cash at a financial institution, and cash back with a purchase at participating merchants. NFCU proprietary ATMs are the exception to this limit, which will allow members to withdraw a maximum of \$1,000 per day. Generally, there is no limit on the number of transactions that can be performed per day; however, for security reasons, we reserve the right to impose other limits on the transactions you may make using your DC.

**5. Use of Card for Illegal or Risky Transactions:** It is your responsibility to comply with all laws when using your Navy Federal DC. You agree to hold us harmless for any damages or other liability arising from transactions initiated by you for the purpose of conducting illegal activity. We reserve the right to decline authorizations and/or cardholder disputes due to participation in transactions for activities we believe may violate law or pose significant risk to us or our Members, such as online gambling.

**6. Liability for Failure to Complete Electronic Fund Transfers:** If we do not complete a transaction using your DC on time or in the correct amount, when properly instructed by you according to the terms of this Agreement, we will be liable for damages caused by our failure, with some exceptions. We will **NOT** be liable in any of the following events:

- through no fault of ours, you do not have enough money in your account or available in your selected Checking Protection option to make the transfer or transaction.
- if the funds in your account are subject to legal process, such as garnishment or attachment, or if the account is subject to a pledge or security agreement.
- if the ATM where you are making the transfer or transaction does not have enough cash.
- if the ATM was not working properly and you knew about the breakdown when you started the transfer or transaction.
- if, despite reasonable precautions that we have taken, circumstances beyond our control (such as fire, power failure, or flood) prevent the transfer or transaction.

**7. Foreign/International Transactions:** Transactions using your DC made in foreign countries will post to your account in U.S. dollars and will be charged an International Service Assessment Fee. This fee will be identified as a separate transaction on your statement. The fee will be assessed on purchases and ATM transactions as follows:

- Transactions made in foreign countries will be charged 1.0% of the transaction amount.

**8. Documentation of Transactions:** It is recommended that you obtain a transaction receipt at the time you make any transaction using your DC at an ATM or POS terminal and retain the receipt copy for a period of at least 90 days. Your checking account statement will identify the merchant, financial institution, or electronic terminal where transactions are made and the dollar amount of the transaction. You will get a monthly account statement even if there are no transfers in a particular month. You may also view your statements and account balances on our website at [navyfederal.org](http://navyfederal.org) or by using our mobile app.

**9. Fees:** There is no fee for using your DC to make a purchase at a merchant location; however, participating merchants may impose a fee for the cash-back portion of the transaction. Cash-back amount limits may vary depending on store policy. For a list of free ATMs, please check our website at [navyfederal.org](http://navyfederal.org). ATM fees are disclosed in our *Schedule of Fees and Charges* brochure and may also be viewed via [navyfederal.org](http://navyfederal.org). When you use a non-Navy Federal ATM, you may be charged a fee by the ATM operator. Additionally, you may be charged a fee for a balance inquiry even if you do not complete an electronic funds transfer.

**10. Refusal to Honor Your DC:** You agree Navy Federal is not responsible or liable for any merchant, financial institution, or other party that refuses to honor your DC.

**11. Ownership and Cancellation of the DC:** The DC is the property of Navy Federal. Navy Federal has the right to cancel your DC or revoke your DC privileges at any time without notice to you.

**12. Disclosure of Information to Third Parties:** Navy Federal will disclose information to third parties about your DC or checking account or the transfers you make in any of the following circumstances: if we are unable to complete an electronic transfer because of non-sufficient funds; where it is necessary to complete the transaction; to verify the existence or conditions of your account for a third party, such as a credit bureau or merchant; in order to comply with government agency or court orders; if you give us written permission; or in accordance with our privacy policy. Additionally, you may have agreements with merchants to keep your DC on file. You acknowledge that Navy Federal may share your DC information with the participating network in order to keep your card information current and/or facilitate uninterrupted processing of your recurring payments.

**13. Stop-Payment for Pre-Authorized Recurring DC Transactions:** We can only honor stop-payment requests for transactions using your DC on pre-authorized recurring transactions or services. If you have told us in advance to make regular payments out of your account, using your DC, you can request us to stop any of these payments. Contact us using the information above in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to confirm your request in writing within 14 days after you call. If you request us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**14. Cardholder Liability for Unauthorized Transactions: NOTIFY US AT ONCE if you believe that your DC or personal identification number (PIN) has been lost, stolen, or used (or may be used) without your authority.** The best way to minimize your possible losses is to contact us as soon as possible by calling us at the number above or, if you have Navy Federal Online Banking, by using the Report Fraud feature. You may also notify us in person at any branch or in writing using the address above.

**Timely Notice of Missing DC:** If you notify us within 2 business days after you learn of the loss or theft of your DC or PIN, your losses will be no more than \$50 if someone used your DC or PIN without your permission.

**Delayed Notice of Missing DC:** If you fail to notify us within 2 business days after you learn of the loss or theft of your DC or PIN, your losses may be as high as \$500. In this case, you would be liable for unauthorized transactions up to \$50 for the first 2 business days plus all unauthorized transactions that occur between those first 2 business days and the day you actually notify us, altogether up to \$500. You will only be liable for unauthorized transactions after the first 2 business days if we can demonstrate that we could have stopped the unauthorized transactions if you had notified us sooner.

**Unauthorized Transactions on Statement:** If your statement shows transactions that you did not make or authorize, tell us AT ONCE. If you do not tell us within 60 calendar days after the statement has been made available to you, your losses for unauthorized transactions that occur after those 60 days may be unlimited until you actually notify us. You will only be liable for unauthorized transactions after the 60 days if we can demonstrate that we could have stopped the unauthorized transactions if you had notified us. Under certain circumstances, we may extend the notification time period.

We advise you to safeguard your DC and protect the integrity of your PIN. Granting use of the DC to another person will make you financially liable for their use, loss, or misuse of the DC until you report unauthorized use or transactions to Navy Federal.



**15. Navy Federal's Zero Liability Policy for Fraud:** In addition to the liability limits above, if you notify us of suspected fraud within 60 days of the statement date on which the fraudulent transactions first appear, we will not hold you responsible for confirmed fraudulent transactions. This Zero Liability policy only covers transactions that have been confirmed by Navy Federal as fraudulent.

**16. Billing Error Resolution:** The Billing Error Resolution process covers the following errors: unauthorized transactions, including invalid amounts, duplicate transactions, transactions that were paid for by other means, and canceled recurring payments; expected credit not received; and non-receipt of ATM funds or POS cash-back. If you think your statement or receipt has errors, or if you need more information about a transaction listed on your statement or receipt, contact us as soon as possible using the contact information listed above. You MUST contact us no later than 60 calendar days after we FIRST make available the statement on which the suspected error appeared. You will need to identify yourself and the account, describe the error or the transaction you are questioning, clearly explain why you believe an error exists or why you need more information, and tell us the dollar amount of the suspected error. If you call to report a suspected error, we may require you to send us your concern in writing within 10 business days. If we ask you to put your concern in writing and we do not receive it within 10 business days, we may not provisionally credit (see below) your account.

We may take up to 45 days to investigate your concern; however, for suspected errors involving new accounts, POS, or foreign-initiated transactions, we may take up to 90 days to investigate. If we take longer than 10 business days (20 business days for new accounts) to determine whether an error occurred, we will provisionally credit your account the amount you reported as an error on or before the 10th business day. This Provisional Credit is a temporary credit that allows you to use the money during the time it takes us to complete our investigation. We will report the results of our investigation to you within 3 business days after completing our investigation. If we determine there was an error, we will promptly correct it. If we determine there was no error, we will send you a written explanation of our findings. You may ask for copies of the documents that we used in making our determination. Any Provisional Credits will be taken out of your account if we determine there was no error, and if there are insufficient funds in your account to cover the reversal of the Provisional Credit, the account may become overdrawn.

**17. Other Reasons for Dispute:** Disputed transactions that are not covered by our Error Resolution Process such as defective, damaged, or non-receipt of merchandise or services, or items received "not as described" will be handled at our discretion. Please first make a good faith attempt to resolve discrepancies with the merchant. If your good faith attempt is not successful, we may use our dispute resolution process to act on your behalf and pursue recovery of funds from the merchant, based on your statement supporting your claim, as well as any documentation we may request. We may not be able to recover your funds. We will report the results of the dispute resolution process to you within 120 days; however, we are not obligated to issue a Provisional Credit during the dispute resolution process.

**18. Merchant Credits:** Merchants and others who honor the DC may give credits for returns or adjustments, which will appear as credits on your checking account statement.

<sup>1</sup>Subject to holds placed on certain transactions, see our Funds Availability Policy (NFCU 668) and the Mobile Check Deposit User Agreement, which may be viewed on our website via [navyfederal.org](http://navyfederal.org).

<sup>2</sup>For details, see our Optional Overdraft Protection Service (OOPS) Disclosures (NFCU 657) and our Checking Line of Credit Agreement and Disclosure (NFCU 33C).

<sup>3</sup>For more information about savings accounts and transactions limits, see our Important Disclosures (NFCU 606).

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Navy Federal Credit Union Charges International Transaction Fees for Online Purchases Made in U.S.](#)

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