

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Ben Hawkins, <i>on behalf of himself</i> <i>and all others similarly situated,</i>	:	
	:	Case No. 1:19-cv-01186
	:	
Plaintiff,	:	
v.	:	
	:	
Navy Federal Credit Union,	:	Hon. Judge Leonie M. Brinkema
	:	
Defendant.	:	
	:	

**PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**¹

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff Ben Hawkins, through counsel and with the consent of Defendant Navy Federal Credit Union, hereby moves this Court for preliminary approval of the proposed class action settlement. In support thereof, Plaintiff relies upon the accompanying Memorandum in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement; Settlement Agreement and Release (Exhibit 1); the Declaration of Alexander H. Burke (Exhibit 2); the Declaration of Jeffrey S. Goldenberg (Exhibit 3); the Declaration of Joseph M. Lyon (Exhibit 4); and the records, pleadings, and papers filed in this action. Pursuant to the Alexandria Division filing guidelines for unopposed motions, Plaintiff includes a proposed Preliminary Certification Order (Exhibit 5).

Respectfully submitted,

BEN HAWKINS, on behalf of himself
and all others similarly situated

Dated: March 12, 2020

By: /s/ David J. Dickens

¹ This filing corrects the motion originally filed at Doc. 24 in order to submit the attachments in the correct order and include the client signature with the Settlement Agreement and Release provided as Exhibit 1.

David J. Dickens (VSB 72891)
THE MILLER FIRM, LLC
108 Railroad Avenue
Orange, VA, 22960
Telephone: (540) 672-4224
ddickens@millerfirmllc.com

Alexander H. Burke
BURKE LAW OFFICES, LLC
155 N. Michigan Ave., Suite 9020
Chicago, IL 60601
Telephone: (312) 729-5288
aburke@burkelawllc.com

Jeffrey S. Goldenberg
GOLDENBERG SCHNEIDER, L.P.A.
1 W. 4th St., 18th Floor
Cincinnati, OH 45202
Telephone: (513) 345-8291
jgoldenberg@gs-legal.com

Joseph M. Lyon
THE LYON FIRM, P.C.
2754 Erie Ave.
Cincinnati, OH 45208
Telephone: (513) 381-2333
jlyon@thelyonfirm.com

*Counsel for Plaintiff and the
Proposed Class*

CERTIFICATE OF SERVICE

I hereby certify that, on March 12, 2020, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ David J. Dickens

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 11th day of March, 2020, by and among (1) Plaintiff (as defined below), for himself and on behalf of the Settlement Class (as defined below), and (2) Defendant (as defined below), subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Plaintiff and Defendant hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against Defendant in the action titled *Hawkins v. Navy Federal Credit Union*, Case No. 19-cv-01186-LNB-IDD (E.D. Va.) (the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

I. Recitals

1. On September 13, 2019, Plaintiff Ben Hawkins filed a class action complaint in the United States District Court for the Eastern District of Virginia, alleging that Navy Federal Credit Union (“Navy Federal”) violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, by sending numerous text messages to his cell phone number without his prior express consent.
2. On November 15, 2019, the Parties (as defined below) filed a joint motion to stay the Action pending mediation. The same day, the Court granted in part and denied in part the joint motion, staying the Action until January 21, 2020.
3. On January 7, 2020, the Parties participated in a full-day mediation led by the Hon. Morton Denlow (Ret.) of JAMS, at which the parties reached agreement in principle on terms to settle the Action. The same day, the Parties executed a settlement term sheet outlining the agreed-to terms, which are integrated into this Agreement.
4. The Parties now agree to settle the Action in its entirety pursuant to the terms set forth in this Agreement, without any admission of liability, with respect to all Released Claims (as defined below) of the Settlement Class. The Parties intend this Agreement to bind Plaintiff, Defendant, and all Settlement Class Members who do not timely request to be excluded from the Settlement (as defined below).

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

II. Definitions

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

5. “Claim” means a written request submitted by a Settlement Class Member to the Settlement Administrator seeking a distribution from the Settlement Fund. “Claim” as used herein includes both Basic Claims and Proof of Receipt Claims.

6. “Claimant” means a Settlement Class Member who submits a Claim.
7. “Claim Deadline” means the last date by which a Claim submitted to the Settlement Administrator by a Claimant must be postmarked or submitted online in order to be considered valid, which shall be 90 days after the Notice Deadline.
8. “Claim Form” means a form provided by the Settlement Administrator for the purpose of making a Claim.
9. “Class Counsel” means Burke Law Offices, LLC, Goldenberg Schneider, L.P.A., and The Lyon Firm, P.C.
10. “Class Period” means the period from September 15, 2015 up through Preliminary Certification.
11. “Court” means the United States District Court for the Eastern District of Virginia.
12. “Defendant” or “Navy Federal” means Navy Federal Credit Union.
13. “Effective Date” means the fifth business day after which all of the following events have occurred:
 - a. All Parties, Navy Federal’s counsel, and Class Counsel have executed this Agreement;
 - b. The Court has entered without material change the Final Approval Order; and
 - c. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

Notwithstanding the foregoing, the Effective Date shall not be earlier than 35 days after Final Approval.

14. “Email Notice” means an electronic notice provided by the Settlement Administrator to individuals associated with cell phone numbers in the Notice Database, with email addresses determined through reverse lookups or some other process recommended by the Settlement Administrator, to the extent those email addresses can be reasonably determined. Email Notice shall be substantially in the form attached hereto as Exhibit B and shall contain one or more links to the Settlement Website to facilitate the filing of Claims.

15. “Final Approval” means the date that the Court enters the Final Approval Order. In the event that the Court issues separate orders addressing the matters in Exhibit G, then Final Approval means the date of the last of such orders.
16. “Final Approval Hearing” means a hearing set by the Court to take place no earlier than 30 days after the Claim Deadline, for the purpose of determining the fairness, adequacy, and reasonableness of the Settlement Agreement and associated procedures and requirements.
17. “Final Approval Order” means the order and judgment that the Court enters finally approving this Settlement, which shall be substantially in the form attached hereto as Exhibit G. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.
18. “Long-Form Notice” means Notice posted on the Settlement Website that shall be substantially in the form attached hereto as Exhibit C.
19. “Mail Notice” means a mailed notice by the Settlement Administrator to individuals associated with cell phone numbers in the Notice Database, with addresses determined through reverse lookups, to the extent those addresses can be reasonably determined. Mail Notice shall be substantially in the form attached hereto as Exhibit A and shall have the Claim Form, substantially in the form attached hereto as Exhibit E, attached thereto.
20. “Mail Notice Program” means the process described in paragraph 53.
21. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve for transmission to the Settlement Class.
22. “Notice Database” means the list of unique, ten-digit numbers associated with a “wrong number” code in Navy Federal’s debt collection records, that were also texted during the Class Period.
23. “Notice Deadline” means the date by which the Settlement Administrator must mail the Mail Notice (including sending Email Notice, if applicable) and place the Publication Notice online, and shall be 75 days after Preliminary Certification.
24. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of (1) Mail Notice; (2) Publication Notice; (3) Long-Form Notice; and (4) Email Notice.
25. “Objection Deadline” means the date by which a Settlement Class Member must serve written objections to the Settlement, if any. The Objection Deadline shall be 60 days after the Notice Deadline. The Objection Deadline will be specified in the Notice.
26. “Opt-Out Deadline” means the date by which a request to opt out must be filed or submitted in writing to the Settlement Administrator for a person who would otherwise

fall within the Settlement Class to be excluded from the Settlement Class. The Opt-Out deadline shall be 60 days after the Notice Deadline. The Opt-Out Deadline will be specified in the Notice.

27. "Parties" means Plaintiff and Defendant.
28. "Plaintiff" means Ben Hawkins.
29. "Preliminary Certification" means the date that the Court enters the Preliminary Certification Order.
30. "Preliminary Certification Order" means the Order approving the form and content of Notice and preliminarily certifying the Settlement Class in a form substantially the same as in the attached Exhibit F. The proposed Preliminary Certification Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Navy Federal, and substantially in the form as that attached hereto as Exhibit F. The motion for the Preliminary Certification shall request that the Court: (1) approve the Notice Program as set forth herein and authorize Notice on the basis that the terms of the Settlement are within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) designate Plaintiff as the Class Representative; (4) appoint Class Counsel as counsel for the Settlement Class; (5) approve the procedures set forth in Sections VIII and IX hereof for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; and (6) schedule a Final Approval hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Navy Federal that is no earlier than 30 days after the Claim Deadline.
31. "Publication Notice" means internet publication using Facebook, Instagram, and Google Ads and shall be substantially in the form attached hereto as Exhibit D.
32. "Released Claims" means all claims to be released as specified in Section XV hereof. The "Releases" means all of the releases contained in Section XV hereof.
33. "Released Parties" means Navy Federal and its respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of its and their respective past, present and future directors, officers, managers, employees, general partners, limited partners, principles, insurers, reinsurers, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives; and any third parties sending text messages on Navy Federal's behalf and its and their respective past, present, and future parents, subsidiaries, holding companies, affiliated companies and corporations, and each of its and their respective past, present and future directors, officers, managers, employees, general partners, limited partners, principles, insurers, reinsurers, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives.

34. “Releasing Parties” means Plaintiff and all Settlement Class Members who do not timely and properly opt out of the Settlement, and any persons who may claim through them such as their respective past, present and future directors, officers, managers, employees, general partners, limited partners, principles, employees, insurers, reinsurers, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives.
35. “Service Award” means a payment to the Plaintiff, not to exceed \$15,000.00, to be paid from the Settlement Fund no later than 30 days following the Effective Date.
36. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.
37. “Settlement Administrator” means Kurtzman Carson Consultants LLC (“KCC”). Class Counsel and Navy Federal may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement. In the absence of agreement, either Class Counsel or Navy Federal may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.
38. “Settlement Class” or “Class” means all nonmember persons of Navy Federal who received one or more text messages (other than text messages concerning fraud) on their cellular telephone from Navy Federal, or anyone on its behalf, between September 15, 2015 through the date of Preliminary Certification. Excluded from the Class are all current employees, officers, and directors of Navy Federal; federal, state, and local governments and all agencies and subdivisions thereunder; and the Judges and mediators to whom this Action is or has been assigned and any member of his or her immediate family.
39. “Settlement Class Member” or “Class Member” means any person included in the Settlement Class.
40. “Settlement Class Opt-Outs” means the Settlement Class Members who have effectively opted out of the Settlement, consistent with the terms of this Agreement.
41. “Settlement Fund” means the total cash consideration to be made available by Navy Federal pursuant to Section IV below, being the sum of \$9,250,000.00.
42. “Settlement Fund Account” means an interest-bearing account held by an FDIC- or NCUA-insured financial institution. Class Counsel and Navy Federal shall agree on the FDIC- or NCUA-insured financial institution at which the account shall be established.
43. “Settlement Fund Payment” means payments to Claimants whose Claims the Settlement Administrator has approved in accordance with the distribution directive in Section XIII hereof.

44. “Settlement Website” means the website that the Settlement Administrator will establish within 30 days of Preliminary Certification. The Settlement Website shall be taken down no earlier than sixty days after the last Settlement Fund Payments have been issued by the Settlement Administrator.

III. Certification of the Settlement Class

45. For settlement purposes only, Plaintiff shall ask the Court to certify the Settlement Class under Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure.

IV. Settlement Consideration

46. The total cash consideration to be made available by Navy Federal pursuant to the Settlement shall be \$9,250,000.00 to cover cash compensation to the Settlement Class, inclusive of all attorneys’ fees and cost reimbursements, the Service Award, and all fees, costs, charges, and expenses of the Settlement Administrator incurred in connection with the administration of the Notice Program as set forth in Section VII hereof and the processing and payment of Claims as set forth in Sections XI and XII hereof.

V. Settlement Approval

47. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for the Preliminary Certification Order.
48. Within 10 days of the filing of the motion for Preliminary Certification, Navy Federal shall serve or cause to be served a notice of the proposed Settlement on the appropriate State and Federal officials under 28 U.S.C. § 1715(b).

VI. Settlement Administrator

49. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraphs hereafter and as approved by the Court and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Notice to Settlement Class Members as described in Section VII; establishing and maintaining the Settlement Website; administering the Claims process; distributing the Settlement Fund as provided herein; and paying the remainder of any Settlement Fund to Navy Federal in the event of a termination of the Settlement pursuant to Section XVII hereof.
50. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:
- a. Conduct the Mail Notice Program;
 - b. Establish and manage the Publication Notice;

- c. Establish and maintain a Post Office box for (i) the submission of Claims; and (ii) mailed requests for exclusion from the Settlement Class;
- d. Establish and maintain the Settlement Website as a means for Settlement Class Members to submit Claims and associated documentation, as well as to obtain notice of and information about the Settlement through and including hyperlinked access to this Agreement, the Long-Form Notice, the Preliminary Certification Order, and such other documents as Class Counsel and Navy Federal agree to post or that the Court orders posted on the website;
- e. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Establish and maintain a toll-free cell phone number for Settlement Class Members to obtain information concerning the settlement;
- g. Respond to any mailed inquiries from Settlement Class Members;
- h. Process all requests for exclusion from the Settlement Class;
- i. Provide reports on request, and, no later than five days after the Opt-Out and Objection Deadlines, a final report to Class Counsel and Navy Federal that summarizes the number of requests for exclusion and objections received during that period, the total number of exclusion requests and objections received to date, and other pertinent information;
- j. Payment of any taxes pursuant to paragraph 64;
- k. At Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each Settlement Class Member who timely and properly requested exclusion from the Settlement Class;
- l. Process and transmit distributions to Settlement Class Members from the Settlement Fund;
- m. Review, determine the validity of, and respond to all Claims;
- n. Provide weekly reports, as well as reports on request, and a final report to Class Counsel and Navy Federal that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims granted and denied since the prior reporting period, the total number of Claims granted and denied to date, and other pertinent information. The Administrator shall remain diligent in identifying and notifying counsel of any unusual or unexpectedly fraudulent claim behavior or other problems;

- o. Pay invoices, expenses, and costs upon approval by Class Counsel and Navy Federal, as provided in this Agreement; and
 - p. Perform any settlement administration-related function at the instruction of Class Counsel and Navy Federal, including, but not limited to, verifying that Settlement Funds have been distributed as required by Section XIII hereof.
- 51. The documents specified in paragraph 50(d) shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.nfcutextsettlement.com or such other URL as Class Counsel and Navy Federal may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Navy Federal logo or Navy Federal trademarks. Ownership of the Settlement Website URL shall be transferred to Navy Federal within 10 days of the date on which operation of the Settlement Website ceases.

VII. Notice to Settlement Class Members

- 52. Notice shall be provided to Settlement Class Members through the Notice Program. Notice shall be provided substantially in a form as that attached hereto as Exhibits A-D.
- 53. Mail Notice Program.
 - a. Within 10 days of Preliminary Certification, Navy Federal will provide to the Settlement Administrator the Notice Database.
 - b. The Settlement Administrator shall then implement the Notice Program provided herein by no later than the Notice Deadline, using the forms of Notice approved by the Court in the Preliminary Certification Order.
 - c. After the Settlement Administrator receives the Notice Database, it will, with the assistance of its consultants/experts, perform a reverse lookup of telephone numbers within the Notice Database to identify the name and address of individuals who were or may have been the user or subscriber of the phone number during the Class Period. The Settlement Administrator will then provide the results of the reverse lookup (i.e., names and addresses associated with the telephone numbers within the Notice Database) to Navy Federal, which will identify names and addresses obtained through the reverse lookup that are deemed to be associated with Navy Federal members. These associated names and addresses shall be excluded from the Mail Notice Program. The Settlement Administrator will then send Mail Notice to persons identified through this process. Potential Class Members may also be identified using other methodologies that the Settlement Administrator and its consultants/experts conclude are reasonably likely to identify additional Class Members. For example, to the extent corresponding email addresses are obtained through this reverse lookup process or another process suggested by the Settlement Administrator, the Email Notice shall also be sent to such email addresses. These provisions for identification of potential Class Members and direct mailing of

Notice are intended to work in conjunction with the other methods of the Notice Program set forth herein.

- d. The Settlement Administrator will then cross reference the information obtained through this process with the United States Postal Service's change of address database to obtain any updated address information for Class Members.
 - e. Any personal information relating to members of the Class or to Navy Federal members who are not Class Members that is provided to the Settlement Administrator or Class Counsel pursuant to this Settlement shall be provided solely for the purpose of providing notice to members of the Class and allowing them to recover under this Settlement, as approved and ordered by the Court. Such information shall be kept in strict confidence, shall be used only for purposes of this Settlement, and shall not be disclosed to any third party.
 - f. Notices provided under or as part of the Notice Program shall not bear or include the Navy Federal logo or trademarks or the return address of Navy Federal, or otherwise be styled to appear to originate from Navy Federal.
 - g. The Mail Notice Program shall be completed by the Notice Deadline. Within seven days after the date the Settlement Administrator completes the Mail Notice Program, the Settlement Administrator shall provide Class Counsel and Navy Federal an affidavit that confirms that the Notice Program was completed in a timely manner. Class Counsel shall file that affidavit (or as further supplemented) with the Court as an exhibit to or in conjunction with Plaintiff's motion for final approval of the Settlement.
54. The Settlement Administrator shall establish the toll-free number identified in paragraph 50(e) and implement the Publication Notice by the Notice Deadline. The Settlement Administrator shall also establish the Settlement Website within 30 days of Preliminary Certification.
55. All costs of the Notice Program shall be deducted from the Settlement Fund.
56. Within the parameters set forth in this Section VII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Navy Federal.

VIII. Exclusion/Opt Out

57. Any Settlement Class Member may exclude himself or herself from the Settlement Agreement and Release, and from its binding effect, by sending to the Settlement Administrator, postmarked by the Opt-Out Deadline, a written request to opt out or be excluded from the Settlement. The request must include the individual's name, address, and cell phone number; a statement that he or she wants to be excluded from the Settlement in *Hawkins v. Navy Federal Credit Union.*, No. 19-cv-01186-LNB-IDD (E.D. Va.); and the individual's signature. The Settlement Administrator shall provide the Parties with copies of all completed opt-out requests, and Class Counsel shall file a list of Settlement Class Opt-Outs with the Court no later than seven days prior to the Final

Approval Hearing. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.

IX. Objections

58. Any Settlement Class Member who does not opt out of the Settlement may object to any aspect of the Settlement. Objections must be electronically filed with the Court or mailed to the Clerk of the Court, with copy to Class Counsel and Navy Federal's counsel. For an objection to be considered by the Court, the objection must be electronically filed or mailed first-class postage prepaid and addressed in accordance with the instructions and the postmark date indicated on the envelope must be no later than the Objection Deadline, as specified in the Notice.
59. For an objection to be considered by the Court, the objection must also set forth:
- a. The name of the Action (*Hawkins v. Navy Federal Credit Union.*, Case No. 19-cv-01186-LNB-IDD (E.D. Va.));
 - b. The objector's full name, address, phone number, and cell phone number texted (if different);
 - c. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
 - d. All grounds for the objection, accompanied by any legal support for the objection;
 - e. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection;
 - f. Whether the objector intends to appear at the Final Approval Hearing and, if so, the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
 - g. Whether the objection applies only to the objector, to a specific subset of the class or the entire class;
 - h. A list of all other class action settlements to which the objector or their counsel filed an objection;
 - i. A list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; and
 - j. The objector's signature (an attorney's signature is not sufficient).

X. Final Approval Order and Judgment

60. Plaintiff's motion for Preliminary Certification will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file its motion for final approval of the Settlement no later than seven days prior to the Final Approval Hearing.
61. The proposed Final Approval Order is attached hereto as Exhibit G.

XI. Settlement Fund

62. Within five days of the filing of Plaintiff's motion for Preliminary Certification, the Settlement Administrator shall provide the Parties an estimate of the costs to implement the Notice Program, establish the Settlement Website, establish the toll-free telephone number, and related upfront expenses. After the upfront payment of costs, settlement administration costs will be paid out of the Settlement Fund Account.
63. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XV hereof and the dismissal of the Action upon Final Approval, within 14 days following the Effective Date, Navy Federal shall transfer to the Settlement Administrator the amount of the Settlement Fund less the amount of the settlement administration costs billed to date to be deposited into a Settlement Fund Account.
64. The monies in the Settlement Fund Account at all times shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund Account. Plaintiff and Class Counsel, and Navy Federal and its counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund Account shall indemnify and hold Plaintiff and Class Counsel, and Navy Federal and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).
65. The Settlement Fund shall be used for the following purposes:
- a. Distribution of Settlement Fund Payments;
 - b. Payment of the Court-ordered award of Class Counsel's attorneys' fees and costs pursuant to Section XVI hereof;
 - c. Payment of the Court-ordered Service Award to Plaintiff pursuant to Section XVI hereof;

- d. Payment of any Taxes pursuant to paragraph 64 hereof, including, without limitation, taxes owed as a result of interest earned on the Settlement Fund Account, in a timely manner, subject to approval by Class Counsel and Navy Federal;
- e. Payment of any costs of settlement administration and the Notice Program; and
- f. Payment of additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (e) of this paragraph, consistent with the purposes of this Agreement, subject to approval of Class Counsel, Navy Federal, and the Court.

XII. Claims Process

66. Any Settlement Class Member—except one who has already released his or her claims against Navy Federal concerning the subject matter of this Action—may submit a Claim to the Settlement Administrator seeking a distribution from the Settlement Fund.
- a. Basic Claims: Settlement Class Members may elect to submit a claim without providing proof other than a certification that he received text messages from Navy Federal; such claims are referred to herein as “Basic Claims.” Basic Claims shall be worth one Claim Credit.
 - b. Proof of Receipt Claims: Any Settlement Class Member that can show proof of receipt of text messages from Navy Federal may submit such proof through the United States Mail or the Settlement Website to the Class Administrator, along with a tally of texts received and a description of the documentation. No subpoenas or any other form of assistance from Navy Federal or Class Counsel are permitted. Proof of Receipt Claims shall be entitled to one Claim Credit for each text message received by the Settlement Class Member from Navy Federal or from a third party acting on behalf of Navy Federal established by such documentation.
67. All Claimants, including Basic Claimants and Proof of Receipt Claimants, must submit a Claim Form. A Claim may be submitted by filing a request with the Settlement Administrator using a Claim Form in the form attached hereto as Exhibit E. Claims may also be filed directly on the Settlement Website. Claimants may submit proof of any Navy Federal text messages they received with their Claim Form via United States Mail or through the Settlement Website. Claims and proof must be submitted to the Settlement Administrator, or through the Settlement Website, by the Claim Deadline. The Claim Form will require the Settlement Class Member to provide his or her full name, mailing address, contact telephone number and email address, the cellular telephone number to which the text messages at issue in the Action were placed, and an affirmation that he/she (1) owned the cellular telephone number and (2) was not a Navy Federal member at the time of the text messages at issue.

68. The Settlement Administrator shall have final authority to determine the adequacy and the legitimacy of any Claim. The Settlement Administrator shall have discretion to require a Claimant to submit additional information and documentation to support a Claim. In exercising its discretion under this paragraph, the Settlement Administrator shall take into account the burden imposed by requiring additional information and documentation and other appropriate considerations.
69. The Settlement Administrator shall not reject any claim until after consultation with Class Counsel and Navy Federal. If, after that consultation, the Settlement Administrator rejects the claim, it shall provide written notice to the Claimant, and an opportunity to remedy curable deficiencies, and/or state any grounds for contesting the proposed decision of the Settlement Administrator, within 30 days of the date the Settlement Administrator sends notice of the rejection by mail. A Claimant shall only receive one 30-day period in which to respond to the Settlement Administrator's proposed rejection of a Claim. Untimely submission of a Claim is not a curable deficiency within the meaning of this paragraph.
70. A Claim (or remedial submission) shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions.
71. All Claim Forms shall be subject to such anti-fraud procedures and random and/or selective audits as the Settlement Administrator shall adopt in its discretion. The Settlement Administrator shall be responsible for developing an appropriate plan to audit Claim Forms. Class Counsel and Navy Federal retain the right to independently audit Claim Forms if they choose to do so.
72. Within the parameters set forth in this Section XII, further specific details of the Claims process shall be subject to the agreement of Class Counsel and Navy Federal. In the event that the Settlement Administrator determines, in its discretion, that any adjustment to the Claims process or deadlines is called for, the Settlement Administrator shall confer with Class Counsel and Navy Federal. Changes may be made to the Claims process set forth in this Section XII by agreement between Class Counsel and Navy Federal, in order to facilitate the working of the Claims process or accomplishment of the goals of the Claims process, subject to final approval by the Court.

XIII. Distribution of Settlement Fund

73. Within the later of 60 days after the Effective Date or 10 days after the resolution of any and all claims under Section XII, the Settlement Administrator shall distribute the Settlement Fund as set forth in this Section XIII.
74. To determine the distribution of the Settlement Fund, the Settlement Administrator shall first calculate the aggregate amount of certain costs and fees to be subtracted from the Settlement Fund ("Non-Claim Costs"), defined to include the following:
 - a. The amount of any Court-awarded attorneys' fees and costs to Class Counsel;

- b. The amount of any Court-awarded Service Award to Plaintiff;
 - c. The costs of settlement administration and the Notice Program, including the projected costs of the Settlement Administrator completing its duties of distribution of the Settlement Fund Payments and its duties following such distribution;
 - d. The amount of any Taxes to be paid pursuant to paragraph 64, if any; and
 - e. All other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (d) of this paragraph that are expressly provided for in this Agreement or have been approved by Class Counsel, Navy Federal, and the Court.
75. The Settlement Administrator shall then subtract the Non-Claim Costs from the Settlement Fund, and the remaining amount shall be divided by the number of approved Claim Credits to yield the Claim Credit Amount. Each Claimant with one or more Claim Credit shall receive a Settlement Fund Payment equal to the product of his or her Claim Credits multiplied by the Claim Credit Amount.
76. The calculations just described shall yield the amount of each Claimant's Settlement Fund Payment.
77. In no event shall Navy Federal ever be required to pay more than a total of \$9,250,000.00 to the Settlement Class, inclusive of all Settlement Fund Payments, attorneys' fees and costs, the Service Award, as well as the costs of settlement administration, and the Notice Program.
78. Settlement Fund Payments will be made by check with an appropriate legend to indicate that it is from the Settlement. Checks will be prepared and mailed by the Settlement Administrator. Checks shall be valid for 180 days after issuance. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Fund Payments whose check is returned by the Postal Service as undeliverable and will re-mail it once to the updated address.

XIV. Disposition of Residual Funds

79. If any funds remain in the Settlement Fund Account after 180 days from the date the Settlement Administrator mails the last Settlement Fund Payment, such funds shall be divided by the number of approved claims and disbursed to Claimants in a second disbursement in the manner described in Section XIII, provided there are sufficient residual funds in the Settlement Fund Account to make the cost of such a second disbursement administratively feasible. If, after the second distribution, the cost of administration is administratively feasible a third redistribution will be made. This shall continue until further distributions are not administratively feasible.
80. If the residual funds do not cover the cost of a third disbursement, or if any funds remain in the Settlement Fund Account after 180 days from the date the Settlement

Administrator mails the last check as provided in paragraph 79, those funds shall be distributed through a residual *cy pres* program to a Court-approved recipient. All costs associated with the disposition of residual *cy pres* funds shall be paid from the Settlement Fund Account. In the event that no money remains in the Settlement Fund Account 180 days after the last check is mailed to claimants under paragraphs 78 or 79, the Parties shall have no obligation whatsoever to make any residual *cy pres* distribution.

XV. Releases

81. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, for alleged or actual violations of the Telephone Consumer Protection Act of 1991 ("TCPA") and related state analogue claims arising out of or relating to non-fraud text messages sent by Navy Federal or any third party on its behalf, between September 15, 2015 and Preliminary Certification. Voice calls and fraud text messages are excluded from this release.
82. AS OF THE EFFECTIVE DATE, PLAINTIFF AND EACH SETTLEMENT CLASS MEMBER (EXCEPTING SETTLEMENT CLASS OPT-OUTS) SHALL FURTHER AUTOMATICALLY BE DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE OR SIMILAR LAWS OF ANY OTHER STATE OR JURISDICTION. SECTION 1542 OF THE CALIFORNIA CIVIL CODE READS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

However, in no event shall this paragraph be construed to expand the scope of claims to be released in paragraph 81.

83. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he or she or it knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 81 and 82 hereof, or the law applicable to such claims may change. Nonetheless, each of those individuals, excepting Settlement Class Opt-Outs, expressly agrees that, as of the Effective Date, he or she or it shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by paragraphs 81 and 82 hereof. Further, each of those individuals, excepting Settlement Class Opt-Outs, agrees and acknowledges that he or she shall be bound by this Agreement, including by the releases contained in this paragraph and in paragraphs 81

and 82 hereof, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a distribution of funds from the Settlement.

XVI. Payment of Attorneys' Fees, Costs, and Service Award

84. Class Counsel state that they will (1) request attorneys' fees in an amount not to exceed one third of the Settlement Fund; and (2) make an application for reasonable expenses incurred in the action. Any award of attorneys' fees and costs to Class Counsel shall be payable solely out of the Settlement Fund.
85. No later than 30 days following the Effective Date, the Settlement Administrator shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys' fees and costs of Class Counsel. In the event that the award of attorneys' fees and costs of Class Counsel is reduced on appeal, the Settlement Administrator shall only pay to Class Counsel from the Settlement Fund the reduced amount of such award, including interest accrued thereon. Class Counsel shall timely furnish to the Settlement Administrator any required tax information or forms before the payment is made.
86. The payment of attorneys' fees and costs of Class Counsel pursuant to paragraph 85 hereof shall be made through wired deposits by the Settlement Administrator per Class Counsels' wiring instructions, in amounts consistent with those ordered by the Court, and as directed by Class Counsel.
87. Class Counsel will ask the Court to approve a Service Award, which shall be paid to Plaintiff in addition to Plaintiff's Settlement Fund Payment.
88. No later than 30 days following the Effective Date, the Settlement Administrator shall pay to the Plaintiff the Service Award as approved by the Court from the Settlement Fund.

XVII. Termination of Settlement

89. This Settlement may be terminated by either Class Counsel or Navy Federal by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 45 days (or such longer time as may be agreed between Class Counsel and Navy Federal) after any of the following occurrences:
 - a. Class Counsel and Navy Federal agree to termination;
 - b. the Court rejects, materially modifies, materially amends or changes, or declines to approve the Settlement;
 - c. an appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days of such reversal;

- d. any court incorporates terms or provisions into, or deletes or strikes terms or provisions from, or modifies, amends, or changes, the Preliminary Certification Order, Final Approval Order, or the Settlement in a material way;
 - e. the Effective Date does not occur; or
 - f. any other ground for termination provided for elsewhere in this Agreement.
90. Navy Federal also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 14 days of its receipt from the Settlement Administrator of the final report specified in paragraph 49(i) hereof, if 200 or more Settlement Class Members timely request exclusion from the Settlement Class.
91. No Party may terminate the Settlement for any reason other than those set forth in paragraphs 89 and 90, including without limitation, (1) any intervening change in law impacting the TCPA claim alleged in the Action, and (2) the amount of attorneys' fees awarded to Class Counsel or of any Service Award awarded to Plaintiff.

XVIII. Effect of a Termination

92. The grounds upon which this Agreement may be terminated are set forth in paragraphs 89 and 90 hereof. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Navy Federal's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Settlement Fund shall be returned to Navy Federal in accordance with paragraph 93 hereof; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiff's right to seek class certification and Navy Federal's right to oppose class certification.
93. In the event of a termination as provided in paragraphs 89 and 90 hereof, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Settlement Fund, the Settlement Administrator shall return the balance of the Settlement Fund to Navy Federal within seven days of termination.
94. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraphs 89 and 90 hereof.
95. In the event the Settlement is terminated in accordance with the provisions of paragraphs 89 and 90 hereof, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiff's right to seek class certification, and Navy Federal's right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XIX. No Admission of Liability

96. Navy Federal disputes the claim alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Navy Federal has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.
97. Class Counsel and Plaintiff believe that the claim asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, the likelihood of certification of a class for litigation purposes, and the likelihood of success on the merits of the Action. Class Counsel and Plaintiff have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.
98. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.
99. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.
100. In addition to any other defenses Navy Federal may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an application for injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XX. Miscellaneous Provisions

101. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
102. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

103. Term Sheet Superseded. This Agreement supersedes and replaces the settlement term sheet executed by the Parties on January 7, 2020.
104. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.
105. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.
106. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made, or relied upon, by any Party hereto, except as provided for herein.
107. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.
108. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the Commonwealth of Virginia, without regard to the principles thereof regarding choice of law.
109. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through e-mail of an Adobe PDF shall be deemed an original.
110. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.
111. Notices. All notices to Class Counsel provided for herein, shall be sent by e-mail with a hard copy sent by overnight mail to:

Alexander H. Burke
BURKE LAW OFFICES, LLC
909 Davis Street, Suite 500
Evanston, IL 60201

Tel: (312) 729-5288
Email: aburke@burkelawllc.com

Jeffrey S. Goldenberg
GOLDENBERG SCHNEIDER, L.P.A.
1 W. 4th St., 18th Floor
Cincinnati, OH 45202
Telephone: (513) 345-8291
Email: jgoldenberg@gs-legal.com

Joseph M. Lyon
THE LYON FIRM, P.C.
2754 Erie Ave.
Cincinnati, OH 45208
Telephone: (513) 381-2333
Email: jlyon@thelyonfirm.com

All notices to Navy Federal, provided for herein, shall be sent by e-mail with a hard copy sent by overnight mail to:

Emily Troncoso
Associate General Counsel
NAVY FEDERAL CREDIT UNION
820 Follin Lane
Vienna, VA 22180
Tel.: (703) 206-1541
Fax: (703) 255-7592
emily_troncoso@navyfederal.org

Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel.: (212) 230-8800
Fax: (212) 230-8888
E-mail: alan.schoenfeld@wilmerhale.com

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

112. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for Navy Federal and Class Counsel and, if the

Settlement has been approved by the Court, such amendment or modification is approved by the Court.

113. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
114. Authority. Class Counsel, Plaintiff, counsel for Navy Federal, and Navy Federal represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiff and Navy Federal to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.
115. Agreement Mutually Prepared. Neither Navy Federal nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
116. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in any substantive or procedural law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law or changes in any substantive or procedural law, subsequently occurring or otherwise.
117. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XV hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Agreed:

Dated: March 12, 2020 Ben Hawkins by [Signature] telephone authorization
Ben Hawkins, Plaintiff

Dated: _____
Alexander H. Burke
BURKE LAW OFFICES, LLC
909 Davis Street, Suite 500
Evanston, IL 60201
Class Counsel

Dated: March 11, 2020
Jeffrey S. Goldenberg
GOLDENBERG-SCHNEIDER, L.P.A.
1 W. 4th St., 18th Floor
Cincinnati, OH 45202
Class Counsel

Dated: 3-11-2020
Joseph M. Lyon
THE LYON FIRM, P.C.
2754 Erie Ave.
Cincinnati, OH 45208
Class Counsel

Dated: _____
Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Counsel for Navy Federal Credit Union

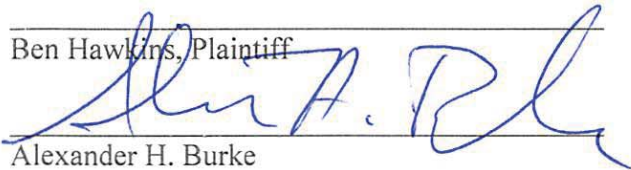
Dated: _____
Emily Troncoso, Deputy General Counsel, for
Navy Federal Credit Union

Agreed:

Dated: _____

Ben Hawkins, Plaintiff

Dated: 3/11/20



Alexander H. Burke
BURKE LAW OFFICES, LLC
909 Davis Street, Suite 500
Evanston, IL 60201
Class Counsel

Dated: _____

Jeffrey S. Goldenberg
GOLDENBERG SCHNEIDER, L.P.A.
1 W. 4th St., 18th Floor
Cincinnati, OH 45202
Class Counsel

Dated: _____

Joseph M. Lyon
THE LYON FIRM, P.C.
2754 Erie Ave.
Cincinnati, OH 45208
Class Counsel

Dated: _____

Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Counsel for Navy Federal Credit Union

Dated: _____

Emily Troncoso, Deputy General Counsel, for
Navy Federal Credit Union

Agreed:

Dated: _____
Ben Hawkins, Plaintiff

Dated: _____
Alexander H. Burke
BURKE LAW OFFICES, LLC
909 Davis Street, Suite 500
Evanston, IL 60201
Class Counsel

Dated: _____
Jeffrey S. Goldenberg
GOLDENBERG SCHNEIDER, L.P.A.
1 W. 4th St., 18th Floor
Cincinnati, OH 45202
Class Counsel

Dated: _____
Joseph M. Lyon
THE LYON FIRM, P.C.
2754 Erie Ave.
Cincinnati, OH 45208
Class Counsel

Dated: 3/11/2020 _____
alan E. Schoenfeld/ss.
Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Counsel for Navy Federal Credit Union

Dated: 3/11/2020 _____
Emily Troncoso
Emily Troncoso, Deputy General Counsel, for
Navy Federal Credit Union

Exhibit A
Mail Notice and Basic Claim Form

Hawkins v. Navy Federal Credit Union, No. 1:19-cv-01186-LMB-IDD (E.D. Va.)

THIS CLAIM FORM MUST BE POSTMARKED BY [REDACTED] AND MUST BE FULLY COMPLETED.

You may also submit your claim online at www.nfcutextsettlement.com, calling 1-XXX-XXX-XXXX.

BASIC CLAIM FORM – If you have proof of text messages and wish to submit a Proof of Receipt Claim for more money, you should download a Proof of Receipt claim form from www.nfcutextsettlement.com.

Full Name (if different from the name to which this postcard was addressed):

bbbbbbbbbbbbbbbbbbbbbbbbbbbbbbbbbbbb

City: (if different) State: ZIP ZIP 4 (optional)

bbbbbbbbbbbbbbbbbb bb bbbbbb - bbbb

E-Mail Address (if available):

bbbbbbbbbbbbbbbbbb

Contact Phone Number:

(WWW) WWW - WWWWW

Cell Phone Number on which You Received a Text:

(WWW) WWW - WWWWW

(Your cell phone number must have been texted by or on behalf of Navy Federal to have a valid claim. If you were texted on more than one cell phone number, or are not certain which of your cell phone numbers was texted, you may submit each number separately.)

CERTIFICATION

By signing below, I certify that: (1) between September 15, 2015 and [Preliminary Certification], I received one or more text messages from or on behalf of Navy Federal; (2) the text message(s) did not concern fraud; and (3) at the time I received the text message(s), I was not a member of Navy Federal and owned the cell phone on which the message was received.

I attest under the pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: _____

Your Signature

For more information, visit www.nfcutextsettlement.com.

LEGAL NOTICE

Hawkins v. Navy Federal Credit Union,
No. 1:19-cv-01186-LMB-IDD (E.D. Va.)

A class action settlement has been proposed in this lawsuit pending in the U.S. District Court for the Eastern District of Virginia ("Court").

This case claims that Navy Federal Credit Union ("Navy Federal") violated the Telephone Consumer Protection Act ("TCPA") by causing autodialed text messages to be sent to non-members' cell phones. Navy Federal denies that it did anything wrong.

Who Is Included? You are likely included in the Settlement if you were a non-member of Navy Federal but received a non-fraud text message on your cell phone from Navy Federal any time between and including September 15, 2015 and [REDACTED].

Hawkins v. Navy Federal Credit Union
Settlement Administrator
c/o [Settlement Administrator]
P.O. Box XXXXX
[City, State ZIP]

Forwarding Service Requested

Claim ID: 1234567890
Confirmation No: 1234567890

[NAME]
[ADDRESS]
[SUITE/APT.]
[CITY, STATE ZIP]



NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES



POSTAGE WILL BE PAID BY ADDRESSEE

NAVY FEDERAL CREDIT UNION TCPA
SETTLEMENT
C/O [SETTLEMENT ADMINISTRATOR]
P.O. BOX XXXXX
[CITY, STATE ZIP]



What is the Settlement about? A Settlement has been reached in a class action lawsuit regarding non-members of Navy Federal Credit Union (“Navy Federal”) who received one or more text messages (other than text messages concerning fraud) from or on behalf of Navy Federal. The lawsuit, *Hawkins v. Navy Federal Credit Union*, No. 1:19-cv-01186-LMB-IDD (E.D. Va.), alleges that Navy Federal violated a federal statute when it sent certain text messages to non-members. Navy Federal denies any liability or wrongdoing but has agreed to settle to avoid the costs and risks of litigation. This is a summary notice only; full information regarding the Settlement can be found at www.nfcutextsettlement.com. **Why am I being contacted?** Navy Federal’s records show that you are likely a member of the Settlement Class, which includes all persons who are not members of Navy Federal who received one or more text messages (other than text messages concerning fraud) on their cellular telephone from Navy Federal, or anyone on its behalf, between September 15, 2015 through [the date of Preliminary Certification]. Excluded from the Class are all current employees, officers, and directors of Navy Federal; federal, state, and local governments and all agencies and subdivisions thereunder; and the Judges and mediators to whom this Action is or has been assigned and any member of his or her immediate family. **What are the Settlement terms?** Navy Federal has agreed to pay \$9.25 million into a Settlement Fund. Payments to Class Members, Class Counsel’s attorney’s fees and litigation costs, and a service payment to the Class Representative will be paid from the Settlement Fund. Class Counsel—Burke Law Offices, LLC, Goldenberg Schneider, L.P.A., and The Lyon Firm—anticipate seeking no more than \$3,083,333.33 in fees, \$15,000 in litigation expenses, and a \$15,000 service award for the Class Representative. **How do I get a Settlement payment?** If you are a Class Member, you may receive a *pro rata* portion of the Settlement Fund per Claim Credit, less the amount of any Non-Claim Costs, by submitting a timely and valid Claim. **How do I submit a Claim?** In addition to the Claim Form being provided with this Mail Notice, Claim Forms are available on the Settlement Website. You can also request a Claim Form by calling [phone number], emailing [TK], or writing to *Hawkins v. Navy Federal Credit Union* Settlement Administrator, c/o [TK], [Address]. **The deadline to submit a Claim and any associated documentation is [Claim Deadline]. Your rights may be affected.** If you do not exclude yourself from the Settlement, you will be bound by its terms, including its Releases. If you do not want to be legally bound, you must ask (in writing) to be excluded from the Settlement Class by [Opt-Out Deadline]. If you stay in the Settlement Class, you may object to the Settlement by [Objection Deadline]. Further information on how to validly opt out or object is available on the Settlement Website. **When and where will the hearing be held to determine approval of the Settlement?** The Court will hold a hearing to consider whether to approve the Settlement and Class Counsel’s request for attorney’s fees and litigation costs, and a Service Award to the Class Representative, at Courtroom 700 of the Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314, at [time] on [date]. You can appear at the hearing, but you do not have to. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing. Any revised hearing date or updates will be available on the Settlement Website.

Exhibit B
Email Notice

LEGAL NOTICE

If you received a text message between September 2015 and [Date] from Navy Federal Credit Union but were not a Navy Federal member, you could get a payment from a class action settlement.

What is the Settlement about? A Settlement has been reached in a class action lawsuit regarding non-members of Navy Federal Credit Union (“Navy Federal”) who received one or more text messages (other than text messages concerning fraud) from or on behalf of Navy Federal. The lawsuit, *Hawkins v. Navy Federal Credit Union*, No. 1:19-cv-01186-LMB-IDD (E.D. Va.), alleges that Navy Federal violated a federal statute when it sent certain text messages to non-members. Navy Federal denies any liability or wrongdoing but has agreed to settle to avoid the costs and risks of litigation. This is a summary notice only; full information regarding the Settlement can be found at www.nfcutextsettlement.com.

Why am I being contacted? Navy Federal’s records show that you are likely a member of the Settlement Class, which includes all nonmember persons of Navy Federal who received one or more text messages (other than text messages concerning fraud) on their cellular telephone from Navy Federal, or anyone on its behalf, between September 15, 2015 through [the date of Preliminary Certification]. Excluded from the Class are all current employees, officers, and directors of Navy Federal; federal, state, and local governments and all agencies and subdivisions thereunder; and the Judges and mediators to whom this Action is or has been assigned and any member of his or her immediate family.

What are the Settlement terms? Navy Federal has agreed to pay \$9.25 million into a Settlement Fund. Payments to Class Members, Class Counsel’s attorney’s fees and litigation costs, and a service payment to the Class Representative will be paid from the Settlement Fund. Class Counsel—Burke Law Offices, LLC, Goldenberg Schneider, L.P.A., and The Lyon Firm, P.C.—anticipate seeking no more than \$3,083,333.33 in fees (i.e., one-third of the Settlement Fund), litigation expenses (not expected to exceed \$15,000), and a \$15,000 service award for the Class Representative.

How do I get a Settlement payment? If you are a Class Member, you may receive a *pro rata* portion of the Settlement Fund per Claim Credit, less the amount of any Non-Claim Costs, by submitting a timely and valid Claim.

How do I submit a Claim? Claim Forms are available on the Settlement Website. You can also request a Claim Form by calling [phone number], emailing [TK], or writing to *Hawkins v. Navy Federal Credit Union* Settlement Administrator, c/o [TK], [Address]. The deadline to submit a Claim and any associated documentation is [Claim Deadline].

Your rights may be affected. If you do not exclude yourself from the Settlement, you will be bound by its terms, including its Releases. If you do not want to be legally bound, you must ask (in writing) to be excluded from the Settlement Class by [Opt-Out Deadline]. If you stay in the Settlement Class, you may object to the Settlement by [Objection Deadline]. Further information on how to validly opt out or object is available on the Settlement Website.

When and where will the hearing be held to determine approval of the Settlement? The Court will hold a hearing to consider whether to approve the Settlement and Class Counsel’s request for attorney’s fees and litigation costs, and a Service Award to the Class Representative, at Courtroom 700 of the Albert

V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314, at [time] on [date]. You can appear at the hearing, but you do not have to. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing. Any revised hearing date will be available on the Settlement Website.

Exhibit C
Long-Form Notice

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A \$9.25 million Settlement has been reached with Navy Federal Credit Union (“Navy Federal”) in a lawsuit where the Plaintiff alleges that Navy Federal violated a federal statute and regulations when it sent certain text messages. Navy Federal denies any liability or wrongdoing.
- The Settlement offers payments to non-members of Navy Federal who received one or more text messages (other than text messages concerning fraud) from or on behalf of Navy Federal between September 15, 2015 through <date of notice approval and preliminary certification>. Mail or email notice about this Settlement has been sent to identifiable persons who may be Settlement Class Members, based on the records of Navy Federal and the Settlement Administrator.
- Your legal rights are affected whether you act or don’t act. Please read this notice carefully.
- These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court in charge of this case has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to those who qualify. Please be patient.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM FOR A PAYMENT	By submitting a valid and timely Claim Form, Settlement Class Members will receive a payment from the Settlement Fund. The value of each payment cannot be determined at this point and will depend upon a number of factors, including the total number of valid claims submitted. Class Counsel’s best estimate is that each claim will exceed \$100.
EXCLUDE YOURSELF	If you exclude yourself, you will get no benefit from the Settlement. Exclusion is the only option that allows you to sue Navy Federal, or participate in any other lawsuit against Navy Federal, about the text messages that are the subject of this case.
OBJECT	You may submit a written objection to the Court if you don’t like an aspect of the Settlement.
GO TO A HEARING	You may ask to speak in Court about the fairness of the Settlement at the final approval hearing (details below), but you do not have to do so.
DO NOTHING	If you are a class member and you do nothing, you will not receive a payment, and you will give up your right to participate in further litigation against Navy Federal about non-fraud text messages.

What This Notice Contains

BASIC INFORMATION 3

- 1. Why is there a notice?
- 2. What is this litigation about?
- 3. Why is this a class action?
- 4. Why is there a Settlement?

WHO IS PART OF THE SETTLEMENT? 4

- 5. Who is included in the Settlement?
- 6. What if I am not sure whether I am included in the Settlement?

THE SETTLEMENT BENEFITS 4

- 7. What does the Settlement provide?
- 8. How much will my payment be?
- 9. When will I receive my payment?
- 10. What am I giving up if I do not exclude myself from the Settlement?

HOW TO RECEIVE A PAYMENT 5

- 11. How can I receive a payment?
- 12. How will my claim be decided?

EXCLUDING YOURSELF FROM THE SETTLEMENT 6

- 13. How do I exclude myself from the Settlement?
- 14. If I do not exclude myself, can I sue Navy Federal for the same thing later?
- 15. If I exclude myself, can I still get a settlement payment?

THE LAWYERS REPRESENTING THE ENTIRE SETTLEMENT CLASS 6

- 16. Do I have a lawyer in the case?
- 17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT 7

- 18. How do I tell the Court if I do not like the Settlement?
- 19. What is the difference between objecting and asking to be excluded?

THE FINAL APPROVAL HEARING 8

- 20. When and where will the Court decide whether to approve the Settlement?
- 21. Do I have to attend the hearing?
- 22. May I speak at the hearing?

GETTING MORE INFORMATION 8

- 23. How do I get more information?

QUESTIONS? CALL **1-XXX-XXX-XXXX** OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

BASIC INFORMATION

1. Why is there a notice?

A court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Leonie M. Brinkema of the United States District Court for the Eastern District of Virginia is overseeing this case. This litigation is known as *Hawkins v. Navy Federal Credit Union*, No. 19-cv-01186-LMB-IDD (E.D. Va.). The individual that sued, Ben Hawkins (“Hawkins”), is called the “Plaintiff.” The party sued, Navy Federal Credit Union (“Navy Federal”), is the “Defendant.”

2. What is this litigation about?

The lawsuit concerns whether Navy Federal, or third parties on Navy Federal’s behalf, sent text messages that violated a federal law called the Telephone Consumer Protection Act.

The complaint in the lawsuit is posted on the settlement website www.nfcutextsettlement.com and contains all of the allegations and claims asserted against Navy Federal. Navy Federal denies any liability or wrongdoing.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case, Hawkins) sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims are members of a “Class.”

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiff or Navy Federal. Instead, both sides have agreed to a Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members (except those who exclude themselves) receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Navy Federal did anything wrong. Navy Federal denies all claims in this case. The Class Representative and his lawyers think the proposed Settlement is in the best interest of the class.

QUESTIONS? CALL **1-XXX-XXX-XXXX** OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

WHO IS PART OF THE SETTLEMENT?

If you received notice of the Settlement by mail or email, then Defendant's records indicate you may be a Settlement Class Member.

5. Who is included in the Settlement?

You are a member of the Settlement Class if, between September 15, 2015 and < **date of notice approval and preliminary certification** >, you were not a member of Navy Federal and you received one or more text messages from or on behalf of Navy Federal (other than text messages concerning fraud).

6. What if I am not sure whether I am included in the Settlement?

Only non-members of Navy Federal who received non-fraud text messages from or on behalf of Navy Federal are class members. If you are one of those persons, you are very likely a Class Member.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

If the Settlement is approved and becomes final, it will provide benefits to Settlement Class Members who file a valid claim and do not exclude themselves. Navy Federal agreed to pay \$9,250,000.00 for the Settlement to make payments to eligible Settlement Class Members; to pay the Court-ordered award of attorneys' fees and costs to Class Counsel; to pay the Court-ordered service award to Plaintiff for serving as the class representative; and to pay any costs of Settlement administration, including the cost of notice and administration.

Any remaining monies from uncashed settlement checks may be redistributed in further distributions to Settlement Class Members who submitted a valid and timely claim and cashed settlement checks. However, if a further distribution would no longer be administratively feasible, the remaining monies will instead be donated to a non-profit designated by the Court.

8. How much will my payment be?

Each Settlement Class Member who files a valid Claim will receive a *pro rata* share of the Settlement Fund for each Claim Credit he or she is entitled to, after deduction of Non-Claim Costs—i.e., attorneys' fees and costs for Class Counsel, an award to the Class Representative, the cost of Settlement notice and administration, and any taxes on the Settlement. *See* Settlement Agreement and Release ¶ 74. The value of each Claim Credit cannot be determined at this point and will depend upon a number of factors including the total number of valid claims submitted. Class Counsel's best estimate is that each Claim Credit will likely exceed \$100.

Class Members have the option of submitting either:

- (1) a Basic Claim, worth one Claim Credit, which does not require the Class Member to supply *any* documental proof of having received one of the text messages at issue; or
- (2) a Proof of Receipt Claim, which requires the Class Member to submit copies of phone screenshots, phone records, or other documents identifying the text messages at issue, and grants

QUESTIONS? CALL **1-XXX-XXX-XXXX** OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

the Class Member one Claim Credit for each of the text messages the documentation shows was received.

Please follow the instructions on the Claim Form to select which type of Claim you intend to submit.

The parties do not know how much each valid claimant will receive under the settlement, because the amount claimants will receive depends upon a substantial number of variables, including the number of valid Basic Claims, and the number of calls shown through valid Proof of Receipt Claims. Experience with similar settlements roughly suggests that each Claim Credit will likely exceed \$100, but of course the final amount could be much higher or much lower.

Because Navy Federal's records are incomplete and imperfect, neither Class Counsel nor Navy Federal can assist you with gathering materials to support a Proof of Receipt Claim.

9. When will I receive my payment?

Settlement Class Members who submit valid Claims will receive their payments, by check, only after the Court grants final approval to the Settlement and after any appeals are resolved (*see* "The Final Approval Hearing" below). If there are appeals, resolving them can take time. Please be patient.

10. What am I giving up if I do not exclude myself from the Settlement?

Unless you exclude yourself from the Settlement, you will be bound by its terms. Generally, this means that you won't be allowed to sue - or continue a lawsuit - against Navy Federal for claims related to text messages (other than text messages concerning fraud) from Navy Federal or from a third party on Navy Federal's behalf from September 15, 2015 through <date of notice approval and preliminary certification >. If you do not exclude yourself, the Settlement Agreement and Release and all decisions by the Court will bind you.

The Settlement Agreement and Release is available at www.nfcutextsettlement.com and describes the claims that you give up if you remain in the Settlement. *See* Settlement Agreement and Release ¶¶ 81-82.

If you were to exclude yourself and file your own lawsuit against Navy Federal for the violations alleged herein, you would have to do so on your own or find a different lawyer to assist you; Class Counsel will not represent you. Navy Federal promises to lodge a vigorous defense to such a lawsuit, arguing among other things that the equipment it used to send the text messages at issue was not covered by the TCPA - a position that courts in many jurisdictions would likely look upon favorably. If you were to prevail, however, you might recover between \$500 and \$1,500 per violation, and you might be able to obtain an injunction against future illegal texts.

HOW TO RECEIVE A PAYMENT

11. How can I receive a payment?

To receive a payment, you must submit a Claim. You can obtain a Claim Form by visiting www.nfcutextsettlement.com. You can also request that a Claim Form be mailed to you by calling [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX) or by writing to the Settlement Administrator at [\[ADDRESS\]](#).

To be eligible for payment, you must complete, sign, and return the Claim Form by submitting it online at www.nfcutextsettlement.com or mailing it to the following address:

QUESTIONS? CALL [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX) OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

Hawkins v. Navy Federal Credit Union Settlement Administrator
c/o [Settlement Administrator]
[Address]
City, State XXXXX-XXXX

Claims must be postmarked or submitted online no later than **Month 00, 2020**.

12. How will my claim be decided?

After you submit your Claim, the Settlement Administrator will use available records to confirm whether you are a Settlement Class Member and therefore entitled to a payment. If your application is incomplete or does not establish that you are entitled to a payment, the Settlement Administrator may notify you to correct any problems with your Claim. If you do not correct the problems, your claim will be denied.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want benefits from the Settlement, and you want to keep the right to sue Navy Federal about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

13. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement Class, you must send a letter or other written document by mail to the Settlement Administrator. Your request must include:

- Your name, address, and cell phone number texted;
- A statement that you want to be excluded from the Settlement in *Hawkins v. Navy Federal Credit Union*, No. 19-cv-01186-LMB-IDD (E.D. Va.); and
- Your signature.

You must mail your exclusion request, postmarked no later than **Month 00, 2020**, to **[ADDRESS]**.

14. If I do not exclude myself, can I sue Navy Federal for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Navy Federal for the claims that the Settlement resolves. You must exclude yourself from the Settlement in order to maintain your own lawsuit.

15. If I exclude myself, can I still get a settlement payment?

No. You will not get a payment if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING THE ENTIRE SETTLEMENT CLASS

16. Do I have a lawyer in the case?

QUESTIONS? CALL **1-XXX-XXX-XXXX** OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

The Court has appointed the following Burke Law Offices, LLC, Goldenberg Schneider, L.P.A., and The Lyon Firm, L.C. as Class Counsel to represent the entire Settlement Class. Class Counsel may be contacted at the following:

Alexander H. Burke
BURKE LAW OFFICES, LLC
909 Davis St., Suite 500
Evanston, IL 60201

Jeffrey S. Goldenberg
GOLDENBERG SCHNEIDER, L.P.A.
1 W. 4th St., 18th Floor
Cincinnati, OH 45202

Joseph M. Lyon
THE LYON FIRM, P.C.
2754 Erie Ave.
Cincinnati, OH 45208

If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class Counsel intend to request attorneys' fees not to exceed one-third of the Settlement Fund (or \$3,083,333.33) and reasonable costs and litigation expenses of prosecuting the class action (not expected to exceed \$15,000). The attorneys' fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will decide the amount of fees and expenses to award. Class Counsel will also request that a service payment of \$15,000 be paid from the Settlement Fund to the Class Representative for his service as a representative of the whole Settlement Class.

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court if I do not like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and costs, and/or the service payment to the Class Representative. To object, you must file the objection electronically with the Court, or mail your objection first-class postage prepaid to the each of the following addresses:

Clerk of the Court
U.S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
401 Courthouse Square
Alexandria, VA 22314

Alexander H. Burke
BURKE LAW OFFICES, LLC
909 Davis St., Suite 500
Evanston, IL 60201

Alan E. Schoenfeld
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007

Your objection must include:

- The name of the case, *Hawkins v. Navy Federal Credit Union*, No. 19-cv-01186-LMB-IDD (E.D. Va.);
- Your full name, address, telephone number, and cell phone number texted by or on behalf of Navy Federal (if different);
- An explanation of the basis upon which you claim to be a Settlement Class Member;
- Whether your objection applies only to you as the objector, to a specific subset of the class, or to the entire class;
- All grounds for the objection, accompanied by any legal support for the objection;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection;

QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

- Whether you intend to appear at the Final Approval Hearing and, if so, the identity of any counsel representing you who will appear on your behalf;
- A list of all other class action settlements to which you or your counsel filed an objection;
- A list of any witnesses you plan to call at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

The requirements to object to the Settlement are described in detail in the Settlement Agreement and Release in Paragraphs 58-59, and in the Court's Preliminary Certification Order. Your objection must be filed or postmarked by **Month 00, 2020**.

19. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement *only if you do not exclude yourself*. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to do so.

20. When and where will the Court decide whether to approve the Settlement?

The Court has scheduled a Final Approval Hearing on **Month 00, 2020 at 00:00 x.m.** at Courtroom 700 of the Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314. The hearing may be moved to a different date or time, so it is a good idea to check www.nfcutextsettlement.com for updates. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

21. Do I have to attend the hearing?

No. Class Counsel will answer questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper addresses, and it complies with the other requirements described in Paragraphs 58-59 of the Settlement Agreement and Release and the Court's Preliminary Certification Order, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must comply with the requirements in Question 18 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

GETTING MORE INFORMATION

QUESTIONS? CALL **1-XXX-XXX-XXXX** OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

23. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement and Release. For a complete, definitive statement of the Settlement terms, refer to the Settlement Agreement and Release at www.nfcutextsettlement.com. You also may write with questions to the Settlement Administrator at [\[ADDRESS\]](#) or call the toll-free number, [1-XXX-XXX-XXXX](#).

QUESTIONS? CALL [1-XXX-XXX-XXXX](#) OR VISIT WWW.NFCUTEXTSETTLEMENT.COM.

Exhibit D
Publication Notice

TEXT OF INTERNET PUBLICATION NOTICE*

Google Ad Display

Hawkins v. Navy Federal, No. 1:19-cv-01186 (E.D. Va.)

If you received a Navy Federal Credit Union text message but were not a member, you may be entitled to money from a class action settlement.

Click here for more information or to submit a claim.

www.nfcutextsettlement.com

Facebook Display

Hawkins v. Navy Federal, No. 1:19-cv-01186 (E.D. Va.)

If you received a Navy Federal Credit Union text message but are not a member, you may be entitled to money from a class action settlement.

Click here for more information or to submit a claim.

www.nfcutextsettlement.com

Hawkins v. Navy Federal

www.nfcutextsettlement.com

Receive a text message from Navy Federal but you are not a member? You may have rights under a class action settlement.

Facebook Settlement Home Page Display

Hawkins v. Navy Federal Credit Union, No. 1:19-cv-01186 (E.D. Va.)

A class action settlement has been reached in a lawsuit with Navy Federal Credit Union (“Navy Federal”), about allegations that it violated the Telephone Consumer Protection Act by causing text messages to be made to non-members’ cell phones. Navy Federal has agreed to pay \$9.25 million under a proposed Settlement in this Action. Settlement Class Members who submit a valid and timely Claim Form will receive a *pro rata* share of the Settlement Fund per Claim Credit, after attorney’s fees and other costs have been deducted. While it is very difficult to predict with accuracy, the Parties estimate that settlement distributions may be \$100 for each Basic Claim; more for Class Members who can prove they received text messages.

If you are a Class Member and the Settlement is approved by the Court, your rights will be affected whether you act or not. For further information about the Settlement and how you can obtain payment, exclude yourself from the Settlement Class, or object to the Settlement, please visit www.nfcutextsettlement.com, or contact the Settlement Administrator at XXX-XXX-XXXX or *Hawkins v. Navy Federal Credit Union* Settlement Administrator, c/o XXXXX, [Address], [City], [State ZIP].

* subject to formatting limitations

Exhibit E
Claim Form

CLAIM FORM

Hawkins v. Navy Federal Credit Union, Case No. 1:19-cv-01186-LNB-IDD (E.D. Va.)

You Must Complete The Below Steps to Claim a Share of the Settlement Fund.

1. Identify Claim Type

Class Members who submit a valid and timely Claim Form will receive one *pro rata* share of the \$9.25 million Settlement Fund per Claim Credit, less the amount of any Non-Claim Costs. Please check which type of Claim you are submitting below:

- Basic Claim.** Each Basic Claim is worth one Claim Credit. You do not need to provide any proof that you received one of the text messages at issue to submit a Basic Claim, aside from completing this form.
- Proof of Receipt Claim.** Provide copies of phone screenshots, text records, or other documents showing that you received the text messages at issue from or on behalf of Navy Federal Credit Union (“Navy Federal”), and you will receive one Claim Credit for each text message such documentation shows you received.

Number of Text Messages Received from or on behalf of Navy Federal: _____

Description of Attached Documentation: _____

2. You Must Provide Your Contact Information, regardless of whether you are submitting a Basic Claim or a Proof of Receipt Claim.

Name: _____

Address: _____

City/State/Zip Code: _____

Contact Phone Number: _____ Cell Phone Number Texted (if different): _____

Claim Number (if available; this would have appeared on mailed Notice): _____

(Your cell phone number must have been texted by or on behalf of Navy Federal to have a valid claim.. If you were texted on more than one cell phone number, or are not certain which of your cell phone numbers was texted, you may submit each number separately.)

3. You Must Certify the Following:

- Between September 15, 2015 and [**Preliminary Certification**], I received one or more text messages on a cell phone from or on behalf of Navy Federal.
- The text message(s) did not concern fraud.
- At the time I received the text message(s), I was not a member of Navy Federal and owned the cell phone on which the message was received.

I attest under the pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

(Sign your name here)

4. You Must Complete and Return this Claim Form and any Documentation by [Claim Deadline**]:**

Mail to: *Hawkins v. Navy Federal Credit Union* Settlement Administrator
c/o [**SETTLEMENT ADMINISTRATOR**]
[Address]
[City], [ST] [ZIP]

OR submit your Claim online at www.nfcutextsettlement.com.

Exhibit F
Preliminary Certification Order

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Ben Hawkins, <i>on behalf of himself</i>	:	
<i>and all others similarly situated,</i>	:	Case No. 1:19-cv-01186-LMB-IDD
	:	
Plaintiff,	:	
v.	:	Hon. Judge Leonie M. Brinkema
	:	
Navy Federal Credit Union,	:	Hon. Magistrate Judge Ivan D. Davis
	:	
Defendant.	:	
_____	:	

PRELIMINARY CERTIFICATION ORDER

This matter having come before the Court on Plaintiff’s motion for preliminary approval of the proposed class action settlement of the above-captioned case (the “Action”) between Plaintiff Ben Hawkins, individually and on behalf of the Settlement Class, and Defendant Navy Federal Credit Union (“Navy Federal”), as set forth in the Parties’ Settlement Agreement and Release (the “Agreement,” which memorializes the “Settlement”). Having duly considered the papers, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the litigation, the Parties, and all Settlement Class Members.
2. Unless defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Agreement.
3. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement for fairness, adequacy, and reasonableness, and finds that giving notice is justified by the Parties’ showing that the Court will likely be able to: (i) approve the Settlement under Fed. R. Civ. P. 23(e)(2), and (ii) certify the Class for purposes of judgment on the proposal. The Court further finds there is cause to believe that: (i) the Agreement is fair,

reasonable, and adequate, and within the range of possible approval; (ii) the Agreement has been negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) with respect to the forms of notice of the material terms of the Agreement to Settlement Class Members for their consideration and reaction, that notice is appropriate and warranted. Therefore, the Court grants preliminary approval of the Settlement.

4. The Court, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure, conditionally certifies, for purposes of this Settlement only, the following Settlement Class:

All nonmember persons of Navy Federal who received one or more text messages (other than text messages concerning fraud) on their cellular telephone from Navy Federal, or anyone on its behalf, between September 15, 2015 through the date of Preliminary Certification. Excluded from the Class are all current employees, officers, and directors of Navy Federal; federal, state, and local governments and all agencies and subdivisions thereunder; and the Judges and mediators to whom this Action is or has been assigned and any member of his or her immediate family.

5. The Court hereby appoints Ben Hawkins as Class Representative of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.

6. The Court appoints Burke Law Offices, LLC, Goldenberg Schneider, L.P.A., and The Lyon Firm, L.C. as Class Counsel, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. This Court hereby orders Defendant to provide notice to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715.

8. On _____, at _____, in Courtroom 700 of the Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, Virginia 22314, or at such other date and time later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether (i) final

approval of the Settlement embodied by the Agreement should be granted, and (ii) Class Counsel's application for attorneys' fees and expenses, and service award to Plaintiff, should be granted, and in what amount. No later than _____, Plaintiff must file papers in support of Class Counsel's application for attorneys' fees and expenses, and the service award to the Class Representative. No later than _____, which is seven (7) days prior to the Final Approval Hearing, Plaintiff must file papers in support of final approval of the Settlement and respond to any written objections.

9. Pursuant to the Agreement, [Settlement Administrator] is hereby appointed as Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Agreement and this Order.

10. The Court approves the proposed Notice Program for giving notice to the Settlement Class (i) directly through Mail Notice and Email Notice, (ii) through an internet Publication Notice campaign as outlined in the Settlement Agreement; and (iii) by establishing a Settlement Website and toll-free number, as more fully described in the Agreement. The Notice Program, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Program no later than _____, in accordance with the terms of the Agreement.

11. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a Claim Form in accordance with the instructions provided therein, including providing proof of receipt of the texting at issue to the extent they are submitting a Proof of Receipt Claim. The Court hereby approves as to form and content the Mail Notice attached to the Settlement Agreement as Exhibit A, the Email Notice attached to the

Settlement Agreement as Exhibit B, the Long-Form Notice attached to the Settlement Agreement as Exhibit C, the Publication Notice attached to the Settlement Agreement as Exhibit D, and Claim Form attached to the Settlement Agreement as Exhibit E. All Claim Forms (and proof of text receipt, if applicable) must be postmarked or received by the Settlement Administrator no later than _____, which is 90 days after the Notice Deadline.

12. Settlement Class Members who wish to either object to the Settlement or request to be excluded from it must do so by the Objection Deadline and Opt-Out Deadline of _____, which are both sixty (60) days after the Notice Deadline. Settlement Class Members may not both object and opt out. If a Settlement Class Member submits both a request for exclusion and an objection, the request for exclusion will be controlling.

13. To submit a request for exclusion, Settlement Class Members must follow the directions in the Notice and send a compliant request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out Deadline. In the request for exclusion, the Settlement Class Member must state his or her full name, address, and cell phone number texted, and express that he or she wishes to be excluded from the Settlement Class in this Action. The request for exclusion must be signed by the Settlement Class Member or, in the case of a person in the Settlement Class who is deceased or incapacitated, the signature of the legally authorized representative of such person. No request for exclusion will be valid unless all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class; however, nothing herein shall prevent Class Members from obtaining the assistance of another, such as a lawyer or family member, in preparing or submitting any individual exclusion. Likewise, “mass” or “class” opt-outs filed by third parties

on behalf of a “mass” or “class” of Settlement Class Members, when not signed by each Settlement Class Member, will not be valid.

14. If a timely and valid request for exclusion is made by a member of the Settlement Class, then that person will not be a Settlement Class Member, and the Agreement and any determinations and judgments concerning it will not bind the excluded person.

15. All Settlement Class Members who do not opt out in accordance with the terms set forth in the Agreement will be bound by all determinations and judgments concerning the Agreement.

16. To object to the Settlement, Settlement Class Members must follow the directions in the Notice. Objections must be electronically filed with the Court or mailed (first-class postage prepaid) to the Clerk of the Court, with copy to Class Counsel and Navy Federal’s counsel, no later than the Objection Deadline. In the written objection, the Settlement Class Member must set forth: (a) the name of the Action, *Hawkins v. Navy Federal Credit Union*, No. 19-cv-01186-LNB-IDD (E.D. Va.); (b) the objector’s full name, address, telephone number, and cell phone number texted by or on behalf of Navy Federal (if different); (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (d) all grounds for the objection, accompanied by any legal support for the objection; (e) the identity of all counsel who represent the objector, if any, including any former or current counsel who may be entitled to compensation for any reason related to the objection; (f) whether the objector intends to appear at the Final Approval Hearing and, if so, the identity of all counsel representing the objector who will appear at the Final Approval Hearing, if any; (g) whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (h) a list of all other class action settlements to which the objector or their counsel filed an objection; (i) a list of any persons who

will be called to testify at the Final Approval Hearing in support of the objection; and (j) the objector's signature (an attorney's signature is not sufficient). The Parties will have the right to issue discovery to or depose any objector as to the basis and circumstances of his or her objection, and to assess whether the objector has standing. No objection will be valid unless all of the information described above is included. A Class Member may not both opt out of the Settlement Agreement and object. If a Settlement Class Member submits both a request for exclusion and objection, the request for exclusion will control.

17. Any Settlement Class Member who fails to timely submit a written objection to the Settlement Administrator and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order, above and as detailed in the Notice, shall not be permitted to object to the Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Agreement by appeal or other means, shall be deemed to have waived his, her, or its objections, and shall be forever barred from making any such objections in the Action. All members of the Settlement Class, except those members of the Settlement Class who submit timely requests for exclusion, will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Settlement Class.

18. Pending the final determination of whether the Settlement should be approved, all pre-trial proceedings and briefing schedules in the Action are stayed. If the Settlement is terminated or final approval does not for any reason occur, the stay will be immediately terminated.

19. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendants or Plaintiff to assert any right or position that could have been asserted if the

Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante* in the Action and the certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class for settlement purposes, or any briefing or materials submitted seeking certification of the Settlement Class, will not be considered in connection with any subsequent class certification decision.

20. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing, by Defendants, or the truth of any of the claims, and evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Final Approval Order.

21. Counsel for the Parties are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice and Claim Form, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to the members of the Class.

22. Accordingly, the following are the deadlines by which certain events related to this Settlement must occur:

ACTION	DATE
Notice Deadline	_____ (75 days after Preliminary Certification)
Class Counsel’s Fee/Expense/Service Award Motion Due	_____ (30 days after Notice Deadline)
Opt-Out Deadline and Objection Deadline	_____ (60 days after Notice Deadline)
Deadline to Submit Claims	_____ (90 days after Settlement Notice Date)
Motion for Final Approval Due	_____ (7 days prior to Final Approval Hearing)
Final Approval Hearing	_____ on _____ Albert V. Bryan U.S. Courthouse 401 Courthouse Square, Courtroom 700 Alexandria, VA 22314

IT IS SO ORDERED.

Dated: _____

Hon. Leonie M. Brinkema
United States District Judge

Exhibit G
Final Approval Order

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Ben Hawkins, <i>on behalf of himself</i>	:	
<i>and all others similarly situated,</i>	:	Case No. 1:19-cv-01186-LMB-IDD
	:	
Plaintiff,	:	
v.	:	Hon. Judge Leonie M. Brinkema
	:	
Navy Federal Credit Union,	:	Hon. Magistrate Judge Ivan D. Davis
	:	
Defendant.	:	
	:	

FINAL APPROVAL ORDER AND JUDGMENT

The Court having held a Final Approval Hearing on [Date], notice of the Final Approval Hearing having been duly given in accordance with this Court’s Preliminary Certification Order, and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in order of this dismissal and good cause appearing therefore,

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Settlement Agreement and Release dated [Date], including its exhibits (the “Settlement Agreement”), and the definition of words and terms contained therein are incorporated by reference in this Order. The terms of this Court’s Preliminary Certification Order are also incorporated by reference in this Order.

2. This Court has jurisdiction over the subject matter of the Action and over the Parties, including all members of the following Settlement Class certified for settlement purposes in this Court’s Preliminary Certification Order:

All nonmember persons of Navy Federal who received one or more text messages (other than text messages concerning fraud) on their cellular telephone from Navy Federal, or anyone on its behalf, between September 15, 2015 through [the date of Preliminary Certification]. Excluded from the Class are all current employees,

officers, and directors of Navy Federal; federal, state, and local governments and all agencies and subdivisions thereunder; and the Judges and mediators to whom this Action is or has been assigned and any member of his or her immediate family.

3. The Court finally certifies the Settlement Class for settlement purposes and finds, for settlement purposes, that it satisfies all the requirements of Rule 23 of the Federal Rules of Civil Procedure. Specifically: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class; (d) Plaintiff and Class Counsel have fairly and adequately represented the interests of the Settlement Class for purposes of entering into and implementing the Settlement Agreement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (f) the Settlement Class is ascertainable; and (g) a class action settlement is superior to the other available methods for the fair and efficient adjudication of the controversy.

4. The Court also finally appoints Plaintiff Hawkins as Class Representative, and his attorneys, Burke Law Offices, LLC, Goldenberg Schneider, L.P.A., and The Lyon Firm, P.C., as Class Counsel.

5. The Court approves [REDACTED] as *cy pres* recipient pursuant to Paragraph 80 of the Agreement.

6. The Court hereby finds that the Settlement Agreement is the product of arm's-length settlement negotiations between Plaintiff Hawkins and Class Counsel, and Defendant Navy Federal Credit Union ("Navy Federal") and Defendant's counsel.

7. The Court hereby finds and concludes that Class Notice was disseminated to members of the Settlement Class in accordance with the terms set forth in the Settlement

Agreement and that Class Notice and its dissemination were in compliance with this Court's Preliminary Certification Order.

8. The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable under the circumstances, and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement Agreement and this Order.

9. This Court hereby finds and concludes that the notice provided to the appropriate State and federal officials pursuant to 28 U.S.C. § 1715 fully satisfied the requirements of that statute.

10. A total of [number] Settlement Class Members submitted timely and proper requests for exclusion. The Court hereby orders that each of those individuals is excluded from the Settlement Class. Those individuals will not be bound by the Settlement Agreement, and neither will they be entitled to any of its benefits. There was [number] objection(s), by [name(s)], which the Court overrules.

11. The Court hereby finally approves the Settlement Agreement and the Settlement contemplated thereby, and finds that the terms constitute, in all respects, a fair, adequate and reasonable settlement as to all Settlement Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure, and directs the Parties to fully implement the Settlement pursuant to its terms and conditions. Each Settlement Class Member who did not opt out is hereby bound by the Settlement Agreement.

12. The Court hereby finds that the Settlement Class Members have been adequately represented by the Class Representative and Class Counsel, that the Settlement was negotiated at

arm's length, that the relief provided is adequate considering the costs, risks, and delay of trial and appeal, that the method of distributing relief and method of processing claims is effective, adequate, and fair, that the terms and timing of payment associated with Class Counsel's request for attorneys' fees was adequate and fair, and that all other relevant factors, including that the Settlement Agreement treats Class Members equitably relative to each other, demonstrate that this Settlement should be finally approved by the Court as fair, adequate, and reasonable.

13. This Court hereby dismisses, with prejudice, without costs to any party, except as expressly provided for in the Settlement Agreement, the Action.

14. Plaintiff and each and every one of the Settlement Class Members unconditionally, fully, and finally release and forever discharge the Released Parties from the Released Claims.

15. The Settlement Agreement (including, without limitation, its exhibits), and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, of any liability or wrongdoing, by Defendant, or of the truth of any of the claims asserted by Plaintiff in the Action, and evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Settlement Agreement, the Preliminary Certification Order, and/or this Order.

16. If for any reason the Settlement Agreement terminates, then certification of the Settlement Class shall be deemed vacated. In such an event, the certification of the Settlement Class for settlement purposes or any briefing or materials submitted seeking certification of the Settlement Class shall not be considered in connection with any subsequent class certification

issues, and the Parties shall return to the status quo ante in the Action, without prejudice to the right of any of the Parties to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court.

17. The Court grants Class Counsel's application for fees and costs, and awards \$ [REDACTED] in attorneys' fees and \$ [REDACTED] in costs. The Court finds these amounts appropriate, fair, and reasonable. The Court awards \$ [REDACTED] as a service award for Plaintiff Ben Hawkins, and finds this amount fair and reasonable.

18. Finding that there is no just reason for delay, the Clerk of the Court is directed to enter this Order on the docket and enter final judgment pursuant to Rule 54(b) forthwith.

19. The Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement.

IT IS SO ORDERED.

Dated: _____

Hon. Leonie M. Brinkema
United States District Judge