IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

STACY EDEY, KELLIE HIGH, and RONNICE LEE, *on behalf of themselves and all similarly situated individuals*, Plaintiffs, v. NAVY FEDERAL CREDIT UNION, Defendant.	)	Civil Action No. 2:25-cv-554

CLASS ACTION COMPLAINT

1. Plaintiffs Stacy Edey, Kellie High, and Ronnice Lee, on behalf of themselves and all other similarly situated individuals, allege as follows for their Class Action Complaint against Navy Federal Credit Union ("NFCU").

PRELIMINARY STATEMENT

2. This case concerns unauthorized personal loans that are now affecting the credit profiles of Plaintiffs and, upon information and belief, countless other NFCU members.

3. In late 2023 and early 2024, fraudsters borrowed money via personal loans through Plaintiffs' NFCU membership accounts without Plaintiffs' authorization or permission.

4. The personal loans were approved by NFCU without correctly verifying the applicants' identities, as NFCU promised to do in its form *Membership Agreement*.

5. NFCU also did not use reasonable security procedures to confirm that the applicants were, in fact, the NFCU members who they purported to be.

6. For example, NFCU did not consider from where the loan applications in Plaintiffs' names were submitted and via what devices.

7. Upon information and belief, the personal loans were not applied for: (i) using phones or computers familiar to Plaintiffs' NFCU accounts; or (ii) from known IP addresses.

8. Also upon information and belief, NFCU neglected to consider other indicia of fraud that were or should have been identified by biometric software.

9. Upon information and belief, had NFCU considered information available to it to verify personal loan applicants like the fraudsters purporting to be Plaintiffs, it would have known that Plaintiffs did not themselves apply for the personal loans.

10. But most notably, NFCU sent documents and correspondence relating to the personal loans, including the "ePromissory Note, Security Agreement, and Disclosure" and requests for e-signatures, to email addresses not belonging to Plaintiffs, at the instruction of the perpetrators.

11. In other words, NFCU approved personal loans applications that were agreed to and ultimately executed using email address previously unaffiliated with its members' NFCU accounts.

12. After approval, the loan proceeds were disbursed into Plaintiffs' NFCU bank accounts.

13. The loan disbursements were described in Plaintiffs' transaction histories with one word: "Deposit."

14. Callers purporting to represent NFCU then instructed Plaintiffs to review their recent account activity and confirm the so-called deposits reflected by NFCU's account records.

15. The purported NFCU employees called Plaintiffs using verified NFCU phone numbers, including NFCU's "24/7 Member Services" telephone number.

16. After Plaintiffs confirmed the unfamiliar activity represented by the purported NFCU employees, Plaintiffs were instructed to send the funds—supposedly sent to Plaintiffs' accounts in error—either back to NFCU or to the purported intended recipients.

17. In some instances, the purported intended recipients' names had already been added to Plaintiffs' accounts, making it appear that a genuine "mix up" had occurred within NFCU's system.

18. For example, during the unauthorized access to Plaintiff Stacy Edey's account, the name Calvinetta L. Walker-Capers was added as a "Member-to-Member transfer recipient."

19. Eventually, Plaintiffs learned: (i) that personal loans had been taken out in their names without their authorization or permission and; (ii) that the unintended deposits were actually the proceeds from those unauthorized loans.

20. After Plaintiffs reported the personal loans as fraudulent, NFCU denied their claims, indicating in some instances that Plaintiffs were required to pay the loans because subsequent transfers were authorized.

21. Although no reasonable basis existed for NFCU to believe that *the personal loans* were, in fact, authorized, NFCU demanded repayment from Plaintiffs.

22. Upon information and belief, Plaintiffs were specifically targeted by NFCU employees or persons with connections to NFCU employees, who used access to personal information and NFCU systems to perpetrate fraud against NFCU members.

23. Upon information and belief, NFCU employees or persons with connections to NFCU employees applied for personal loans from Plaintiffs' accounts and then used those unauthorized personal loans to induce Plaintiffs to transfer the funds to other accounts.

24. Such fraud, notably, is not unfamiliar to NFCU and its employees, including at the time of the fraud perpetrated against Plaintiffs. *See, e.g.*, CBS 42, *New details in 'slick scam' run against Georgia emerge in what police are calling an 'inside job'* (Jul. 9, 2024), https://www.cbs42.com/regional/georgia-news/new-details-in-slick-scam-run-against-navy-federal-credit-union-emerge-in-what-police-are-calling-an-inside-job ("He was an employee of the Navy Federal Credit Union, so he used his position at that bank and his ability to log in to people's accounts, to manipulate those accounts and move money and deposit checks and withdraw funds."); Leonard Hall and Gabriela Johnson, *Ex-Columbus credit union employee charged in $800K+ fraud case*, WTVM, https://www.wtvm.com/2024/05/29/ex-columbus-credit-union-employee-charged-800k-fraud-case/ (May 29, 2024) ("Verrett allegedly used legitimate customers at his desk as cover while he deposited counterfeit checks, opened fraudulent vehicle loans and transferred the money himself and several other co-conspirators."); Peter Strozniak, *Former Navy Federal Employee Sentenced to Prison for Fraud Scheme*, Credit Union Times, https://www.cutimes.com/2024/06/12/former-navy-federal-employee-sentenced-to-prison-for-fraud-scheme (June 12, 2024) ("According to the evidence presented before a jury during his four-day trial in February, McMillan used his position as a Navy Federal member service representative at the credit union's Laurel, Md., branch to open accounts using stolen identities of other persons and, at times, the identities of Navy Federal members to make fraudulent financial transactions."); NBC15News, *FDLE: Former Pensacola Navy Federal employee participated in dark web fraud scheme*, https://mynbc15.com/news/local/fdle-former-pensacola-navy-federal-employee-participated-in-dark-web-fraud-scheme (Jan. 3, 2023) ("Agents discovered that Helms misused his employee access to compromise dozens of credit union member accounts, taking the members' personal identification information and providing it to third parties via the dark web."); Peter

Strozniak, *Internal Fraud Cases Hit Navy Federal Credit Union*, Credit Union Times, https://www.cutimes.com/2022/05/19/internal-fraud-cases-hit-navy-federal-credit-union/ (May 19, 2022) ("Navy Federal Credit Union and Cybercrime Support Network formed a new partnership to protect members from outside cybercriminals, including those who pretend to be Navy Federal employees to get access to members' accounts to steal money. But the nation's largest credit union recently had two cases in which actual Navy Federal employees stole members' funds.").

25. In any event, NFCU's deficient verification procedures allowed bad actors to compromise Plaintiffs' NFCU accounts, giving rise to fraud at the expense of Plaintiffs' financial well-being and their creditworthiness.

26. Plaintiffs assert a negligence claim on behalf of a class of similarly situated consumers because NFCU allowed bad actors to apply for and obtain approval for personal loans in Plaintiffs' names without verifying Plaintiffs' identities through reasonable measures.

27. Plaintiffs separately assert a class claim for breach of contract because NFCU agreed to verify Plaintiffs' identities with respect to the opening of any accounts in its *Membership Agreement*, yet it failed to do so before approving personal loans.

28. Alternatively, Plaintiffs assert a class claim for breach of the implied covenant of good faith and fair dealing because, to the extent the *Membership Agreement* gave NFCU discretion in how to verify applicant identities, NFCU did not exercise that discretion in good faith.

29. In addition, Plaintiffs assert a subclass claim for unjust enrichment because NFCU retained payments made on the unauthorized loans.

30. Finally, Plaintiff Kellie High asserts a claim for conversion on behalf of a subclass of similarly situated consumers because NFCU unilaterally debited her and other members' NFCU checking and savings accounts to pay off unauthorized loans.

31. Finally, NFCU violated the Fair Credit Reporting Act by reporting Plaintiffs' debts to the major credit reporting agencies and refusing to correct its reporting after Plaintiffs disputed those debts as having been caused by identity theft.

32. Plaintiffs, therefore, allege individual claims against NFCU for violating the FCRA, § 1681s-2(b)(1), in addition to their class claims.

33. In a furnisher capacity, NFCU failed to properly investigate their disputes and to review all relevant information provided by the consumer reporting agencies.

JURISDICTION AND VENUE

34. This Court has jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367.

35. Venue is proper in this Court under 28 U.S.C. § 1391(b) because NFCU has its principal place of business in in this District, and the events giving rise to Plaintiff Edey's claims occurred here.

PARTIES

36. Plaintiff Stacy Edey is a natural person and "consumer" as defined and governed by the FCRA, 15 U.S.C. § 1681a(c).

37. Plaintiff Kellie High is a natural person and "consumer" as defined and governed by the FCRA, 15 U.S.C. § 1681a(c).

38. Plaintiff Ronnice Lee is a natural person and "consumer" as defined and governed by the FCRA, 15 U.S.C. § 1681a(c).

39. NFCU is a Virginia company with a principal place of business in Vienna. It is a furnisher as that term is used in the FCRA.

FACTS

40. Plaintiffs were each victimized by identity theft when fraudsters borrowed money from NFCU via personal loans made from Plaintiffs' NFCU accounts.

41. None of the personal loans taken out in Plaintiffs' names were initiated at NFCU branches.

42. Rather, upon information and belief, the personal loans were initiated online by persons other than Plaintiffs via Internet-connected devices and IP addresses unfamiliar to the NFCU members' accounts (*i.e.*, using "non-historical" devices and IP addresses).

43. Irrespective of the method used, NFCU did not verify the identities of the person(s) applying for the personal loans.

44. NFCU did not verify the applicants' identities despite agreeing to do so in its *Membership Agreement*: "When you open an account, we will ask you for your name, address, date of birth, and other information that will allow us to identify you."

45. NFCU also did not use reasonable security procedures to confirm that the applicants were, in fact, the NFCU members who they purported to be.

46. For example, NFCU did not consider *from where* Plaintiffs' loan applications were submitted and *via what devices*.

47. Upon information and belief, none of the personal loans were applied for from devices or IP addresses familiar to Plaintiffs' NFCU accounts.

48. Also upon information and belief, NFCU neglected to consider indicia of fraud that were or should have been identified by biometric software.

49. Upon information and belief, had NFCU considered information available to it to verify personal loan applicants, it would have known that Plaintiffs did not themselves apply for personal loans.

50. Additionally, the “ePromissory Note, Security Agreement, and Disclosure” and other documents and correspondence relating to the personal loans were sent to email addresses not belonging to Plaintiffs.

51. Upon information and belief, Plaintiffs’ email addresses were changed while the fraudsters had access to their accounts (*i.e.*, at or around the time of the personal loan applications).

52. Thus, upon information and belief, NFCU communicated with the fraudsters directly and accepted e-signatures from the fraudsters via fraudulent email addresses with which NFCU had not previously corresponded.

53. Upon information and belief, despite using fraud detection procedures designed to prevent unauthorized transfers from NFCU accounts, NFCU does not employ similar measures to prevent other unauthorized account activity, such as personal loans.

54. Upon information and belief, had NFCU used fraud detection procedures akin to those used to prevent unauthorized transactions, the personal loans applied for in Plaintiffs’ names would have been flagged as fraudulent.

55. The “ePromissory Note, Security Agreement, and Disclosure” for each personal loan states the purpose of each loans as “PERSONAL EXPENSE – S.”

56. That document was not itself signed but stated that “[MEMBER NAME] electronically signed on [DATE] at [TIME] (Seal).”

57. For example:

By typing your name and clicking on the "Accept and Submit" button, you are creating an electronic signature and delivering your signed ePromissory Note. From that point on, the ePromissory Note will show your typed name whenever it is displayed. If you choose not to submit the ePromissory Note, you can click on the "I Decline to Sign Electronically" button. **Please Note:** Your electronic signature is not effective until you click on the "Accept and Submit" button and the ePromissory Note is delivered. Once submitted, your electronic signature will be just as enforceable as a handwritten signature.

By electronically signing, you expressly agree that this ePromissory Note is a transferable record and that Navy Federal may, at our option, convert this ePromissory Note and your electronic signature into a paper original. You further agree to be bound by your signature whether it remains in electronic form or is reduced to paper.

By clicking "Accept and Submit," I understand and agree to be bound by the terms and conditions set forth in the ePromissory Note, Security Agreement and Disclosure, and Truth-in-Lending Disclosure.

Borrower (Member) ▶ Stacy D Edey electronically signed on 2024-04-13 at 13:54 (Seal)

Notice: See the following page(s) for additional disclosures and Security Agreement.

58. After the personal loans were approved, the loan proceeds were deposited into Plaintiffs' respective NFCU bank accounts.

59. Plaintiffs did not receive notice of the personal loans before the proceeds were disbursed.

60. If any notice was sent, it was sent to the email address chosen by the fraudster.

61. On Plaintiffs' transaction histories (*e.g.*, as shown in the NFCU app from a mobile device or online at the NFCU website), reference to the loan disbursements showed only the word "Deposit."

62. Around the time the personal loan proceeds were disbursed, Plaintiffs were contacted by callers purporting to represent NFCU, using phone numbers affiliated with NFCU.

63. Plaintiffs, for example, were contacted by callers from 1-888-842-6328, which is advertised on NFCU's website as its "24/7 Member Services" telephone number.

64. Those incoming calls are reflected in Plaintiffs' call records.

65. The callers advised Plaintiffs that fraud was afoot on their accounts, and eventually, upon "review" of Plaintiffs' accounts, that Plaintiffs had received funds to which they were not entitled.

66. Exhibiting precise knowledge about NFCU's systems and the specific transactions at issue, the callers referenced the exact amounts of the mystery deposits.

67. When called by the purported NFCU agents or employees, Plaintiffs did not know that personal loans had been taken out in their names and through their membership with NFCU.

68. Thus, when directed to the "Deposit" reflected on their transaction histories, Plaintiffs believed that they had received unintended windfalls at the expense of other persons.

69. Plaintiffs' transaction histories gave Plaintiffs no reason to suspect otherwise.

70. Again, the loan proceeds were described only by the word "Deposit" with no reference to the source of the funds.

71. Further legitimizing the scheme, in some instances, the purported intended recipients' names had already been added to Plaintiffs' accounts, making it appear that a genuine "mix up" had occurred within NFCU's system.

72. Later, Plaintiffs received notice that *they* had apparently borrowed money from NFCU via personal loans and that payment was due.

73. Upon information and belief, Plaintiffs—and other NFCU members—were specifically targeted by NFCU employees or persons with connections to NFCU employees, who used access to personal information and NFCU systems to perpetrate fraud against NFCU members.

74. Upon information and belief, NFCU employees or persons with connections to NFCU employees applied for personal loans from Plaintiffs' accounts and then used those unauthorized personal loans to induce Plaintiffs to transfer the loan proceeds to other accounts.

75. Upon information and belief, NFCU employees or persons with connections to NFCU employees could not have performed the funds transfers from Plaintiffs' accounts using the same access that allowed them to borrow money through the unauthorized personal loans.

76. Thus, the scheme was necessarily performed in two parts: (i) the unauthorized loan application; and (ii) the fraudulently induced transfer.

77. Upon information and belief, the fraudsters could not complete the scheme on their own because NFCU uses security procedures to prevent unauthorized transactions.

78. Those security procedures, however, were not used to detect the application fraud in the first instance.

79. Plaintiffs' claims pertain only to the unauthorized personal loans.

80. Plaintiffs do not assert claims based on the transfers of funds from their accounts, which Plaintiffs admittedly performed.

81. After Plaintiffs reported the personal loans as fraudulent, NFCU denied their claims, indicating that Plaintiffs would be held liable for the loans.

82. Although there was no doubt that the personal loans were unauthorized, NFCU demanded repayment from Plaintiffs.

83. Upon information and belief, NFCU decided that Plaintiffs somehow ratified the personal loans through subsequent account activity, which NFCU knew to have been fraudulently induced because of the unauthorized personal loans.

84. That subsequent account activity, however, did not make the unauthorized personal loans valid.

85. Neither did payments made to NFCU or any unilateral set offs taken from Plaintiffs' NFCU bank accounts by NFCU.

Plaintiff Stacy Edey

86. On April 13, 2024, Plaintiff Edey received a phone call from (888) 842-6328.

87. Around the time of that phone call, Plaintiff Edey received two deposits into her NFCU checking account, totaling $5,535.37.

88. The caller advised Plaintiff Edey that the deposits were in error and that she needed to transfer the funds to a person named Calvinetta L. Walker-Capers, whose name had been added to Plaintiff Edey's account as a "Member-to-Member transfer recipient."

89. Reasonably believing the caller to be an NFCU employee, Plaintiff Edey did as she was instructed.

90. Then, on April 16, Plaintiff Edey learned that a personal loan had been taken out in her name in the amount of $4,000 and that $1,535.37 in credits were applied to her account after someone made fraud claims on her account relating to *authorized* debit card transactions.

91. Despite Plaintiff Edey's representations that she did not authorize the loan, NFCU dunned her for payment and reported the loan to the three major credit reporting agencies: Equifax, Experian, and Trans Union.

92. Plaintiff Edey mailed dispute letters to Equifax, Experian, and Trans Union in August 2024.

93. Plaintiff Edey's disputes explained that she was the victim of identity theft and that she did not apply for the loan that was reporting.

94. Upon information and belief, the credit reporting agencies forwarded notification of Plaintiff Edey's dispute to NFCU.

95. In response, NFCU failed to adequately investigate Plaintiff Edey's dispute. Instead, it merely conducted a cursory search of its records and confirmed the same information that it previously reported to the credit bureaus.

96. Plaintiff Edey mailed second dispute letters to Equifax, Experian, and Trans Union in October 2024.

97. Plaintiff Edey's second disputes again explained that she was the victim of identity theft and that she did not apply for the loan that was reporting.

98. Upon information and belief, the credit reporting agencies again forwarded notification of Plaintiff Edey's dispute to NFCU.

99. In response, NFCU again failed to adequately investigate Plaintiff Edey's dispute. Instead, it merely conducted a cursory search of its records and confirmed the same information that it previously reported to the credit bureaus.

100. As of the date of this filing, the inaccurate information remains on Plaintiff Edey's credit reports.

101. Plaintiff Edey has made payments to the loan to ensure that her credit rating is not destroyed, but she has maintained that she did not authorize the loan that NFCU continues to report to the credit reporting agencies.

Plaintiff Kellie High

102. On April 2, 2024, Plaintiff High missed a phone call from (888) 842-6328.

103. After reviewing her NFCU accounts, she learned of fraudulent activity on her NFCU credit card account.

104. Plaintiff High then called NFCU and had her credit card canceled.

105. Later that day, Plaintiff High received another phone call from (888) 842-6328, during which the caller advised her that other fraudulent activity was afoot on her NFCU accounts.

106. Around the time of that call, Plaintiff High received a deposit into her NFCU checking account in the amount of $5,000.

107. The caller advised Plaintiff High that the deposit was in error and that she needed to transfer the funds to a person named Tamasia B. Spencer, whose name had been added to Plaintiff High's account.

108. Reasonably believing the caller to be an NFCU employee, Plaintiff High did as she was instructed.

109. Later that evening, Plaintiff High learned that a personal loan had been taken out in her name in the amount of $5,000.

110. Despite Plaintiff High's representations that she did not authorize the loan, NFCU dunned her for payment and reported the loan to the three major credit reporting agencies: Equifax, Experian, and Trans Union.

111. Plaintiff High mailed dispute letters to Equifax, Experian, and Trans Union in July 2024.

112. Plaintiff High's disputes explained that she was the victim of identity theft and that she did not apply for the loan that was reporting.

113. Upon information and belief, the credit reporting agencies forwarded notification of Plaintiff High's dispute to NFCU.

114. In response, NFCU failed to adequately investigate Plaintiff High's dispute. Instead, it merely conducted a cursory search of its records and confirmed the same information that it previously reported to the credit bureaus.

115. Plaintiff High mailed second dispute letters to Equifax, Experian, and Trans Union in October 2024.

116. Plaintiff High's second disputes again explained that she was the victim of identity theft and that she did not apply for the loan that was reporting.

117. Upon information and belief, the credit reporting agencies again forwarded notification of Plaintiff High's dispute to NFCU.

118. In response, NFCU again failed to adequately investigate Plaintiff High's dispute. Instead, it merely conducted a cursory search of its records and confirmed the same information that it previously reported to the credit bureaus.

119. Plaintiff High sent third and fourth disputes in December 2024, and February 2024, but NFCU still verified its reporting.

120. As of the date of this filing, the inaccurate information remains on Plaintiff High's credit reports.

121. Plaintiff High initially made payments to the loan to ensure that her credit rating was not destroyed, but at all times she maintained that she did not authorize the loan that NFCU continues to report to the credit reporting agencies.

122. After Plaintiff High stopped making payments on the personal loan, and despite having knowledge that Plaintiff High did not authorize the personal loan or apply for it, NFCU took payments from her bank account under a purported right to set off.

Plaintiff Ronnice Lee

123. On November 22, 2023, Plaintiff Lee received a deposit into her NFCU checking account in the amount of $5,200.

124. Around that time, Plaintiff Lee received a phone call from a number that she confirmed was affiliated with NFCU.

125. The caller advised Plaintiff Lee that the deposit was in error and that she needed to transfer the funds to a person named Jaidyn Perry, whose name had been added to Plaintiff Lee's account.

126. Reasonably believing the caller to be an NFCU employee, Plaintiff Lee did as she was instructed.

127. On November 24, 2023, Plaintiff Lee called NFCU to check on the status of her account.

128. She reported that she did not authorize the personal loan from which the deposit came.

129. NFCU advised Plaintiff Lee that it had determined that she was involved in the fraudulent scheme.

130. Plaintiff Lee, of course, was a victim—and not a perpetrator.

131. Despite Plaintiff Lee's representations that she did not authorize the loan, NFCU later dunned her for payment and reported the loan to the three major credit reporting agencies: Equifax, Experian, and Trans Union.

132. Plaintiff Lee mailed dispute letters to Equifax, Experian, and Trans Union in September 2024.

133. Plaintiff Lee's disputes explained that she was the victim of identity theft and that she did not apply for the loan that was reporting.

134. Upon information and belief, the credit reporting agencies forwarded notification of Plaintiff Lee's dispute to NFCU.

135. In response, NFCU failed to adequately investigate Plaintiff Lee's dispute. Instead, it merely conducted a cursory search of its records and confirmed the same information that it previously reported to the credit bureaus.

136. Plaintiff Lee mailed second dispute letters to Equifax, Experian, and Trans Union in December 2024.

137. Plaintiff Lee's second disputes again explained that she was the victim of identity theft and that she did not apply for the loan that was reporting.

138. Upon information and belief, the credit reporting agencies again forwarded notification of Plaintiff Lee's dispute to NFCU.

139. In response, NFCU again failed to adequately investigate Plaintiff Lee's dispute. Instead, it merely conducted a cursory search of its records and confirmed the same information that it previously reported to the credit bureaus.

140. As of the date of this filing, the inaccurate information remains on Plaintiff Lee's credit reports.

141. Plaintiff Lee has made payments to the loan to ensure that her credit rating is not destroyed, but she has maintained that she did not authorize the loan that NFCU continues to report to the credit reporting agencies.

NFCU's FCRA Violations Were Willful

142. NFCU's processing of consumer disputes was also willful and carried out in reckless disregard for consumers' rights under the FCRA. For example, NFCU's conduct was willful because it was intentionally accomplished through intended procedures that prioritize efficiency over accuracy.

143. In addition, the willfulness of NFCU's FCRA violations can be established by, for example:

a. Congress enacted the FCRA in 1970, and NFCU has had over 50 years to become compliant;

b. NFCU is a company with access to legal advice through its own general counsel and outside litigation counsel. Yet there is not contemporaneous evidence that NFCU determined that its conduct was lawful;

c. NFCU knew, or had reason to know, that its conduct contradicted the FCRA's plain language, regulatory guidance, and the relevant case law;

d. NFCU voluntarily ran a risk of violating the law substantially greater than the risk associated with a reading of the statute that was merely careless;

e. NFCU's FCRA violations were repeated and systematic;

f. NFCU had substantial documentation available to it that apprised it of its duties under the FCRA but still chose not to comply with the statute; and

g. NFCU had notice of its defective dispute processing procedures through internal audits and litigation but chose not to meaningfully change its policies and procedures to comply with the FCRA.

COUNT ONE:
NEGLIGENCE
(CLASS CLAIM – ALL NAMED PLAINTIFFS)

144. Plaintiffs incorporate by reference each of the allegations set forth in the preceding paragraphs.

145. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this claim for themselves and on behalf of a class initially defined as:

> All (1) NFCU members who (2) within two years of the filing of the Complaint or during the pendency of the action (3) had a personal loan opened in their name using an email address previously unaffiliated with their membership (4) for which they were held responsible by NFCU (5) despite disputing the loan as unauthorized.
>
> All Plaintiffs are members of this class.

146. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, Plaintiffs allege that the Class Members are so numerous that joinder of all is impractical. The names and addresses of the class members are identifiable through the internal business records maintained by NFCU, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

147. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the putative class, and there are no factual or legal issues that differ between the putative Class Members. These questions predominate over the questions affecting only individual class members. The principal issues

include whether NFCU owed a duty to Plaintiffs and the Class Members to prevent identity theft, whether NFCU breached that duty, and whether Plaintiffs and the Class Members suffered damages as a result of the breach.

148. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claim is typical of the claims of each putative Class Member. In addition, Plaintiffs are entitled to relief under the same claim as the other members of the putative Class. All claims are based on the same facts and legal theories.

149. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the putative Class because their interests coincide with, and are not antagonistic to, the interests of the members of the class they seek to represent. Plaintiffs have retained counsel competent and experienced in such litigation; they intend to continue to prosecute the action vigorously; they and their counsel will fairly and adequately protect the interests of the members of the class; and they and their counsel have no interest that might cause them to not vigorously pursue this action.

150. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Class Members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for members of the class individually to effectively redress the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by NFCU's conduct. By contrast, the class action device will result in substantial benefits to the

litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

151. Plaintiffs and the putative Class Members suffered harm as a result of the breaches because personal loans were opened in their names without their authorization or permission.

152. Because it would be inequitable for NFCU to enforce unauthorized loans, Plaintiffs seek, individually and on behalf of the class, rescission of the personal loans and a return of all monies paid to NFCU.

COUNT TWO:
BREACH OF CONTRACT
(CLASS CLAIM – ALL NAMED PLAINTIFFS)

153. Plaintiffs incorporate by reference each of the allegations set forth in the preceding paragraphs.

154. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this claim for themselves and on behalf of a class initially defined as:

> All (1) NFCU members subject to NFCU's *Membership Agreement* who (2) within five years of the filing of the Complaint or during the pendency of the action (3) had a personal loan opened in their name using an email address previously unaffiliated with their membership (4) for which they were held responsible by NFCU (5) despite disputing the loan as unauthorized.
>
> All Plaintiffs are members of this class.

155. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, Plaintiffs allege that the Class Members are so numerous that joinder of all is impractical. The names and addresses of the class members are identifiable through the internal business records maintained by NFCU, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

156. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the putative class, and there are no factual or legal issues that differ between the putative Class Members. These questions predominate over the questions affecting only individual class members. The principal issues include whether contracts exist between Plaintiffs and the Class Members, on one hand, and NFCU on the other; whether NFCU breached those contracts by failing to verify the bad actors' identities; and whether Plaintiffs and the Class Members suffered damages as a result of NFCU's breaches.

157. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claim is typical of the claims of each putative Class Member. In addition, Plaintiffs are entitled to relief under the same claim as the other members of the putative Class. All claims are based on the same facts and legal theories.

158. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the putative Class because their interests coincide with, and are not antagonistic to, the interests of the members of the class they seek to represent. Plaintiffs have retained counsel competent and experienced in such litigation; they intend to continue to prosecute the action vigorously; they and their counsel will fairly and adequately protect the interests of the members of the class; and they and their counsel have no interest that might cause them to not vigorously pursue this action.

159. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Class Members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for members of the class individually to effectively redress the wrongs done to them. Even if the members of the Class themselves could afford such

individual litigation, it would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by NFCU's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

160. As part of the *Membership Agreement* applicable to all members, NFCU had a contractual obligation to verify the identity of account applicants.

161. NFCU breached that contractual obligation because it allowed bad actors to open personal loans in Plaintiffs and the putative Class Members' names without their permission or authorization.

162. Plaintiffs and the putative Class Members suffered harm as a result of the breaches because personal loans were opened in their names without their authorization or permission.

<u>COUNT THREE:</u>
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(CLASS CLAIM – ALL NAMED PLAINTIFFS)

163. Plaintiffs incorporate by reference each of the allegations set forth in the preceding paragraphs.

164. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this claim for themselves and on behalf of a class initially defined as:

> All (1) NFCU members subject to NFCU's *Membership Agreement* who (2) within five years of the filing of the Complaint or during the pendency of the action (3) had a personal loan opened in their name using an email address previously unaffiliated with their membership (4) for which they were held responsible by NFCU (5) despite disputing the loan as unauthorized.

> All Plaintiffs are members of this class.

165. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, Plaintiffs allege that the Class Members are so numerous that joinder of all is impractical. The names and addresses of the class members are identifiable through the internal business records maintained by NFCU, and the Class Members may be notified of the pendency of this action by published and/or mailed notice.

166. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the putative class, and there are no factual or legal issues that differ between the putative Class Members. These questions predominate over the questions affecting only individual class members. The principal issues include whether contracts exist between Plaintiffs and the Class Members, on one hand, and NFCU on the other; whether those contracts gave NFCU discretion to determine how to effectively verify the identity of applicants; and whether NFCU exercised that discretion in good faith.

167. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claim is typical of the claims of each putative Class Member. In addition, Plaintiffs are entitled to relief under the same claim as the other members of the putative Class. All claims are based on the same facts and legal theories.

168. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the putative Class because their interests coincide with, and are not antagonistic to, the interests of the members of the class they seek to represent. Plaintiffs have retained counsel competent and experienced in such litigation; they intend to continue to prosecute the action vigorously; they and their counsel will fairly and adequately protect the interests of the members of the class; and they and their counsel have no interest that might cause them to not vigorously pursue this action.

169. **<u>Superiority</u>. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Class Members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for members of the class individually to effectively redress the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by NFCU's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

170. As part of the *Membership Agreement* applicable to all members, NFCU had a contractual obligation to verify the identity of account applicants.

171. To the extent that contractual obligation afforded NFCU discretion in how it could verify the identity of account applicants, NFCU failed to exercise that discretion in good faith.

172. That failure breached the implied covenant of good faith and fair dealing.

173. Plaintiffs and the putative Class Members suffered harm as a result of the breaches because personal loans were opened in their names without their authorization or permission.

<u>COUNT FOUR</u>:
UNJUST ENRICHMENT
(SUBCLASS CLAIM – ALL NAMED PLAINTIFFS)

174. Plaintiffs incorporate by reference each of the allegations set forth in the preceding paragraphs.

175. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this claim for themselves and on behalf of a subclass initially defined as:

> All (1) NFCU members who (2) within two years of the filing of the Complaint or during the pendency of the action (3) had a personal loan opened in their name using an email address previously unaffiliated with their membership (4) on which NFCU collected payments (5) although the loan was disputed as unauthorized.
>
> All Plaintiffs are members of this subclass (the "Payment Subclass").

176. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, Plaintiffs allege that the Payment Subclass Members are so numerous that joinder of all is impractical. The names and addresses of the class members are identifiable through the internal business records maintained by NFCU, and the Payment Subclass Members may be notified of the pendency of this action by published and/or mailed notice.

177. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the putative class, and there are no factual or legal issues that differ between the putative Payment Subclass Members. These questions predominate over the questions affecting only individual class members. The principal issues are whether Plaintiffs' and the Payment Subclass Members' payments on unauthorized loans conferred a benefit on NFCU; and whether the retention of those payments would be inequitable.

178. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiffs' claim is typical of the claims of each putative Payment Subclass Member. In addition, Plaintiffs are entitled to relief under the same claim as the other members of the putative Payment Subclass. All claims are based on the same facts and legal theories.

179. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiffs are adequate representatives of the putative Payment Subclass because their interests coincide with, and are not

antagonistic to, the interests of the members of the class they seek to represent. Plaintiffs have retained counsel competent and experienced in such litigation; they intend to continue to prosecute the action vigorously; they and their counsel will fairly and adequately protect the interests of the members of the class; and they and their counsel have no interest that might cause them to not vigorously pursue this action.

180. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Payment Subclass Members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for members of the class individually to effectively redress the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by NFCU's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

181. Plaintiffs and the putative Payment Subclass Members conferred a benefit on NFCU when they repaid their unauthorized loans, in full or in part.

182. NFCU knew or should have known of the benefit conferred by Plaintiffs and the putative Payment Subclass Members.

183. NFCU has been unjustly enriched through its receipt of any amounts in connection with collecting on the unauthorized loans.

COUNT FIVE:
CONVERSION
(SUBCLASS CLAIM – PLAINTIFF HIGH ONLY)

184. Plaintiffs incorporate by reference each of the allegations set forth in the preceding paragraphs.

185. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff High brings this claim for herself and on behalf of a subclass initially defined as:

> All (1) NFCU members who (2) within five years of the filing of the Complaint or during the pendency of the action (3) had a personal loan opened in their name using an email address previously unaffiliated with their membership (4) on which NFCU unilaterally offset other accounts to pay the loan (5) although the loan was disputed as unauthorized.
>
> Plaintiff Kellie High is a member of this subclass (the "Setoff Subclass").

186. **Numerosity. Fed. R. Civ. P 23(a)(1).** Upon information and belief, Plaintiff High alleges that the Setoff Subclass Members are so numerous that joinder of all is impractical. The names and addresses of the class members are identifiable through the internal business records maintained by NFCU, and the Setoff Subclass Members may be notified of the pendency of this action by published and/or mailed notice.

187. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2).** Common questions of law and fact exist as to all members of the putative class, and there are no factual or legal issues that differ between the putative Setoff Subclass Members. These questions predominate over the questions affecting only individual class members. The principal issue is whether NFCU had a legal entitlement to the funds unilaterally taken from Plaintiff High's and the Setoff Subclass Members' accounts.

188. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff High's claim is typical of the claims of each putative Setoff Subclass Member. In addition, Plaintiff is entitled to relief under the same

claim as the other members of the putative Setoff Subclass. All claims are based on the same facts and legal theories.

189. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiff High is an adequate representative of the putative Class because her interests coincide with, and are not antagonistic to, the interests of the members of the class she seeks to represent. Plaintiff High has retained counsel competent and experienced in such litigation; she intends to continue to prosecute the action vigorously; she and her counsel will fairly and adequately protect the interests of the members of the class; and she and her counsel have no interest that might cause them to not vigorously pursue this action.

190. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Setoff Subclass Members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be virtually impossible for members of the class individually to effectively redress the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by NFCU's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in a case.

191. Plaintiff High and the putative Setoff Subclass Members were deprived of possession of their funds by NFCU in the absence of the latter's right of ownership.

192. Plaintiff High and the putative Setoff Subclass Members suffered damages as a result of that deprivation of possession of funds.

COUNT SIX:
VIOLATION OF FCRA, 15 U.S.C. § 1681s-2(b)(1)(A)
(INDIVIDUAL CLAIM – NAMED PLAINTIFFS)

193. Plaintiffs incorporate the preceding allegations.

194. On one or more occasion within the past two years, NFCU violated 15 U.S.C. § 1681s-2(b)(1)(A) by failing to fully and properly investigate Plaintiffs' respective disputes.

195. When Plaintiffs disputed the account with the credit bureaus, NFCU used a dispute system named "e-Oscar," which is an automated system that the consumer-reporting agencies have developed to quickly transmit disputes to furnishers.

196. E-Oscar is an automated system, and the procedures used by the credit reporting agencies are systematic and uniform.

197. E-Oscar's dispute processing is systemic and uniform: when the credit reporting agencies receive consumer disputes, they (usually via an outsourced vendor) translate each dispute into an automated consumer dispute verification ("ACDV") form.

198. Upon information and belief, the ACDV form is way that NFCU has elected to receive consumer disputes under 15 U.S.C. § 1681i(a).

199. Upon information and belief, the credit reporting agencies forwarded Plaintiffs' disputes by ACDVs.

200. NFCU understood the nature of Plaintiffs' disputes when it received the ACDV forms.

201. Upon information and belief, when NFCU received ACDV forms containing Plaintiffs' disputes, it followed a standard and systematically unlawful process where it only

reviewed its own internal computer screen for the account and repeated back the same information to the ACDV system that was previously reported to the credit reporting agency.

202. Upon information and belief, when NFCU receives a consumer dispute through e-Oscar, it does not conduct a substantive review of any sort to determine whether there is information already in its computer system that would demonstrate the disputed information is misleading or inaccurate.

203. Because of NFCU's violation of 15 U.S.C. § 1681s-2(b)(1)(A), Plaintiffs suffered actual damages, including embarrassment, humiliation, stress, and other emotional distress.

204. NFCU's conduct in violating 15 U.S.C. § 1681s-2(b)(1)(A) was willful, rending it liable to Plaintiffs for punitive damages under 15 U.S.C. § 1681n.

205. In the alternative, NFCU was negligent, entitling Plaintiffs to recover under 15 U.S.C. § 1681o.

COUNT SEVEN:
VIOLATION OF FCRA, 15 U.S.C. § 1681s-2(b)(1)(B)
(INDIVIDUAL CLAIM – NAMED PLAINTIFFS)

206. Plaintiffs incorporate the preceding allegations.

207. On one or more occasion within the past two years, NFCU violated 15 U.S.C. § 1681s-2(b)(1)(B) by failing to review all relevant information provided by the credit reporting agencies.

208. As Plaintiffs detailed in the previous Count, NFCU has elected to use the e-Oscar system for its FCRA disputes from the consumer reporting agencies.

209. When it received the ACDV forms from the credit-reporting agencies, NFCU did not review any of the information that Plaintiffs included in their disputes, which demonstrated that NFCU's reporting of the account was inaccurate.

210. If NFCU had reviewed this information, it would have known that its previous reporting was incorrect and needed to be updated.

211. NFCU also ignored the other information that the consumer-reporting agencies provided on Plaintiffs' disputes, including the two-digit dispute code that the agencies listed on the ACDV form.

212. NFCU knew the meaning of the dispute codes used by the consumer-reporting agencies in e-Oscar.

213. NFCU does not contend that the ACDV system is an inadequate means to receive FCRA disputes from the consumer-reporting agencies.

214. NFCU understood Plaintiffs' disputes and that they were disputing that they owed debts to NFCU.

215. Despite this, NFCU did not update its incorrect reporting regarding the accounts and continued to report the inaccurate information about Plaintiffs.

216. Because of NFCU's 15 U.S.C. § 1681s-2(b)(1)(B) violations, Plaintiffs suffered actual damages, including embarrassment, humiliation, and other emotional distress.

217. NFCU's violations of 15 U.S.C. § 1681s-2(b)(1)(B) were willful, rendering it liable for damages under 15 U.S.C. § 1681n.

218. In the alternative, NFCU was negligent, entitling Plaintiffs to recover damages under 15 U.S.C. § 1681o.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment on behalf of themselves and the classes they seek to represent against NFCU for:

A. Certification for this matter to proceed as a class action;

B. Equitable relief as pleaded herein;

C. Actual, statutory, and punitive damages as pleaded herein;

D. Attorneys' fees, litigation expenses, and costs of suit; and

E. Such other or further relief as the Court deems proper.

TRIAL BY JURY IS DEMANDED

Respectfully submitted,

PLAINTIFFS

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