

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WANDA BONILLA, on behalf of herself
and all others similarly situated,
Plaintiff,
v.
CARVER FEDERAL SAVINGS BANK,
Defendant.

Case No.

CLASS ACTION COMPLAINT

Plaintiff Wanda Bonilla, by counsel, and for her Class Action Complaint against the Defendant Carver Federal Savings Bank, alleges as follows:

INTRODUCTION

1. Plaintiff brings this action individually and on behalf of all similarly situated consumers against Defendant Carver Federal Savings Bank (“Carver Bank” or “Bank”), arising from its routine practices of (a) assessing more than one insufficient funds fee (“NSF Fee”) on the same transaction; and (b) assessing an overdraft fee (“OD Fee”) on transactions that did not actually overdraw checking accounts.

2. Carver Bank’s customers have been injured by the Bank’s improper practices to the tune of millions of dollars bilked from their accounts in violation Carver Bank’s clear contractual commitments.

3. Plaintiff, on behalf of herself and two Classes of similarly situated consumers, seeks to end Carver Bank’s abusive and predatory practices and force it to refund all of these improper charges. Plaintiff asserts a claim for breach of contract, including breach of the covenant of good faith and fair dealing, and seeks damages, restitution, and injunctive relief, as set forth more fully below.

4. While there is nothing unlawful about assessing NSF Fees on accounts when such fees are assessed in compliance with contractual terms, NSF Fees in general have a crushing impact on persons

living paycheck to paycheck. This is why the financial services industry is increasingly moving away from such fees.

5. For example, one of the nation's largest consumer banks, Ally Bank recently stopped assessing overdraft fees altogether. Diane Morais, Ally Bank's president of consumer and commercial banking, said that one reason is because NSF Fees disproportionately affect people who are living paycheck to paycheck and that NSF Fees disproportionately affect Black and Latino households. *Overdraft Fees Are Getting the Boot at Ally Financial*, The Wall Street Journal (June 2, 2021), <https://www.wsj.com/articles/overdraft-fees-are-getting-the-boot-at-ally-financial-11622631600> (last accessed June 4, 2021).

6. Indeed, Black households and those with low-to-moderate incomes are almost twice as likely to incur NSF Fees as white households or those with higher incomes, according to a report from the Financial Health Network, a research firm partly funded by financial institutions.

PARTIES

7. Plaintiff is a citizen and resident of Bronx, New York.

8. Defendant Carver Bank is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Classes. Carver Bank has its headquarters in New York, New York and operates banking branches throughout New York.

JURISDICTION AND VENUE

9. This Court has original jurisdiction of this action, among other reasons, under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because (1) the proposed Class is comprised of at least 100 members; and (2) the aggregate claims of the putative class members exceed \$5 million, exclusive of interest and costs.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Carver Bank is subject to personal jurisdiction here and regularly conducts business in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

I. CARVER BANK CHARGES MORE THAN ONE FEE ON THE SAME TRANSACTION

11. Prior to May 1, 2021, Carver Bank’s Account Documents allowed Carver Bank to charge a *single* \$35 NSF Fee when a transaction was returned for insufficient funds or paid despite insufficient funds.

12. Carver Bank breached its Account Documents by charging more than one \$35 NSF Fee on the same transaction, since the contract explicitly states—and reasonable consumers understand—that the same transaction can only incur a single NSF Fee.

13. A recent Washington Post article discussed predatory overdraft fees, labeling NSF fees like those Carver Bank imposes as “indefensible” because “the customer gets hit with multiple charges for the same item.” *I bought my kids dinner – and saw firsthand how overdraft fees punish the poor*, The Washington Post (October 1, 2021), https://www.washingtonpost.com/outlook/i-bought-my-kids-dinner-and-saw-firsthand-how-overdraft-fees-punish-the-poor/2021/09/30/32383c40-216e-11ec-b3d6-8cdebe60d3e2_story.html (last accessed October 8, 2021). The banks “are charging a fee for doing literally nothing.... [T]his is like asking a friend if I can borrow \$20, only to have him take \$10 out of my wallet for turning down my request.” *Id.*

14. Carver Bank’s abusive practices are not standard within the financial services industry. Indeed, major banks like Wells Fargo—one of the largest consumer banks in the country—charge one NSF Fee per item, even if that item is resubmitted for payment multiple times. And while some other banks engage in the same practices as Carver Bank, their members agree to terms authorizing the fee practice.

15. Until May 1, 2021, Carver Bank's Account Documents did not say that Carver Bank may repeatedly charge customers multiple fees on a single transaction. To the contrary, the Account Documents indicated Carver Bank will only charge a single NSF Fee on a transaction.

A. Plaintiff's Experiences.

16. In support of her claim, Plaintiff offers examples of fees that should not have been assessed against her checking account. As alleged below, Carver Bank: (a) reprocessed previously declined transactions; and (b) charged an additional fee upon reprocessing.

17. For example, on January 14, 2021, Plaintiff was charged \$35 OD Fees on transactions which were resubmitted by the merchant for payment without Plaintiff's request to reprocess the transactions. The re-submitted transactions were specifically labeled as "RETRY PYMT" on her statements.

18. Each merchant request for payment was for a single transaction and, as is laid out in Carver Bank's Account Documents, should be subject to, at most, a single NSF or OD Fee (if Carver Bank returned it or paid it).

B. The Imposition of Multiple Fees on a Single Transaction Violates Carver Bank's Express Promises and Representations.

19. Before May 1, 2021, Carver Bank's Account Documents stated that the Bank will assess a single fee of \$35 for a transaction that is returned due to insufficient funds.

20. The same check, ACH, or other electronic payment on an account is not a new "item" each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit the transaction.

21. Even if Carver Bank reprocesses an instruction for payment, it is still the same item. The Bank's reprocessing is simply another attempt to effectuate an accountholder's original order or instruction.

22. As alleged herein, Plaintiff took only a single action to make a single payment; she therefore created only one transaction and may be charged only a single fee.

23. As the disclosures described above show, Plaintiff never agreed that Carver Bank may assess multiple NSF Fees for a transaction that was returned for insufficient funds and later reprocessed one or more times and returned again.

24. In sum, Carver Bank promised that one \$35 NSF Fee will be assessed per item, and this must mean all iterations of the same instruction for payment. As such, Carver Bank breached the contract when it charged more than one fee per transaction.

25. A reasonable consumer would understand that Carver Bank's Account Documents permit it to assess an NSF Fee only once per "item."

26. Taken together, the representations and omissions identified above convey to customers that all submissions for payment of the same transaction will be treated as the same "item," which the Bank will either pay (resulting in an overdraft item) or return (resulting in a returned transaction) when it decides there are insufficient funds in the account. Nowhere do Carver Bank and its customers agree that Carver Bank will treat each reprocessing of a check or ACH payment as a separate transaction, subject to additional fees.

27. Customers reasonably understand, based on the language of the Account Documents, that the Bank's attempts to reprocess checks or ACH payments are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger additional NSF Fees. In other words, it is always the same transaction.

28. Banks like Carver Bank that employ this abusive multiple fee practice know how to plainly and clearly disclose it. Indeed, other banks and credit unions that engage in this abusive practice require their accountholders to expressly authorize it—something Carver Bank only recently did.

29. For example, First Hawaiian Bank engages in the same abusive practices as Carver Bank, but at least currently discloses it in its online banking agreement, in all capital letters, as follows:

YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND RESUBMISSION.

Terms and Conditions of FHB Online Services, First Hawaiian Bank 40, <https://bit.ly/2KWMvTg> (last accessed Jan. 28, 2021) (emphasis added).

30. Klein Bank similarly states in its online banking agreement:

[W]e will charge you an NSF/Overdraft Fee each time: (1) a Bill Payment (electronic or check) is submitted to us for payment from your Bill Payment Account when, at the time of posting, your Bill Payment Account is overdrawn, would be overdrawn if we paid the item (whether or not we in fact pay it) or does not have sufficient available funds; or (2) we return, reverse, or decline to pay an item for any other reason authorized by the terms and conditions governing your Bill Payment Account. **We will charge an NSF/Overdraft Fee as provided in this section regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the bill payment.**

Consumer Account Terms and Conditions, Klein Bank 4 (Jan. 2013), <https://bit.ly/2KVckhI> (emphasis added).

31. Central Pacific Bank, a leading bank in Hawai'i, states in its deposit account under the "MULTIPLE NSF FEES" subsection:

Items and transactions (such as, for example, checks and electronic transactions/payments) returned unpaid due to insufficient/non-sufficient funds ("NSF") in your account, may be resubmitted one or more times for payment, and a returned item/transaction fee will be imposed on you each time an item and transaction resubmitted for payment is returned due to insufficient/non-sufficient funds.

Miscellaneous Fee Schedule, Central Pacific Bank 1 (Jan. 4, 2021), <https://www.cpb.bank/media/2776/fee-001.pdf> (last accessed June 4, 2021).

32. BP Credit Union likewise states: "We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item

and resubmission(s) of the returned item.” *Membership and Account Agreement*, BP Federal Credit Union, ¶ 14(a), <https://www.bpfcu.org/images/docs/membership-agreement.pdf> (last accessed June 4, 2021).

33. Regions Bank likewise states:

If an item is presented for payment on your account at a time when there is an insufficient balance of available funds in your account to pay the item in full, you agree to pay us our charge for items drawn against insufficient or unavailable funds, whether or not we pay the item. If any item is presented again after having previously been returned unpaid by us, you agree to pay this charge for each time the item is presented for payment and the balance of available funds in your account is insufficient to pay the item.

Deposit Agreement, Regions Bank 18 (2018), <https://bit.ly/2L0vx6A> (last accessed June 4, 2021).

34. Andrews Federal Credit Union states:

You understand and agree that a merchant or other entity may make multiple attempts to resubmit a returned item for payment. Consequently, because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to use for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item. When we charge a fee for NSF items, the charge reduces the available balance in your account and may put your account into (or further into) overdraft.

Terms & Conditions, Andrews Federal Credit Union 17 (Aug. 2020), ¶ 6, <https://bit.ly/3iXEdHb> (last accessed June 4, 2021).

35. Consumers Credit Union states:

Consequently, because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.

Member Services Guide, Consumers Credit Union 5 (Apr. 2020), ¶ 11a, <https://bit.ly/3iVM1ta> (last accessed June 4, 2021).

36. Wright Patt Credit Union states:

Consequently, because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and represented regardless of the number of times an item is presented or represented to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.

Important Account Information, Wright Patt Credit Union 13 (July 2020), ¶ 6.1, (last accessed June 4, 2021).

37. Railroad & Industrial Federal Credit Union states:

Consequently, because we may charge an NSF fee for an NSF item each time it is presented, we may charge you more than one NSF fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.

Important Account Information for Our Members, Railroad & Industrial Federal Credit Union, p. 2, (Aug. 1, 2019), <https://bit.ly/3t5ehhF> (last accessed June 4, 2021).

38. Partners 1st Federal Credit Union states:

Consequently, because we may charge a fee for an NSF item each time it is presented, we may charge you more than one fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.

Consumer Membership & Account Agreement, Partners 1st Federal Credit Union, p. 11 (Sept. 15, 2019), <https://bit.ly/39pDZWb> (last accessed March 2, 2021).

39. Members First Credit Union states:

We reserve the right to charge a Non-Sufficient Funds Fee (NSF Fee) each time a transaction is presented if your account does not have sufficient funds to cover the transaction at the time of presentment and we decline the transaction for that reason. **This means that a transaction may incur more than one Non-Sufficient Funds Fee (NSF Fee) if it is presented more than once . . .** we reserve the right to charge a Non-Sufficient Funds (NSF Fee) for both the original presentment and the representment[.]

Membership and Account Agreement, Members First Credit Union of Florida 3, <https://bit.ly/39rRJ2Y> (last accessed March 2, 2021).

40. Community Bank, N.A. states:

We cannot dictate whether or not (or how many times) a merchant will submit a previously presented item. You may be charged more than one Overdraft or NSF Fee if a merchant submits a single transaction multiple times after it has been rejected or returned.

Overdraft and Unavailable Funds Practices Disclosure, Community Bank 5 (Nov. 12, 2019), <https://bit.ly/3iY9dH2> (last accessed June 4, 2021).

41. RBC Bank states:

We may also charge against the Account an NSF fee for each item returned or rejected, including for multiple returns or rejections of the same item.

Service Agreement for Personal Accounts, RBC Bank 13 (Sept. 17, 2014), <https://bit.ly/3otUtko> (last accessed June 4, 2021).

42. Diamond Lakes Credit Union states,

Your account may be subject to a fee for each item regardless of whether we pay or return the item. We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item and resubmission(s) of the returned item.

Membership and Account Agreement, Diamond Lakes Federal Credit Union, <https://bit.ly/39o2P94> (last accessed June 4, 2021).

43. Parkside Credit Union states,

If the Credit Union returns the item, you will be assessed an NSF Fee. Note that the Credit Union has no control over how many times an intended payee may resubmit the same check or other item to us for payment. In the event the same check or other item is presented for payment on more than one occasion, your account will be subject to an additional charge on each occasion that the item is presented for payment. There is no limit to the total fees the Credit Union may charge you for overdrawing your account.

Membership and Account Agreement, Parkside Credit Union 21 (Jan. 30, 2020), <https://bit.ly/3aaXfpG> (last accessed March 2, 2021).

44. Carver Bank provided no such disclosure until recently, and by not doing so, deceived its accountholders.

C. The Imposition of Multiple Fees on a Single Transaction Breaches Carver Bank's Duty of Good Faith and Fair Dealing.

45. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are vested with a discretionary power over the other party. Further, as to bank transactions, the Uniform Commercial Code (“UCC”)—which has been adopted by all states—mandates good faith and fair dealing. As such, when a party such as Carver Bank gives itself discretion to act, the party with discretion is required to exercise that power and discretion in good faith. This creates an implied promise to act in accordance with the parties’ reasonable expectations and means that the Bank is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, the Bank has a duty to honor transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater penalties.

46. Here—in the adhesion agreements Carver Bank foisted on Plaintiff and its other customers—Carver Bank has provided itself numerous discretionary powers affecting customers’ bank accounts. But instead of exercising that discretion in good faith and consistent with consumers’ reasonable expectations, the Bank abuses that discretion to take money out of consumers’ accounts without their permission and contrary to their reasonable expectations that they will not be charged multiple fees for the same transaction.

47. Carver Bank exercises its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it defines “item” in a way that directly leads to more NSF Fees. Further, Carver Bank abuses the power it has over customers and their bank accounts and acts contrary to their reasonable expectations under the Account Documents. This is a breach of the Bank’s implied covenant to engage in fair dealing and act in good faith.

48. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging more than one fee on a single transaction, Carver Bank breaches the reasonable

expectation of Plaintiff and other customers and in doing so violates the implied covenant to act in good faith.

49. It was bad faith and totally outside Plaintiff's reasonable expectations for Carver Bank to use its discretion to assess multiple NSF Fees for a single attempted payment.

II. CARVER BANK CHARGES OD FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT

50. Plaintiff has a checking account with Carver Bank.

51. Carver Bank issues debit cards to its checking account customers, including Plaintiff, which allows its customers to have electronic access to their checking accounts for purchases, payments, withdrawals, and other electronic debit transactions.

52. Pursuant to its Account Documents, Carver Bank charges fees for transactions that purportedly result in an overdraft.

53. Plaintiff brings this cause of action challenging Carver Bank's practice of charging OD Fees on what are referred to in this complaint as "Authorize Positive, Purportedly Settle Negative Transactions" ("APPSN Transactions").

54. Here's how it works. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Carver Bank immediately reduces accountholders' checking accounts by the amount of the purchase, sets aside funds in a checking account to cover that transaction, and as a result, the accountholder's displayed "available balance" reflects that subtracted amount. Therefore, customers' accounts will always have sufficient available funds to cover these transactions because Carver Bank has already sequestered these funds for payment.

55. However, Carver Bank still assesses crippling OD Fees on many of these transactions and misrepresents its practices in its Account Documents.

56. Despite putting aside sufficient available funds for debit card and other POS transactions at the time those transactions are authorized, Carver Bank later assesses OD Fees on those same transactions when they purportedly settle days later into a negative balance. These types of transactions are APPSN Transactions.

57. Carver Bank maintains a running account balance in real time, tracking funds accountholders have for immediate use. This running account balance is adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Carver Bank sequesters the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the accountholder, and such funds are specifically associated with a given debit card transaction.

58. That means when any *subsequent*, intervening transactions are initiated on a checking account, they are compared against an account balance that has already been reduced to account for any earlier debit card transactions. This means that many subsequent transactions incur OD Fees due to the unavailability of the funds sequestered for those debit card transactions.

59. Still, despite keeping those held funds off-limits for other transactions, Carver Bank improperly charges OD Fees on those APPSN Transactions, even though the APPSN Transactions *always* have sufficient available funds to be covered.

60. Indeed, the Consumer Financial Protection Bureau ("CFPB") has expressed concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

A financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately

disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive. At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, Winter 2015 "Supervisory Highlights."

61. There is no justification for these practices, other than to maximize Carver Bank's OD Fee revenue. APPSN Transactions only exist because intervening checking account transactions supposedly reduce an account balance. But Carver Bank is free to protect its interests and either reject those intervening transactions or charge OD Fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year. But Carver Bank was not content with these millions in OD Fees. Instead, it sought millions *more* in OD Fees on these APPSN Transactions.

62. Besides being unfair and unjust, these practices breach contract promises made in Carver Bank's adhesion contracts—contracts which fail to inform accountholders about the true nature of Carver Bank's processes and practices. These practices also exploit contractual discretion to gouge accountholders.

63. In plain, clear, and simple language, the Account Documents covering OD Fees promise that Carver Bank will only charge OD Fees on transactions that have insufficient funds to cover that transaction.

64. In short, Carver Bank is not authorized by contract to charge OD Fees on transactions that have not overdrawn an account, but it has done so and continues to do so.

A. Mechanics of a Debit Card Transaction

65. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Carver Bank. When a merchant physically or virtually “swipes” a customer’s debit card, the credit card terminal connects, via an intermediary, to Carver Bank, which verifies that the customer’s account is valid and that sufficient available funds exist to cover the transaction amount.

67. At this step, if the transaction is approved, Carver Bank immediately decrements the funds in an accountholder’s account and sequesters funds in the amount of the transaction but does not yet transfer the funds to the merchant.

68. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles, as discussed in the Federal Register notice announcing revisions to certain provisions of the Truth in Lending Act regulations:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer’s account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a “debit hold.” During the time the debit hold remains in place, which may be up to three days after authorization, those funds may be unavailable for the consumer’s use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 29, 2009).

69. Sometime thereafter, the funds are actually transferred from the customer’s account to the merchant’s account.

70. Carver Bank (like all banks and credit unions) decides whether to “pay” debit card transactions at authorization. After that, Carver Bank is obligated to pay the transaction no matter what.

For debit card transactions, that moment of decision can only occur at the point of sale, at the instant the transaction is authorized or declined. It is at that point—and only that point—when Carver Bank may choose to either pay the transaction or decline it. When the time comes to actually settle the transaction, it is too late—the financial institution has no discretion and must pay the charge. This “must pay” rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it “must pay” it when the merchant later makes a demand, regardless of other account activity. *See* Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

71. There is no change—no impact whatsoever—to the available funds in an account when this step occurs.

B. Carver Bank’s Account Contract

72. Plaintiff has a checking account with Carver Bank, which is governed by Carver Bank’s standardized Account Documents.

73. The Account Documents indicate that Carver Bank will only pay overdrafts when an accountholder lacks sufficient funds to pay for a transaction:

Overdrafts - You understand that we may, at our discretion, honor withdrawal requests that overdraw your account. However, the fact that we may honor withdrawal requests that overdraw the account balance does not obligate us to do so later. So you can NOT rely on us to pay overdrafts on your account regardless of how frequently or under what circumstances we have paid overdrafts on your account in the past. We can change our practice of paying overdrafts on your account without notice to you. You can ask us if we have other account services that might be available to you where we commit to paying overdrafts under certain circumstances, such as an overdraft protection line-of-credit or a plan to sweep funds from another account you have with us. You agree that we may charge fees for overdrafts. For consumer accounts, we will not charge fees for overdrafts caused by ATM withdrawals or one-time debit card transactions if you have not opted-in to that service. We may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees.

Ex. A at 2.

74. For APPSN Transactions, which are immediately deducted from a positive account balance and should be held aside for payment of that same transaction, there are always funds to cover those transactions—yet Carver Bank assesses OD Fees on them anyway.

75. The above promises mean that transactions are only overdraft transactions when they are authorized into a negative account balance. Of course, that is not true for APPSN Transactions.

76. APPSN transactions are always initiated at a time when there are sufficient available funds in the account.

77. In fact, Carver Bank actually authorizes transactions on positive funds, claims to set those funds aside on hold, but then fails to use those same funds to settle those same transactions. Instead, it uses a secret posting process described below.

78. All the above representations and contractual promises are untrue. In fact, Carver Bank charges OD Fees even when sufficient funds exist to cover transactions that are authorized into a positive balance. No express language in any document states that Carver Bank may impose OD Fees on any APPSN Transactions.

79. First, and most fundamentally, Carver Bank charges OD Fees on debit card transactions for which there are sufficient funds available to cover the transactions. That is despite contractual representations that Carver Bank will only charge OD Fees on transactions with insufficient available funds to cover a given transaction.

80. Carver Bank assesses OD Fees on APPSN Transactions that do have sufficient funds available to cover them throughout their lifecycle.

81. Carver Bank's practice of charging OD Fees even when sufficient available funds exist to cover a transaction violates a contractual promise not to do so. This discrepancy between Carver Bank's actual practice and the contract causes accountholders like the Plaintiff to incur more OD Fees than they should.

82. Next, sufficient funds for APPSN Transactions are actually debited from the account immediately, consistent with standard industry practice.

83. Because these withdrawals take place upon initiation, they cannot be re-debited later. But that is what Carver Bank does when it re-debits the account during a secret batch posting process.

84. In reality, Carver Bank's actual practice is to deduct the same debit card transaction twice to determine if the transaction overdraws an account—both at the time a transaction is authorized and later at the time of settlement.

85. At the time of settlement, however, an available balance *does not change at all* for these transactions previously authorized into good funds. As such, Carver Bank cannot then charge an OD Fee on such transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

86. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Carver Bank does something new and unexpected, during the middle of the night, during its nightly batch posting process. Specifically, Carver Bank releases the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debits the same transaction a second time.

87. This secret step allows Carver Bank to charge OD Fees on transactions that never should have caused an overdraft—transactions that were authorized into sufficient funds, and for which Carver Bank specifically set aside money to pay them.

88. This discrepancy between Carver Bank's actual practices and the contract causes accountholders to incur more OD Fees than they should.

89. In sum, there is a huge gap between Carver Bank's practices as described in the Account Documents and Carver Bank's practices in reality.

C. Carver Bank Abuses Contractual Discretion

90. Carver Bank's treatment of debit card transactions to charge OD Fees is not simply a breach of the express terms of the numerous Account Documents. In addition, Carver Bank exploits contractual discretion to the detriment of accountholders when it uses these policies.

91. Carver Bank uses its contractual discretion to cause APPSN Transactions to incur OD Fees by knowingly authorizing later transactions that it allows to consume available funds previously sequestered for APPSN Transactions.

92. Carver Bank uses this contractual discretion unfairly to extract OD Fees on transactions that no reasonable accountholder would believe could cause OD Fees.

D. Reasonable Accountholders Understand Debit Card/POS Transactions Are Debited Immediately

93. The assessment of OD Fees on APPSN Transactions is fundamentally inconsistent with immediate deduction and holding of funds for debit card/POS transactions. That is because, if funds are immediately debited from the balance and held, they cannot be depleted by intervening transactions (and it is that subsequent depletion that is the necessary condition of APPSN Transactions). If funds are immediately debited from the available balance, then they are necessarily available to be applied to the debit card transactions for which they are debited.

94. Carver Bank was and is aware that this is precisely how accountholders reasonably understand such transactions to work.

95. Carver Bank knows that many accountholders prefer debit cards for this very reason. Research indicates that accountholders prefer debit cards as a budgeting device because they do not allow debt like credit cards do, and because the money comes directly out of a checking account.

96. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is no grace period on

debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.” *What Do I Need to Know About Using a Debit Card?*, Consumer Action (Jan. 14, 2019), https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card (last visited June 4, 2021).

97. Further, Consumer Action informs consumers that “Debit cards offer the convenience of paying with plastic without the risk of overspending. When you use a debit card, you do not get a monthly bill. You also avoid the finance charges and debt that can come with a credit card if not paid off in full.” *Understanding Debit Cards*, Consumer Action, http://www.consumer-action.org/english/articles/understanding_debit_cards (last visited June 4, 2021).

98. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States increased by approximately 1.4 million in a recent five year period and, with that increasing ubiquity, consumers have (along with credit cards) viewed debit cards “as a more convenient option than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch, Mar. 23, 2016, <http://www.marketwatch.com/story/morepeople-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23>.

99. Not only have accountholders increasingly transitioned from cash to debit cards, but they believe that a debit card purchase is the fundamental equivalent of a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

100. Carver Bank was aware of accountholder perception that debit transactions reduce an available balance *in a specified order*—namely, the moment they are actually initiated—and its account agreement only supports this perception.

E. Plaintiff's Experience

101. As an example, on July 7, 2021, Plaintiff was assessed OD Fees for debit card transactions that settled that day, despite the fact that positive funds were deducted immediately, prior to that day, for the transaction on which Plaintiff was assessed the OD Fee. At the time that the positive funds were deducted, Plaintiff had a positive balance, which would not have caused an OD Fee.

CLASS ACTION ALLEGATIONS

102. Plaintiff brings this action on behalf of herself, and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

103. The proposed classes are defined as:

All Carver Bank checking account holders in the United States who, during the applicable statute of limitations, were charged multiple fees on the same item (the "National Multi NSF Class").

All Carver Bank checking account holders in the State of New York who, during the applicable statute of limitations, were charged multiple fees on the same item (the "New York Multi NSF Subclass").

All Carver Bank checking account holders in the United States who, during the applicable statute of limitations, were charged OD Fees on transactions that were authorized into a positive available balance (the "National APPSN Class").

All Carver Bank checking account holders in the State of New York who, during the applicable statute of limitations, were charged OD Fees on transactions that were authorized into a positive available balance (the "New York APPSN Subclass").

The classes are collectively referred to as the "Classes."

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

105. Excluded from the Classes are Carver Bank, its parents, subsidiaries, affiliates, officers and directors, any entity in which Carver Bank has a controlling interest, all customers who make a timely

election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

106. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to Carver Bank's records.

107. The claims of Plaintiff are typical of the claims of the Classes in that she, like all Class members, was charged improper NSF Fees and OD Fees. Plaintiff, like all Class members, has been damaged by Carver Bank's misconduct in that she paid improper NSF Fees and OD Fees. Furthermore, the factual basis of Carver Bank's misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes.

108. There are numerous questions of law and fact common to the Classes and those common questions predominate over any questions affecting only individual Class members.

109. Among the questions of law and fact common to the Classes are whether Carver Bank:

- a. Charged multiple fees on a single transaction;
- b. Charged OD Fees on transactions when those transactions did not overdraw accounts;
- c. Breached its contract with consumers by charging OD Fees on transactions when those transactions did not overdraw accounts;
- d. Breached the covenant of good faith and fair dealing by charging OD Fees on transactions when those transactions did not overdraw accounts;
- e. Whether Plaintiff and the Classes were damaged by Carver Bank's conduct and if so, the proper measure of damages.

110. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of

consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

111. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Carver Bank, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Carver Bank's misconduct will proceed without remedy. Moreover, given that the improper fees were assessed in a uniform manner, common issues predominate over any questions, to the extent there are any, affecting only individual members.

112. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF

**Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing
(On Behalf of Plaintiff and the Classes)**

113. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

114. Plaintiff and Carver Bank have contracted for bank account deposit, checking, ATM, and debit card services. Prior to May 1, 2021, that contract did not permit Carver Bank to charge multiple fees for the same item. Moreover, the contract also does not permit Carver Bank to charge OD Fees on transactions that do not actually overdraw an account.

115. Further, under the laws of New York, good faith is an element of every contract, including the instant Account Documents pertaining to the assessment of OD Fees and NSF Fees. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

116. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A failure to act in good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of violations of good faith and fair dealing include evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

117. Carver Bank has breached the covenant of good faith and fair dealing in its contract with customers by charging multiple fees for the same item.

118. Carver Bank has breached the covenant of good faith and fair dealing in its contract with customers by charging OD Fees on transactions that do not actually overdraw the account *i.e.* when there were sufficient actual funds in the account to cover the transaction.

119. Carver Bank also breached the express terms of its contract with Plaintiff and the Multi NSF Classes by charging multiple fees on the same item.

120. Carver Bank also breached the express terms of its contract with Plaintiff and the APPSN Classes by charging OD Fees on transactions that do not actually overdraw the account *i.e.* when there were sufficient actual funds in the account to cover the transaction.

121. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the contract.

122. Plaintiff and members of the Classes have sustained damages as a result of Carver Bank's breach of the contract.

SECOND CLAIM FOR RELIEF
Violations of New York General Business § 349, et seq.
(On Behalf of Plaintiff and the New York Subclass)

123. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

124. This claim is asserted on behalf of the members of the New York Sub-Classes under New York's consumer protection law, New York General Business Law § 349, et seq. ("GBL § 349").

125. Carver Bank engaged in deceptive acts or practices relating to the imposition of overdraft fees on consumers, in violation of GBL § 349, N.Y. Gen. Bus. Law § 349(a).

126. GBL § 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service." *Id.*

127. Carver Bank engaged in deceptive acts or practices, unlawful conduct, made affirmative misrepresentations, or otherwise violated GBL § 349 by, *inter alia*, knowingly and intentionally employing an unfair and deceptive policy as described herein.

128. Carver Bank also engaged in unlawful conduct, made affirmative misrepresentations, or otherwise violated GBL § 349.

129. Carver Bank's deceptive acts or practices were "consumer-oriented." *E.g., Wilson v. Northwestern Mut. Ins. Co.*, 625 F.3d 54, 64 (2d Cir. 2010) (quoting *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, NA.*, 85 N.Y.2d 20, 623 N.Y.S.2d 529, 532-33, 647 N.E.2d 741 (1995)).

130. Carver Bank intended that Plaintiff and the members of the New York Subclasses rely on the acts of concealment and deception, so that Plaintiff and the members of the New York Subclasses would incur additional NSF Fees and OD Fees.

131. Carver Bank's conduct caused Plaintiff and the members of the New York Subclasses to suffer ascertainable losses in the form of improper NSF Fees and OD Fees that, but for Carver Bank's unfair and deceptive policies, would not otherwise have been imposed.

132. A causal relationship exists between Carver Bank's unlawful conduct and the ascertainable losses suffered by Plaintiff and the members of the New York Subclasses. Had Carver Bank kept its promises, Plaintiff and the members of the New York Subclasses would not have incurred certain OD Fees in violation of GBL § 349.

133. As redress for Carver Bank's repeated and ongoing violations of GBL § 349, Plaintiff and the New York Subclasses are entitled to, *inter alia*, actual damages, treble damages, declaratory relief, and reasonable attorney's fees. N.Y. Gen. Bus. Law. § 349(h).

THIRD CLAIM FOR RELIEF
VIOLATION OF THE EFTA (REGULATION E), 12 C.F.R. § 1005, *et seq.*;
AUTHORITY DERIVED FROM 15 U.S.C. § 1693, *et seq.*
(On Behalf of Plaintiff and the APPSN Class)

134. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

135. Carver Bank charged Plaintiff overdraft fees as a result of ATM and non-recurring debit card transactions authorized into a positive balance.

136. Carver Bank failed to provide Plaintiff disclosures that fully and accurately described Carver Bank's overdraft service – i.e., the service under which Carver Bank would assess overdraft fees as a result of ATM and non-recurring debit card transactions authorized into a positive balance. Specifically, prior to enrolling Plaintiff in the service and charging Plaintiffs overdraft fees as a result of

ATM and non-recurring debit card transactions authorized into a positive balance, Carver Bank failed to provide Plaintiff a segregated, non-misleading and truthful description of its practices, as part of the overdraft service, in assessing overdraft fees as a result of one-time debit card transactions, as required by 12 C.F.R. § 1005.17.

137. Plaintiff was assessed overdraft fees as a result of debit card transactions being authorized into a positive balance, without her informed, affirmative and written consent, in violation of Regulation E (12 C.F.R. §§1005 et seq.), whose “primary objective” is “the protection of consumers” (§1005.1(b)) and which “carries out the purposes of the [Electronic Fund Transfer Act 15 U.S.C. §§1693 et seq.], the “EFTA”] (§1005. 1(b)), whose express “primary objective” is also “the provision of individual consumer rights” (15 U.S.C. §1693(b)).

138. Due to Carver Bank’s violation of Regulation E (12 C.F.R. § 1005.17), Plaintiff and all members of the APPSN Classes are entitled to, and do seek, actual and statutory damages, as well as attorneys’ fees and costs of suit pursuant to 15 U.S.C.A. § 1693m.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Classes demand a jury trial on all claims so triable and judgment as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and that Plaintiff’s counsel be appointed Class Counsel;

B. Declaring Carver Bank’s OD and NSF Fee policies and practices to be wrongful, unfair, and unconscionable;

C. Ordering Carver Bank to immediately cease the wrongful conduct set forth above and enjoining Carver Bank from conducting business via the unlawful and unfair business acts and practices complained of herein;

D. Restitution of all wrongful OD and NSF Fees paid to Carver Bank by Plaintiff and members of the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

- E. Actual and exemplary damages in an amount to be determined at trial;
- F. Pre-judgment interest at the maximum rate permitted by applicable law;
- G. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law;
- H. Granting such other relief as the Court deems just and proper.

TRIAL BY JURY IS DEMANDED

Plaintiff respectfully demands a trial by jury on all issues so triable.

Dated: April 13, 2022

Respectfully submitted,

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TERMS AND CONDITIONS OF YOUR ACCOUNT

NOTICE OF CHANGE - This is a notice of changes to the Terms and Conditions of your account with us. Effective 30 calendar days after we sent this notice to you, your account(s) shall be governed by the following terms and conditions. Continued use of your account(s) after receipt of these terms and conditions constitutes acceptance of, and agreement to, the terms and conditions.

Contents:

- (1) Important Information about Procedures for Opening a New Account
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- (3) Liability
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 - Multiple Signatures, Electronic Check Conversion, and Similar Transactions*
 - Notice of Withdrawal*
- (6) Ownership of Account and Beneficiary Designation
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 - Errors Relating to Electronic Fund Transfers or Substitute Checks*
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- (15) Setoff
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- (18) Truncation, Substitute Checks, and Other Check Images
- (19) Remotely Created Checks
- (20) Unlawful Internet Gambling Notice
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- (23) Restrictive Legends or Indorsements
- (24) Account Transfer
- (25) Indorsements
- (26) Death or Incompetence

- (27) Fiduciary Accounts
- (28) Credit Verification
- (29) Legal Actions Affecting Your Account
- (30) Security
- (31) Telephonic Instructions
- (32) Monitoring and Recording Telephone Calls and Consent to Receive Communications
- (33) Claim of Loss
- (34) Early Withdrawal Penalties
- (35) Address or Name Changes
- (36) Resolving Account Disputes
- (37) Waiver of Notices

(1) IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

- To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(2) AGREEMENT - This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully and retain it for future reference. If you sign the signature card or open or continue to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement is subject to applicable federal laws, the laws of the state of New York and other applicable rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document. Nothing in this document is intended to vary our duty to act in good faith and with ordinary care when required by law.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. However, this agreement does not intend, and the

terms “you” and “your” should not be interpreted, to expand an individual’s responsibility for an organization’s liability. If this account is owned by a corporation, partnership or other organization, individual liability is determined by the laws generally applicable to that type of organization. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

(3) LIABILITY - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges, without notice to you, directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

You will be liable for our costs as well as for our reasonable attorneys’ fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your account. This includes, but is not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming an interest in your account. This also includes any action that you or a third party takes regarding the account that causes us, in good faith, to seek the advice of an attorney, whether or not we become involved in the dispute. All costs and attorneys’ fees can be deducted from your account when they are incurred, without notice to you.

(4) DEPOSITS - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn “on us”). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Unless prohibited by law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing indorsement, claim of alteration, encoding error or other problem which in our judgment justifies reversal of credit. You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our “daily cutoff time” on a business day we are open, or received on a day we are not open for business, as if initiated

on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check for deposit, we may require any third-party indorsers to verify or guarantee their indorsements, or indorse in our presence.

(5) WITHDRAWALS -

Generally - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs to open the account or has authority to make withdrawals may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person who signs or has authority to make withdrawals to indorse any item payable to you or your order for deposit to this account or any other transaction with us.

Postdated checks - A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. Because we process checks mechanically, your notice will not be effective and we will not be liable for failing to honor your notice unless it precisely identifies the number, date, amount and payee of the item.

Checks and withdrawal rules - If you do not purchase your check blanks from us, you must be certain that we approve the check blanks you purchase. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us or by any method we do not specifically permit. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. In addition, we may place limitations on the account until your identity is verified.

Even if we honor a nonconforming request, we are not required to do so later. If you violate the stated transaction limitations (if any), in our discretion we may close your account or reclassify it as a transaction account. If we reclassify your account, your account will be subject to the fees and earnings rules of the new account classification.

If we are presented with an item drawn against your account that would be a “substitute check,” as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts to which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. An item may be returned after the funds from the deposit of that item are made available for withdrawal. In that case, we will reverse the credit of the item. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the time we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

A temporary debit authorization hold affects your account

balance - On debit card purchases, merchants may request a temporary hold on your account for a specified sum of money, which may be more than the actual amount of your purchase. When this happens, our processing system cannot determine that the amount of the hold exceeds the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it may be up to three days before the adjustment is made. Until the adjustment is made, the amount of funds in your account available for other transactions will be reduced by the amount of the temporary hold. If another transaction is presented for payment in an amount greater than the funds left after the deduction of the temporary hold amount, that transaction will be a nonsufficient funds (NSF) transaction if we do not pay it or an overdraft transaction if we do pay it. You will be charged an NSF or overdraft fee according to our NSF or overdraft fee policy. You will be charged the fee even if you would have had sufficient funds in your account if the amount of the hold had been equal to the amount of your purchase.

Here is an example of how this can occur – assume for this example the following: (1) you have opted-in to our overdraft services for the payment of overdrafts on ATM and everyday debit card transactions, (2) we pay the overdraft, and (3) our overdraft fee is \$35 per overdraft, but we do not charge the overdraft fee if the transaction overdraws the account by less than \$10.

You have \$120 in your account. You swipe your card at the card reader on a gasoline pump. Since it is unclear what the final bill will be, the gas station's processing system immediately requests a hold on your account in a specified amount, for example, \$80. Our processing system authorizes a temporary hold on your account in the amount of \$80, and the gas station's processing system authorizes you to begin pumping gas. You fill your tank and the amount of gasoline you purchased is only \$50. Our processing system shows that you have \$40 in your account available for other transactions ($\$120 - \$80 = \$40$) even though you would have \$70 in your account available for other transactions if the amount of the temporary hold was equal to the amount of your purchase ($\$120 - \$50 = \$70$). Later, another transaction you have authorized is presented for payment from your account in the amount of \$60 (this could be a check you have written, another debit card transaction, an ACH debit or any other kind of payment request). This other transaction is presented before the amount of the temporary hold is adjusted to the amount of your purchase (remember, it may take up to three days for the adjustment to be made). Because the amount of this other transaction is greater than the amount our processing system shows is available in your account, our payment of this transaction will result in an overdraft transaction. Because the transaction overdraws your account by \$20, your account will be assessed the overdraft fee of \$35 according to our overdraft fee policy. You will be charged this \$35 fee according to our policy even though you would have had enough money in your account to cover the \$60 transaction if your account had only been debited the amount of your purchase rather than the amount of the temporary hold or if the temporary hold had already been adjusted to the actual amount of your purchase.

Overdrafts - You understand that we may, at our discretion, honor withdrawal requests that overdraw your account.

However, the fact that we may honor withdrawal requests that overdraw the account balance does not obligate us to do so later. So you can NOT rely on us to pay overdrafts on your account regardless of how frequently or under what circumstances we have paid overdrafts on your account in the past. We can change our practice of paying overdrafts on your account without notice to you. You can ask us if we have other account services that might be available to you where we commit to paying overdrafts under certain circumstances, such as an overdraft protection line-of-credit or a plan to sweep funds from another account you have with us. You agree that we may charge fees for overdrafts. For consumer accounts, we will not charge fees for overdrafts caused by ATM withdrawals or one-time debit card transactions if you have not opted-in to that service. We may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees.

Multiple signatures, electronic check conversion, and similar transactions - An electronic check conversion transaction is a transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation. In these types of transactions the check or similar item is either removed from circulation (truncated) or given back to you. As a result, we have no opportunity to review the check to examine the signatures on the item. You agree that, as to these or any items as to which we have no opportunity to examine the signatures, you waive any requirement of multiple signatures.

Notice of withdrawal - We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit or demand deposit, or from any other savings account as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

(6) OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds.

Individual Account - is an account in the name of one person.

Joint Account - With Survivorship (And Not As Tenants In Common) - is owned by two or more persons. Deposits and any additions to the account are the property of the owners as joint tenants with right of survivorship. This means that we may release the entire account to any owner during the lifetime of all owners. We may honor withdrawal requests (including checks) from any owner during the lifetime of all owners. We may be required to release money in the account to satisfy a judgment against or other valid debt incurred by any owner. We may honor withdrawal requests (including checks) from any surviving owner after the death of any owner, and may treat the account as the sole property of the surviving owner(s). Unless an owner directs us by written notice not to honor the withdrawal request (including checks) of an owner we will not be liable for doing so. After we receive such a notice, we may require written authorization of any or all joint owners for any further payments or deliveries.

Joint Account - No Survivorship (As Tenants In Common)

- is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the "number of signatures" necessary for withdrawal.

Convenience Account - governed by New York Banking Law § 678. See separate disclosure.

Revocable Trust Account - If two or more of you create such an account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating this account type reserve the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

(7) BUSINESS, ORGANIZATION AND ASSOCIATION ACCOUNTS

- Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. You represent that you have the authority to open and conduct business on this account on behalf of the entity. We may require the governing body of the entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the entity.

(8) STOP PAYMENTS - Unless otherwise provided, the rules in this section cover stopping payment of items such as checks and drafts. Rules for stopping payment of other types of transfers of funds, such as consumer electronic fund transfers, may be established by law or our policy. If we have not disclosed these rules to you elsewhere, you may ask us about those rules.

A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it. Because stop-payment orders are handled by computers, to be effective the order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item.

Generally, if your stop-payment order is given to us in writing it is effective for six months. Your order will lapse after that time if you do not renew the order in writing before the end of the six-month period. If the original stop-payment order was oral your stop-payment order will lapse after 14 calendar days if you do not confirm your order in writing within that time period. We are not obligated to notify you when a stop-payment order expires. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

If you stop payment on an item and we incur any damages or expenses because of the stop payment, you agree to indemnify us for those damages or expenses, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal actions that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order.

(9) TELEPHONE TRANSFERS - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

(10) AMENDMENTS AND TERMINATION - We may change any term of this agreement. Rules governing changes in interest rates are provided separately in the Truth-in-Savings disclosure or in another document. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Items presented for payment after the account is closed may be dishonored. When you close your account, you are responsible for leaving enough money in the account to cover any outstanding items to be paid from the account. Reasonable notice depends on the circumstances, and in some cases such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the change or account closure becomes effective. For instance, if we suspect fraudulent activity with respect to your account, we might immediately freeze or close your account and then give you notice. If we have notified you of a change in any term of your account and you continue to have your account after the effective date of the change, you have agreed to the new term(s).

(11) NOTICES - Any written notice you give us is effective when we actually receive it, and it must be given to us according to the specific delivery instructions provided elsewhere, if any. We must receive it in time to have a reasonable opportunity to act on it. If the notice is regarding a check or other item, you must give us sufficient information to be able to identify the check or item, including the precise check or item number, amount, date and payee. Written notice we give you is effective when it is deposited in the United States Mail with proper postage and addressed to your mailing address we have on file. Notice to any of you is notice to all of you.

(12) STATEMENTS - Your duty to report unauthorized signatures, alterations and forgeries

- You must examine your statement of account with "reasonable care and promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to bear the entire loss. Your loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer. We lose these protections if you establish that we failed to exercise ordinary care in paying an item with an unauthorized signature or alteration.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 14 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations or forgeries in your account within 60

days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

Your duty to report other errors - In addition to your duty to review your statements for unauthorized signatures, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error - such as an encoding error. In addition, if you receive or we make available either your items or images of your items, you must examine them for any unauthorized or missing indorsements or any other problems. You agree that the time you have to examine your statement and items and report to us will depend on the circumstances. However, this time period shall not exceed 60 days. Failure to examine your statement and items and report any errors to us within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any errors on items identified in that statement and as between you and us the loss will be entirely yours.

Errors relating to electronic fund transfers or substitute checks (For consumer accounts only) - For information on errors relating to electronic fund transfers (e.g., computer, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

(13) DIRECT DEPOSITS - If we are required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into your account, you authorize us to deduct the amount of our liability to the federal government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

(14) TEMPORARY ACCOUNT AGREEMENT - If the account documentation indicates that this is a temporary account agreement, each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

(15) SETOFF - You each agree that we may (when permitted by law) set off the funds in this account against any due and payable debt any of you owe us now or in the future. If this account is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt a partnership owes us now or in the future, to the extent of your liability as a partner for the partnership debt. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated the due date.

This right of setoff does not apply to this account if prohibited by law. For example, the right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not

affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity, or (d) social security or supplemental security income payments are deposited directly into this account pursuant to an agreement with us which permits such direct deposit without presentation to you at the time of deposit, or (e) setoff is prohibited by the Military Lending Act or its implementing regulations. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

(16) CHECK PROCESSING - We process items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the items. This means that we do not individually examine all of your items to determine if the item is properly completed, signed and indorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have exercised ordinary care if our automated processing is consistent with general banking practice, even though we do not inspect each item. Because we do not inspect each item, if you write a check to multiple payees, we can properly pay the check regardless of the number of indorsements unless you notify us in writing that the check requires multiple indorsements. We must receive the notice in time for us to have a reasonable opportunity to act on it, and you must tell us the precise date of the check, amount, check number and payee. We are not responsible for any unauthorized signature or alteration that would not be identified by a reasonable inspection of the item. Using an automated process helps us keep costs down for you and all account holders.

(17) CHECK CASHING - We may charge a fee for anyone that does not have an account with us who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash such a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

(18) TRUNCATION, SUBSTITUTE CHECKS, AND OTHER CHECK IMAGES - If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

(19) REMOTELY CREATED CHECKS - Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account.

Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line.

You warrant and agree to the following for every remotely created check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to create the check in the amount and to the payee that appears on the check; (2) you will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and (3) if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

(20) UNLAWFUL INTERNET GAMBLING NOTICE - Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

(21) ACH AND WIRE TRANSFERS - This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. Credit entries may be made by ACH. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

(22) FACSIMILE SIGNATURES - Unless you make advance arrangements with us, we have no obligation to honor facsimile signatures on your checks or other orders. If we do agree to honor items containing facsimile signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose. You must notify us at once if you suspect that your facsimile signature is being or has been misused.

(23) RESTRICTIVE LEGENDS OR INDORSEMENTS - The automated processing of the large volume of checks we

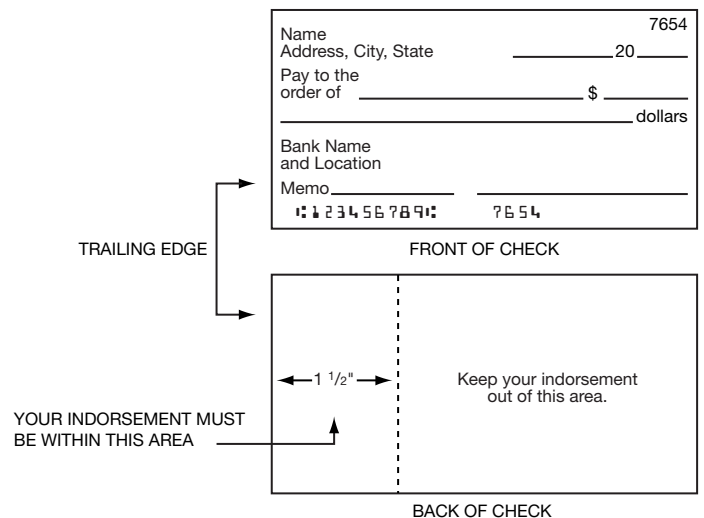
receive prevents us from inspecting or looking for restrictive legends, restrictive indorsements or other special instructions on every check. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1,000.00." The payee's signature accompanied by the words "for deposit only" is an example of a restrictive indorsement. For this reason, we are not required to honor any restrictive legend or indorsement or other special instruction placed on checks you write unless we have agreed in writing to the restriction or instruction. Unless we have agreed in writing, we are not responsible for any losses, claims, damages, or expenses that result from your placement of these restrictions or instructions on your checks.

(24) ACCOUNT TRANSFER - This account may not be transferred or assigned without our prior written consent.

(25) INDORSEMENTS - We may accept for deposit any item payable to you or your order, even if they are not indorsed by you. We may give cash back to any one of you. We may supply any missing indorsement(s) for any item we accept for deposit or collection, and you warrant that all indorsements are genuine.

To ensure that your check or share draft is processed without delay, you must indorse it (sign it on the back) in a specific area. Your entire indorsement (whether a signature or a stamp) along with any other indorsement information (e.g. additional indorsements, ID information, driver's license number, etc.) must fall within 1 1/2" of the "trailing edge" of a check. Indorsements must be made in blue or black ink, so that they are readable by automated check processing equipment.

As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all indorsement information within 1 1/2" of that edge.



It is important that you confine the indorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed indorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your indorsement, another indorsement or information you have printed on the back of the check obscures our indorsement.

These indorsement guidelines apply to both personal and business checks.

(26) DEATH OR INCOMPETENCE - You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or is adjudicated (determined by the appropriate official) incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or adjudication of incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or adjudication of incompetence for up to ten (10) days after your death or adjudication of incompetence unless ordered to stop payment by someone claiming an interest in the account.

(27) FIDUCIARY ACCOUNTS - Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.

(28) CREDIT VERIFICATION - You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

(29) LEGAL ACTIONS AFFECTING YOUR ACCOUNT - If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section), we will comply with that legal action. Or, in our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action. Any fees or expenses we incur in responding to any legal action (including, without limitation, attorneys' fees and our internal expenses) may be charged against your account. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that we may charge for certain legal actions.

(30) SECURITY - It is your responsibility to protect the account numbers and electronic access devices (e.g., an ATM card) we provide you for your account(s). Do not discuss, compare, or share information about your account number(s) with anyone unless you are willing to give them full use of your money. An account number can be used by thieves to issue an electronic debit or to encode your number on a false demand draft which looks like and functions like an authorized check. If you furnish your access device and grant actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized.

Your account number can also be used to electronically remove money from your account, and payment can be made

from your account even though you did not contact us directly and order the payment.

You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. If you are negligent in safeguarding your checks we will not be responsible for any losses you incur due to an alteration or forgery if we have paid the check in good faith and in accordance with reasonable commercial standards.

Except for consumer electronic funds transfers subject to Regulation E, you agree that if we offer you services appropriate for your account to help identify and limit fraud or other unauthorized transactions against your account, such as positive pay or commercially reasonable security procedures, and you reject those services, you will be responsible for any fraudulent or unauthorized transactions which could have been prevented by the services we offered, unless we acted in bad faith or to the extent our negligence contributed to the loss. If we offered you a commercially reasonable security procedure which you reject, you agree that you are responsible for any payment order, whether authorized or not, that we accept in compliance with an alternative security procedure that you have selected.

(31) TELEPHONIC INSTRUCTIONS - Unless required by law or we have agreed otherwise in writing, we are not required to act upon instructions you give us via facsimile transmission or leave by voice mail or on a telephone answering machine.

(32) MONITORING AND RECORDING TELEPHONE CALLS AND CONSENT TO RECEIVE COMMUNICATIONS - We may monitor or record phone calls for security reasons, to maintain a record and to ensure that you receive courteous and efficient service. You consent in advance to any such recording. We need not remind you of our recording before each phone conversation.

To provide you with the best possible service in our ongoing business relationship for your account we may need to contact you about your account from time to time by telephone, text messaging or email. However, we must first obtain your consent to contact you about your account because we must comply with the consumer protection provisions in the federal Telephone Consumer Protection Act of 1991 (TCPA), CAN-SPAM Act and their related federal regulations and orders issued by the Federal Communications Commission (FCC).

- Your consent is limited to this account, and as authorized by applicable law and regulations.
- Your consent does not authorize us to contact you for telemarketing purposes (unless you otherwise agreed elsewhere).

With the above understandings, you authorize us to contact you regarding this account throughout its existence using any telephone numbers or email addresses that you have previously provided to us or that you may subsequently provide to us.

This consent is regardless of whether the number we use to contact you is assigned to a landline, a paging service, a cellular wireless service, a specialized mobile radio service, other radio common carrier service or any other service for which you may be charged for the call. You further authorize us to contact you through the use of voice, voice mail and text messaging, including the use of pre-recorded or artificial voice messages and an automated dialing device.

If necessary, you may change or remove any of the telephone numbers or email addresses at any time using any reasonable means to notify us.

(33) CLAIM OF LOSS - If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you.

You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

(34) EARLY WITHDRAWAL PENALTIES (and involuntary withdrawals) - We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your notice of penalty for early withdrawals for additional information.

(35) ADDRESS OR NAME CHANGES - You are responsible for notifying us of any change in your address or your name. Unless we agree otherwise, change of address or name must be made in writing by at least one of the account holders. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. If provided elsewhere, we may impose a service fee if we attempt to locate you.

(36) RESOLVING ACCOUNT DISPUTES - We may place an administrative hold on the funds in your account (refuse payment or withdrawal of the funds) if it becomes subject to a claim adverse to (1) your own interest; (2) others claiming an interest as survivors or beneficiaries of your account; or (3) a claim arising by operation of law. The hold may be placed for such period of time as we believe reasonably necessary to allow a legal proceeding to determine the merits of the claim or until we receive evidence satisfactory to us that the dispute has been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

(37) WAIVER OF NOTICES - To the extent permitted by law, you waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account. For example, if you deposit a check and it is returned unpaid or we receive a notice of nonpayment, we do not have to notify you unless required by federal Regulation CC or other law.



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Carver Bank Hit with Class Action Over Alleged Overdraft Fee Practices](#)
