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

14 CESAR E. CORTES, individually, and ) **Case No.: '22CV0444 LAB DEB**  
15 on behalf of all others similarly situated, )  
16 ) (San Diego Superior Court Case No.: 37-  
17 ) 2020-00018182-CU-BC-CTL)  
18 Plaintiff, )  
19 )  
20 v. )  
21 ) **NOTICE OF REMOVAL PURSUANT TO**  
22 UNIVERSITY & STATE EMPLOYEES ) **28 U.S.C. §§1331, 1441, AND 1446**  
23 CREDIT UNION, a California )  
24 Corporation; and DOES 1 through 100, )  
25 inclusive, )  
26 )  
27 Defendants. )  
28 ) Complaint Filed: June 2, 2020  
 ) FAC Filed: March 17, 2022

29  
30  
31 TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
32 SOUTHERN DISTRICT OF CALIFORNIA AND TO ALL PARTIES AND THEIR  
33 COUNSEL OF RECORD:

34 PLEASE TAKE NOTICE that based on the following allegations, Defendant

1 UNIVERSITY & STATE EMPLOYEES CREDIT UNION (“Defendant”) hereby  
2 removes the above-captioned action from the Superior Court of the State of California for  
3 the County of San Diego, to the United States District Court for the Southern District of  
4 California, on the grounds of federal question under 28 U.S.C. §§ 1331, 1441(a), and  
5 1446. The following statement is submitted pursuant to 28 U.S.C. § 1446(a):

6 **BACKGROUND**

7 1. On June 2, 2020, Cesar E. Cortes (“Plaintiff”) filed a complaint for damages  
8 against Defendant in the Superior Court of the State of California for the County of San  
9 Diego, entitled “*Cesar E. Cortes, individually, and on behalf of all others similarly*  
10 *situated v. University & State Employees Credit Union, and Does 1 through 100,*  
11 *inclusive*” (“Complaint”), designated as San Diego County Superior Court Case No.: 37-  
12 2020-00018182-CU-BC-CTL (“State Court Action”).

13 2. Defendant received a copy of the Complaint on July 27, 2020 by personal  
14 service. Defendant is the only party defendant who has been properly joined and served.  
15 To date, no other defendants have appeared or been served.

16 3. The Complaint enumerates causes of action for Breach of Account  
17 Agreement, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust  
18 Enrich/Restitution, Money Had and Received, and Violation of the California Unfair  
19 Competition Law.

20 4. The Complaint, including the prayer for relief, fails to specify the amount in  
21 controversy.

22 5. On March 17, 2022, Plaintiff filed a First Amended Complaint (“FAC”).  
23 The FAC enumerates causes of action for Breach of Account Agreement, Breach of the  
24 Implied Covenant of Good Faith and Fair Dealing, Unjust Enrich/Restitution, Money  
25 Had and Received, Violation of the California Unfair Competition Law and Violation of  
26 Electronic Fund Transfer Act (Regulation E, 12 C.F.R. §§ 1005, *et seq.*)

27 6. Attached hereto collectively as Exhibits “1 through 12” are true and correct  
28 copies all documents filed in the State Court Action: (1) Summons and Complaint; (2)

1 Civil Case Cover Sheet; (3) Proof of Service of Process; (4) Stipulation and Order to  
2 Extend Defendant's time to Respond to the Complaint; (5) Answer; (6) Plaintiff's  
3 Counsel's Motion to Appear Pro Hac Vice, Proof of Service and Order; (7) all Case  
4 Management Statements filed by the Parties; (8) Notice of Jury Fee Deposit Filed by  
5 Plaintiff; (9) Joint Discovery Plan and Order; (10) Stipulation and Order to Continue the  
6 Joint Discovery Plan; (11) Plaintiff's Motion for Leave to File Amended Complaint; and  
7 (12) Plaintiff's FAC.

8 **TIMELINESS OF REMOVAL**

9 7. This Notice of Removal is timely pursuant to 18 U.S.C. § 1446(c)(3)  
10 because it is being filed within thirty (30) days of March 17, 2022, which is the first day  
11 on which Defendant was able to ascertain that this case is removable.

12 **PROCEEDINGS IN STATE COURT**

13 8. The following proceedings have been held in the State Court action:

14 On January 8, 2021, Plaintiff's Motion to Appear Pro Hac Vice was heard; on  
15 February 26, 2021 and March 26, 2021, the court held a Case Management Conference;  
16 on March 4, 2022, Plaintiff's Motion for Leave to File a First Amended Complaint was  
17 heard; and a Class Certification Motion was scheduled for November 10, 2022.

18 **JURISDICTION**

19 9. This Court has original jurisdiction over this action under 28 U.S.C. § 1331.  
20 Pursuant to 28 U.S.C. § 1331, the district courts shall have original jurisdiction over civil  
21 actions arising under the Constitution, laws, or treaties of the United States.

22 10. The FAC enumerates a cause of action for Violation of Electronic Fund  
23 Transfer Act (Regulation E, 12 C.F.R. § 1005, *et seq.*) at paragraphs 157 to 164. The  
24 FAC alleges that authority for this cause of action is derived from 15 U.S.C. § 1693, *et*  
25 *seq.*

26 11. The FAC at paragraph 38 alleges that "Defendant had violated TISA [Truth  
27 in Savings Act] in regard to Plaintiff by, among other things, providing inaccurate  
28 disclosures and agreements and failing to clearly and conspicuously identify its true

1 overdraft practices.

2 12. The FAC at paragraph 44 alleges that “Defendant committed numerous  
3 Regulation E violations...”

4 13. The FAC at paragraph 103 alleges multiple classes including a Regulation E  
5 Class.

6 14. Regulation E is issued by the Bureau of Consumer Financial Protection  
7 pursuant to the Electronic Fund Transfer Act (15 U.S.C. § 1693, *et seq.*)

8 15. Plaintiff’s initial Complaint only alleged state causes of action. Plaintiff was  
9 granted leave to file an amended complaint on March 4, 2022. Plaintiff filed the FAC on  
10 March 17, 2022, which alleged a cause of action for violation of Regulation E which  
11 arises under laws of the United States. Accordingly, federal question jurisdiction exists  
12 for removal and this case meets all requirements for removal and is timely and properly  
13 removed by the filing of this Notice.

14 **NO OTHER PARTIES NEED TO JOIN THIS REMOVAL**

15 16. All defendants who have been named and served in this lawsuit have signed  
16 this Notice of Removal.

17 **VENUE**

18 17. This Court is the United States District Court for the district within which  
19 the State Court Action is pending. Thus, venue lies in this Court pursuant to 28 U.S.C.  
20 §1441(a).

21 **NON-WAIVER OF DEFENSES**

22 18. Nothing in this Notice shall be interpreted as a waiver or relinquishment of  
23 Defendant’s right to assert any defense or affirmative matter, including without limitation  
24 a motion to dismiss pursuant to Federal Rule of Civil Procedure 12.

25 **NOTICE OF REMOVAL**

26 19. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of  
27 Removal will be given promptly to Plaintiff and, together with a copy of the Notice of  
28 Removal, will be filed in the State Court Action with the Clerk of the Superior Court of

1 the State of California for the County of San Diego.

2 20. This Notice of Removal will be served on all of Plaintiff's counsel identified  
3 on the Summons and Complaint. A copy of the Proof of Service regarding the Notice of  
4 Removal will be filed shortly after these papers are filed and served.

5 21. WHEREFORE, Defendant removes the above-captioned action now  
6 pending in the Superior Court of the State of California for the County of San Diego to  
7 this Court by timely filing this Notice of Removal.

8  
9 DATED: April 04, 2022

LITCHFIELD CAVO, LLP

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11  
12 By: /s/ Mark K. Worthge  
13 Mark K. Worthge  
14 Alexandria K. Hobson  
15 Attorneys for Defendant,  
16 University & State Employees Credit  
17 Union  
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# EXHIBIT 14

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10 Attorneys for Plaintiff Cesar Cortes  
and the Putative Class  
11  
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN DIEGO**  
15

16 CESAR E. CORTES, individually, and on behalf  
of all others similarly situated,  
17

18 Plaintiff,

19 v.

20 UNIVERSITY & STATE EMPLOYEES  
CREDIT UNION, and DOES 1 through 100,  
inclusive,  
21

22 Defendants.  
23  
24  
25  
26

Case No. 37-2020-00018182-CU-BC-CTL

**FIRST AMENDED COMPLAINT FOR:**

1. Breach of Account Agreement
2. Breach of Opt-in Agreement
3. Breach of the Implied Covenant of Good Faith and Fair Dealing
4. Unjust Enrichment/Restitution
5. Money Had and Received
6. Violation of the California Unfair Competition Law (Bus. & Prof. Code, § 17200, *et seq.*)
7. Violation of Electronic Fund Transfer Act (Regulation E, 12 C.F.R. §§ 1005, *et seq.*)

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Cesar E. Cortes (“Plaintiff”), by his attorneys, hereby brings this class and  
2 representative action against University & State Employees Credit Union and DOES 1 through 100  
3 (collectively “USE Credit Union” or “Defendant”).

4 **NATURE OF THE ACTION**

5 1. All allegations herein are based upon information and belief except those allegations  
6 which pertain to Plaintiff or his counsel. Allegations pertaining to Plaintiff or his counsel are based  
7 upon, *inter alia*, Plaintiff or his counsel’s personal knowledge, as well as Plaintiff or his counsel’s own  
8 investigation. Furthermore, each allegation alleged herein either has evidentiary support or is likely to  
9 have evidentiary support, after a reasonable opportunity for additional investigation or discovery.

10 2. Plaintiff has brought this class and representative action to assert claims in his own right,  
11 and as the class representative of all other persons similarly situated, and in his capacity as a private  
12 attorney general on behalf of the members of the general public. Defendant wrongfully and without  
13 authorization, unilaterally and without warning, withdrew money from Plaintiff and the Class Members’  
14 share (“checking”) accounts when it was not authorized to do so. Defendant falsely claimed that the  
15 funds it unilaterally took from Plaintiff’s account were properly assessed overdraft fees (a fee for a  
16 transaction item that was advanced and paid by Defendant on behalf of Plaintiff) or Non-Sufficient  
17 Funds (“NSF”) fees (a fee for a transaction that was returned unpaid). That was not true. Defendant was  
18 not authorized by its contracts to assess or collect these supposed overdraft fees or NSF fees.

19 3. Defendant’s assessment of such overdraft/NSF fees also violated federal and state law.  
20 Defendant failed to describe its actual overdraft practice in its Opt-in Agreement by, *inter alia*, failing to  
21 describe accurately in its Opt-in Agreement the actual method by which Defendant calculates its  
22 overdraft fees, and because Defendant also violated or did not fulfill other prerequisites of Regulation E,  
23 12 C.F.R. §§ 1005, *et seq.*, of the Electronic Fund Transfer Act, 15 U.S.C.A. §§ 1693 *et seq.*, before  
24 charging overdraft fees on ATM and one-time debit card transactions, 12 C.F.R. § 1005.17(b)(1).  
25 Defendant’s violations are also actionable under California’s Unfair Competition Law, California  
26 Business & Professions Code § 17200.

27 4. This class action seeks monetary damages, restitution, and injunctive relief due to, *inter*  
28 *alia*, Defendant’s policy and practice of unlawfully assessing and unilaterally collecting overdraft fees



1 and NSF fees as set forth herein, in violation of its contract(s) with Plaintiff and the Class, as well as  
2 regulations, statutes, and/or equities.

3 **PARTIES**

4 5. Plaintiff Cesar E. Cortes is a resident of Chula Vista, California, and a member of  
5 Defendant at all relevant times.

6 6. Based on information and belief, Defendant is and has been a state-chartered credit union  
7 with its headquarters located in San Diego, California. Defendant is a “financial institution” within the  
8 meaning of Regulation E, 12 C.F.R. § 1005.2(i).

9 7. Without limitation, defendants DOES 1 through 100, include agents, partners, joint  
10 ventures, subsidiaries, and/or affiliates of Defendant and, upon information and belief, also own and/or  
11 operate Defendant’s branch locations. As used herein, where appropriate, the term “Defendant” is also  
12 inclusive of Defendants DOES 1 through 100.

13 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Defendants  
14 DOES 1 through 100 are thus sued by fictitious names, and the pleadings will be amended as necessary  
15 to obtain relief against Defendants DOES 1 through 100 when the true names are ascertained, or as  
16 permitted by law or the Court.

17 9. There exists, and at all times herein mentioned existed, a unity of interest and ownership  
18 between the named defendants (including DOES) such that any corporate individuality and separateness  
19 between the named defendants has ceased, and that the named defendants are *alter egos* in that they  
20 effectively operate as a single enterprise, or are mere instrumentalities of one another.

21 10. At all material times herein, each Defendant was the agent, servant, co-conspirator,  
22 and/or employer of each of the remaining defendants; acted within the purpose, scope, and course of  
23 said agency, service, conspiracy, and/or employment and with the express and/or implied knowledge,  
24 permission, and consent of the remaining defendants; and ratified and approved the acts of the other  
25 defendants. However, each of these allegations are deemed alternative theories whenever not doing so  
26 would result in a contradiction with the other allegations.

27 11. Whenever reference is made in this Complaint to any act, deed, or conduct of Defendant,  
28 the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of

1 its officers, directors, agents, employees, or representatives who was actively engaged in the  
2 management, direction, control, or transaction of Defendant’s ordinary business and affairs.

3 12. As to the conduct alleged herein, each act was authorized, ratified or directed by  
4 Defendant’s officers, directors, or managing agents.

5 **JURISDICTION AND VENUE**

6 13. This Court has subject matter jurisdiction over this case because Plaintiff is informed and  
7 believes Defendant is qualified to do business, and regularly conducts business, in California.

8 14. Venue is proper in this judicial district and in the County of San Diego, California  
9 because Defendant maintains offices and transacts business within the district; Plaintiff, and similarly  
10 situated persons, entered into contracts with Defendant within the district; and Defendant executed its  
11 unlawful policies and practices in breach of those contracts, which are the subject of this action, in San  
12 Diego County.

13 **BACKGROUND**

14 **DEFENDANT**

15 15. Defendant is a credit union with approximately eight branches. According to its financial  
16 filings, as of December 31, 2019, Defendant has 61,777 members, 179 full-time employees, and holds  
17 \$1,023,696,056 in assets. Defendant’s members consist of California State and University employees,  
18 along with others who live, work, or worship in the five counties of San Diego, Sacramento, Yolo,  
19 Alameda, and Santa Clara. On its website, Defendant describes itself as “a cooperative, not-for-profit,  
20 financial institution.” (<https://www.usecu.org/home/our-story/who-we-are> [last visited May 26, 2020].)  
21 It markets and sells itself as superior to banks, in no small part through claims that it is not motivated by  
22 profit, but instead by service to its member owners. *Id.* As will be discussed in the following, that  
23 statement is false relating to its overdraft practices.

24 **CHECKING ACCOUNTS DEFENDANT OFFERS TO MEMBERS**

25 16. One of the main services Defendant offers to its members is a checking account. The  
26 checking account can increase or be credited in a variety of ways, including automatic payroll deposits;  
27 electronic deposits; incoming transfers; deposits at the branch; and deposits at ATM machines. Debits  
28 decreasing the amount in the checking account can be made by using a debit card for purchases of goods

1 and services (point of sale purchases) that can be one-time purchases or recurring automatic purchases;  
2 through withdrawal of money at an ATM; or by electronic purchases. Additionally, some of the other  
3 ways to debit the account include writing checks; issuing electronic checks; scheduling Automated  
4 Clearing House (ACH) transactions (which can include recurring automatic payments or one-time  
5 payments); transferring funds; and other types of transactions that debit from a checking account. As of  
6 December 31, 2019, Defendant reported holding 39,001 checking accounts with a total balance of  
7 \$264,565,930.

8 **CHECKING ACCOUNT OVERDRAFT AND NSF FEES GENERATE SIGNIFICANT PROFIT**  
9 **FOR DEFENDANT**

10 17. In connection with its processing of debit transactions (debit card, ATM, check, ACH,  
11 and other similar transactions), Defendant assesses overdraft and NSF fees to member accounts when it  
12 claims to have determined that an account has been overdrawn. While Defendant does not publicly  
13 disclose the amount of overdraft fees and NSF fees it collects from its members, in 2019 it reported  
14 collecting from all members \$6,005,175 in service fee income. Based on information and belief, a  
15 significant portion of those service fees consist of overdraft fees and NSF fees that are collected from a  
16 small percentage of the overall credit union members.

17 **THE DETRIMENTAL EFFECT OF OVERDRAFT AND NSF FEES**

18 18. This case is about when and under what circumstances Defendant may charge an  
19 overdraft or NSF fee.

20 19. The underlying principle for charging overdraft fees is that when the credit union pays a  
21 transaction by advancing the credit union's own funds instead of using a member's insufficient funds, it  
22 may charge a *contracted* fee, provided that charging the fee is not prohibited by some legal regulation.

23 The fee Defendant charges here constitutes very expensive credit. According to the FDIC:

24 For almost all study population banks operating an automated overdraft  
25 program, the main fee associated with the program was an NSF usage fee.  
26 Usage fees reported by these banks ranged from \$10 to \$38; the median  
27 fee was \$27, charged on a per-transaction basis in almost all cases. **In this**  
28 **context, a \$27 fee charged for a single advance of \$60 that was repaid**  
**in two weeks roughly translated into an APR of 1,173 percent.** Many  
surveyed banks (24.6 percent) assessed additional fees on accounts that  
remained in negative balance status in the form of flat fees or interest  
charged on a percentage basis.

1 (FDIC Study of Bank Overdraft Programs, 2008,  
2 [https://www.fdic.gov/bank/analytical/overdraft/fdic138\\_report\\_final\\_v508.pdf](https://www.fdic.gov/bank/analytical/overdraft/fdic138_report_final_v508.pdf) [last viewed April 22,  
3 2020] (emphasis added).)

4 20. Financial institutions can also charge a *contracted* NSF fee when a customer’s checking  
5 account purportedly lacks sufficient funds to cover an item and the financial institution opts to return the  
6 transaction item unpaid rather than cover it. Although there is very little, if any, risk to financial  
7 institutions when they return an item unpaid, they still charge customers a very expensive fee for this  
8 purported “service.”

9 21. The Consumer Financial Protection Bureau (“CFPB”) has noted that, as opposed to  
10 overdraft program coverage, financial institutions’ return of items as unpaid, which often results in the  
11 assessment and collection of insufficient funds fee charges (which the CFPB refers to as “NSF fees”),  
12 confers little, if any, benefit to customers:

13 An important consumer outcome of any overdraft program is the  
14 percentage of negative transactions that are paid (*i.e.*, result in overdrafts)  
15 or returned unpaid (*i.e.*, were NSFs). Paying overdraft transactions may  
16 confer some benefit (in exchange for the associated fees and other costs)  
17 to consumers by helping them make timely payments and avoid late  
18 penalty fees and/or interest charges from a merchant or biller. **In**  
19 **contrast, returning an item generally confers little benefit to the**  
**consumer (other than perhaps deterring future overdrafting and any**  
**subsequent consequences) and can result in an NSF fee as well as**  
**additional related fees, such as a returned check fee charged by the**  
**institution to whom the check was presented or a late fee charged by**  
**the entity to whom payment was due.**

20 (CFPB, CFPB Study of Overdraft Programs (June 2013), p. 26 (internal footnote omitted) (emphasis  
21 added), [https://files.consumerfinance.gov/f/201306\\_cfpb\\_whitepaper\\_overdraft-practices.pdf](https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf) [last  
22 viewed April 22, 2020].)

23 22. Overdraft and NSF fees constitute a primary revenue generator for banks and credit  
24 unions. According to one banking industry market research company, Moeb's Services, banks and credit  
25 unions in 2018 alone generated an estimated \$34.5 billion on overdraft fees. (Moeb's Services,  
26 [Overdraft Revenue Inches Up in 2018 \(March 27, 2019\),](http://www.moeb's.com/Portals/0/pdf/Articles/Overdraft%20Revenue%20Inches%20Up%20in%202018%200032719-1.pdf?ver=2019-03-27-115625-283)  
27 [http://www.moeb's.com/Portals/0/pdf/Articles/Overdraft%20Revenue%20Inches%20Up%20in%202018](http://www.moeb's.com/Portals/0/pdf/Articles/Overdraft%20Revenue%20Inches%20Up%20in%202018%200032719-1.pdf?ver=2019-03-27-115625-283)  
28 [%200032719-1.pdf?ver=2019-03-27-115625-283](http://www.moeb's.com/Portals/0/pdf/Articles/Overdraft%20Revenue%20Inches%20Up%20in%202018%200032719-1.pdf?ver=2019-03-27-115625-283) [last viewed April 22, 2020].) A 2010 report by

1 Georgetown University Law Professor Adam Levitin concluded that overdraft fees comprise 6% to 7%  
2 of the gross revenue of credit unions. (Filene Research Institute Report, Overdraft Regulation A Silver  
3 Lining In The Clouds? (Filene Research Institute 2010), <https://ssrn.com/abstract=1544888> [last viewed  
4 April 22, 2020].)

5 23. While credit unions portray themselves as more overdraft and fee friendly than banks—  
6 and that may have been historically true—it is not true now. Moebs Services reported that 2018 credit  
7 union overdraft revenue jumped \$500 million, even as bank overdraft revenue declined by \$400 million.  
8 Further, the same study showed that credit unions generated significantly more revenue per customer in  
9 service fees than banks did. (See Credit Union Times, *Overdraft Revenue Surges at Credit Unions:*  
10 *Moebs* (Jan. 7, 2019), [https://www.cutimes.com/2019/01/07/overdraft-revenue-surges-at-credit-unions-](https://www.cutimes.com/2019/01/07/overdraft-revenue-surges-at-credit-unions-moebs/)  
11 [moebs/](https://www.cutimes.com/2019/01/07/overdraft-revenue-surges-at-credit-unions-moebs/) [last viewed April 22, 2020].) And none of this is any surprise, because from 2000 to 2017 the  
12 average credit union overdraft fee increased from \$15 to \$29. (MarketWatch, *The Average Credit*  
13 *Union Overdraft Fee Has Almost Doubled Since 2000* (March 27, 2017)  
14 [https://www.marketwatch.com/story/credit-unions-charge-almost-as-much-as-major-banks-in-overdraft-](https://www.marketwatch.com/story/credit-unions-charge-almost-as-much-as-major-banks-in-overdraft-fees-2017-03-24)  
15 [fees-2017-03-24](https://www.marketwatch.com/story/credit-unions-charge-almost-as-much-as-major-banks-in-overdraft-fees-2017-03-24) [last viewed April 22, 2020].)

16 24. Defendant's financial filings and practices reveal that it has followed these trends to the  
17 letter. Defendant charges an overdraft/NSF fee of \$27 per item for each of the first 1-5 items it claims  
18 result in an account being overdrawn, and \$33 per item for each additional alleged overdrafting item  
19 within a 12 month period. Even if Defendant had been properly charging overdraft fees, the \$27 and  
20 \$33 overdraft fees bear no relation to the credit union's minute risk of loss or cost for administrating the  
21 Defendant's overdraft services. Nevertheless, the practical effect of the fee is to charge those who pay it  
22 an interest rate with an APR in the thousands.

23 25. Accordingly, the overdraft fee is a punitive fee rather than a service fee, which makes it  
24 even more unfair because most account overdrafts are accidental and involve a small amount of money  
25 in relation to the fee. Further, in a 2012 study, more than 90% of customers who were assessed overdraft  
26 fees overdrew their accounts by mistake. (Pew Charitable Trust Report, *Overdraft America: Confusion*  
27 *and Concerns about Bank Practices*, at p. 4 (May 2012), [https://www.pewtrusts.org/-](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/sciboverdraft20america1pdf.pdf)  
28 [/media/legacy/uploadedfiles/pcs\\_assets/2012/sciboverdraft20america1pdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/sciboverdraft20america1pdf.pdf) [last viewed April 22,

2020].) More than 60% of the transactions that resulted in a large overdraft fee were for less than \$50. (Pew Charitable Trust Report, *Overdrawn*, at p. 8 (June 2014), [https://www.pewtrusts.org/-/media/assets/2014/06/26/safe\\_checking\\_overdraft\\_survey\\_report.pdf](https://www.pewtrusts.org/-/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf) [last viewed April 22, 2020].)

More than 50% of those who were assessed overdraft fees do not recall opting into an overdraft program, (*id.* at p. 5), and more than two-thirds of customers would have preferred the financial institution decline their transaction rather than being charged a very large fee, (*id.* at p. 10).

26. Finally, the financial impact of these fees falls on the most vulnerable among the banking population with the least ability to absorb the overdraft fees. Younger, lower-income, and non-white account holders are among those most likely to be assessed overdraft fees. (*Id.* at p. 1.) A 25-year-old is 133% more likely to pay an overdraft penalty fee than a 65-year-old. (*Id.* at p. 3.) More than 50% of the customers assessed overdraft fees earned under \$40,000 per year. (*Id.* at p. 4.) And non-whites are 83% more likely to pay an overdraft fee than whites. (*Id.* at p. 3.)

**ACCOUNTING TRICKS TO CHARGE OVERDRAFT AND NSF FEES ON AN ACCOUNT WITH SUFFICIENT FUNDS TO PAY THE TRANSACTION**

27. As a matter of background and to understand the banks and credit unions' improper overdraft practices, the various balances affecting customer checking accounts must be understood. Either unknown to customers or confusing even if known by customers, there are three balances associated with a checking account: the "balance"; the "collected available balance"; and, the artificial "available balance."

28. Not all these balances are equal. There is one official and real balance. It is often referred to just as the "balance," or a credit union may call it the "actual balance," "current balance," or "ledger balance." Whatever it is called, it is the money actually in the account without bookkeeping adjustments for either upcoming authorized charges or holds the credit union may place on deposits already made and placed in the account. It is the official balance of the account. It is the balance provided to members in monthly statements, which are the official records of any account's activity. It is the balance used to determine interest on deposits and any minimum balance requirements. It is the balance used by Defendant to report its deposits to regulators, shareholders, and the public. It is the balance used in financial reports to shareholders and the balance used for internal financial reporting.

1 And it is the balance used by credit reporting agencies when they decide Defendant’s credit ratings.

2 29. The “collected balance” or “collected funds balance” is the “balance” less holds placed  
3 on certain deposits pursuant to the financial institution’s “Funds Availability Policy” (“FAP”).

4 30. The “available balance” is a completely different calculation from the “collected balance”  
5 or the real “balance.” It is an artificially created internal risk management calculation developed to  
6 determine which transactions to process and which to return in line with likely upcoming debit charges  
7 and deposits that did not clear the bank or credit union’s FAP.

8 31. Over time, as credit unions jumped on the overdraft train for revenue purposes, they  
9 decided to use the internal and artificial “available” balance not only for its legitimate use of managing  
10 pay or return decisions based on activities that they anticipated in the future, but also to assess overdraft  
11 and NSF fees on this artificial balance, rather than the real “balance.” Generally, the result is that 10-  
12 20% of overdraft fees are assessed on transactions where sufficient money was in the account and, thus,  
13 should not have been considered overdrawn.

14 32. This practice is not only unfair on its face but, more importantly for this case, Defendant  
15 did not contract with Plaintiff to authorize it to charge overdraft or NSF fees on transactions when the  
16 account had sufficient money to cover a transaction. In fact, Defendant’s agreement with members  
17 specifically stated that such fees would be assessed only when there was insufficient money in the  
18 account to cover the transaction (“balance”). Defendant did not contract with its members to use the  
19 artificial “available balance” for assessing overdraft and NSF fees.

20 **REPEAT FEES ON A SINGLE RETURNED TRANSACTION ALSO JUICES PROFITS**

21 33. Charging overdraft and NSF fees when there is money in an account to cover a  
22 transaction is just one way that banks and credit unions manipulate checking accounts to increase  
23 profits. They also contract and disclose to customers that they will only charge a single NSF fee when  
24 they opt to return a check or ACH due to a lack of funds in the account. For ACH charges, the rejection  
25 of the electronic requested charge is completely automated and results in no risk cost to the financial  
26 institution. There is also virtually no cost to administer the rejection as it is an automated computer  
27 function. However, the NSF fee is the same as if the transaction was paid into overdraft by the financial  
28 institution. What is even worse, financial institutions like Defendant not only charge one NSF fee for a

1 returned item (\$27 or \$33 here), they charge multiple fees for insufficient funds on the same item and  
2 attempt to justify the practice as caused by a merchant submitting the same item for payment multiple  
3 times.

4 34. Not only is this an unfair charge, it is not authorized by banks and credit unions'  
5 contracts with customers. Those contracts, like Defendant's, do not disclose or permit the charging of  
6 multiple NSF fees based on the same transaction with the same merchant. Nor do they permit charging  
7 an NSF fee followed by an overdraft fee on the same item if the item is paid into overdraft on a second  
8 presentment. Instead, the agreements identify an NSF fee as being singular on a per item basis.

9 **THE REGULATORY RESPONSE TO THE HARM CAUSED TO CUSTOMERS BY**  
10 **OVERDRAFT AND NSF FEES**

11 35. In response to financial institutions' use of overdraft and NSF fees as profit centers at the  
12 expense of vulnerable customers, the federal government stepped in to provide additional protections to  
13 customers with respect to overdraft policies. The regulations relevant to overdraft fees are found in the  
14 Truth in Savings Act ("TISA") directed specifically at credit unions, found at 12 C.F.R. § 707.1, *et seq.*  
15 and the Electronic Fund Transfer Act ("Regulation E"), 12 C.F.R. § 1005, *et seq.*

16 **TISA REQUIREMENTS**

17 36. The purpose of TISA is to allow credit unions and potential members to make informed  
18 decisions about accounts. (12 C.F.R. § 707.1(b).) Disclosures must be presented in a format allowing  
19 members to readily review the terms of the account and use consistent terminology to describe terms,  
20 which would include the overdraft terms in the account disclosure, fee agreement, and monthly  
21 statements. (12 C.F.R. § 707.3.)

22 37. When a credit union promotes the payment of overdrafts in advertisements, it must do so  
23 accurately, clearly, and conspicuously. (12 C.F.R. § 707.8; 12 C.F.R. § 707.11 (b).) In its account  
24 disclosure, a credit union must specifically authorize the fee it is charging, (12 C.F.R. § 707.4(b)(4)),  
25 and it must *list the conditions* under which the fee may be imposed. (*Id.* (emphasis added).) It must also  
26 list the various types of transactions that may be subject to an overdraft. (12 C.F.R. § 707, App. C.)

27 38. Defendant has violated TISA in regard to Plaintiff by, among other things, providing  
28 inaccurate disclosures and agreements and failing to clearly and conspicuously identify its true overdraft



1 practices.

2 **REGULATION E REQUIREMENTS**

3 39. In 2010, the Federal Reserve Board enacted regulations giving financial institutions the  
4 authority to charge overdraft fees on ATM and one-time debit card transactions **only** if the institution  
5 first obtained the customer’s affirmative consent. (12 C.F.R. § 1005.17 (Regulation E’s “Opt-in Rule”).)  
6 The special treatment provided for these transactions was supported by the CFPB study of actual  
7 practices that found: 1) ATM and debit card transactions are by far the most frequently-occurring  
8 transactions; 2) overdraft fee policies entail expensive fees at very little risk to the financial institutions;  
9 and 3) opted-in accounts have seven times as many overdrafts that result in fees as not opted-in  
10 accounts. (CFPB, *Data Point: Checking Account Overdraft*, (July 2014),  
11 [https://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf) [last viewed April  
12 22, 2020].)

13 40. The Federal Reserve’s regulations specified what banks and credit unions had to do in  
14 order to comply with Regulation E and charge overdraft fees on one-time debit card and ATM  
15 transactions. They must obtain affirmative consent from the customer to charge the fees, and the  
16 affirmative consent must be obtained strictly in compliance with the Regulation E requirements. First,  
17 the customer must be provided the Opt-in Agreement before agreeing to opt-in. To qualify as  
18 affirmative consent, the Opt-in Agreement must accurately describe the overdraft program and include  
19 specific features of the overdraft program, including the standard overdraft practice and the enhanced  
20 overdraft program for debit card and ATM transactions.

21 41. When the customer is provided with the Opt-in Agreement, it must be presented as a  
22 standalone document and consent must be obtained separately from other consents and  
23 acknowledgements. The customer’s consent cannot serve any purpose other than opting into the  
24 overdraft program. The consent cannot be given through a default pre-selected, checked box and the  
25 financial institution may not provide different terms for the account depending on whether or not the  
26 customer opted into the overdraft program. The customer’s affirmative consent must be documented  
27 either with the customer’s signature, or by mailing the customer a confirmation that he or she opted in  
28 pursuant to their request 1) after being provided the Opt-in Agreement, and 2) after being notified of the

1 option to opt-out at any time.

2 42. Financial institutions are not permitted to include any additional information in the Opt-in  
3 Agreement unless specifically authorized by Regulation E, and financial institutions must ensure these  
4 procedures are followed no matter the medium used to offer customers the option to opt-in, whether  
5 online, by telephone, or in person at a branch. Furthermore, financial institutions are also prevented from  
6 aggressively marketing the benefits of Regulation E overdraft coverage, promoting their overdraft  
7 coverage as short-term credit programs, or otherwise encouraging customers to opt into their programs.

8 43. If the financial institution fails to obtain proper, affirmative consent from the customer in  
9 a manner that meets all of Regulation E’s requirements, it may not charge any overdraft fees on ATM  
10 and one-time debit card transactions.

11 44. Here, Defendant committed numerous Regulation E violations including, but not limited  
12 to, using an Opt-in Agreement that misinformed members about both its standard overdraft policies and  
13 the Regulation E-specific overdraft policies by falsely stating that overdrafts were assessed only when  
14 there was not enough money in an account to cover a transaction and Defendant paid the transaction  
15 anyway (actual “balance”), when instead, the Defendant used the bookkeeping artificial “available  
16 balance” to assess overdraft fees; improperly marketing its overdraft program, and failing to properly  
17 opt-in members to the program via certain mediums.

18 **HOW SOME BANKS AND CREDIT UNIONS HAVE DISCLOSED THEIR USE OF**  
19 **AVAILABLE BALANCE TO ASSESS OVERDRAFT AND NSF FEES IN THE ACCOUNT**  
20 **AGREEMENT**

21 45. Financial institutions have the ability to contract and disclose their actual practice of  
22 assessing overdraft and NSF fees on the artificial “available balance” rather than the actual “balance.”  
23 Other banks and credit unions have done so.

24 46. For example, Affinity Federal Credit Union’s account agreement states, in bold, that “[a]  
25 temporary debit authorization hold affects your account balance.” The language beneath this header  
26 explains that “the amount of funds in your account available for other transactions will be reduced by  
27 the amount of the temporary hold.”

28

1           47.     Likewise, GTE Federal Credit Union’s account agreement contains the following  
2 language:

3                   YOUR CHECKING ACCOUNT BALANCE: . . . Any purchases, holds,  
4 fees, charges, or deposits made on your account that have not yet posted  
5 will not appear in your actual balance . . . . Your available balance is the  
6 amount of money in your account that is available to you to use without  
7 incurring an overdraft or NSF fee. The available balance takes into  
8 account things like holds placed on deposits and pending transactions  
9 (such as pending debit card purchases) that the Credit Union has  
10 authorized but have not yet posted to your account . . . .

8           48.     Logix Credit Union has also adopted an account agreement specifically stating debit  
9 holds can cause overdrafts:

10                   The available balance takes into account things like holds placed on  
11 deposits and payments that have been authorized but have not yet posted  
12 to your account (such as pending debit card purchases). For example,  
13 assume you have an actual balance of \$50 and an available balance of \$50.  
14 If you were to swipe your debit card at a restaurant to buy lunch for \$20,  
15 then that merchant could ask us to pre-authorize the payment. In that case,  
16 we will reduce your available balance by \$20. Your actual balance would  
17 still be \$50 because this transaction has not yet posted, but your available  
18 balance would be \$30 because you have committed to pay the restaurant  
19 \$20. When the restaurant submits the transaction to us (which could be a  
20 few days later), we will post the payment transaction to your account and  
21 your actual balance will be reduced by \$20.

17           49.     Baxter Credit Union has an account agreement stating that “[a]vailable balance is used to  
18 determine when there are insufficient funds to pay an item presented for payment from the account” and  
19 describes the available balance as:

20                   generally equal to the actual balance, less the amount of any holds placed  
21 on recent deposits, holds for other reasons, and holds for pending  
22 transactions (such as pending debit card purchases) that the Credit Union  
23 has authorized but that have not yet posted to your account.

23           50.     Southland Credit Union’s account agreement also states that for purposes of determining  
24 whether to assess an overdraft fee, it:

25                   takes into account factors such as holds placed on deposits and pending  
26 transactions (such as pending debit card purchases) that the Credit Union  
27 has authorized but that have not yet posted to your account.

27           51.     Similarly, State Employees Credit Union of Maryland discloses that for purposes of  
28 assessing an overdraft fee, it:

1 takes into account things such as holds placed on deposits and decreases in  
2 your Available Balance (such as pending debit card purchases) that you  
initiated and SECU has authorized but that have not yet posted to your  
account.

3 52. MidFlorida Credit Union has also put forward a separate Overdraft Agreement which  
4 states that it:

5 takes into account things like holds placed on deposits and pending  
6 transactions (such as pending debit card purchases) that the Credit Union  
7 has authorized but that have not yet posted to your account.

8 53. Point Loma Credit Union explains in its account agreement that for purposes of assessing  
9 overdraft fees:

10 [a]ny purchases, holds, fees, other charges, or deposits made on my  
account that have not yet posted will not appear in my actual balance.

11 54. San Diego County Credit Union’s account agreement states that in determining whether  
12 an overdraft fee will be assessed against a member, “[w]e will consider all transactions that have posted  
13 to your account, any holds that may be in place on deposits you have made, and pending transactions  
14 (such as pending debit card purchases) that the Credit Union has authorized but that have not yet posted  
15 to your account.” It also contains a section on authorization holds, titled, “Authorization Holds for  
16 Debit Card Transaction,” which states:

17 [w]e generally place a temporary hold against some or all of the funds in  
18 the account linked to your debit card if and when an authorization request  
19 is obtained, [and that] [t]he amount of the authorization hold will be  
subtracted from your available balance.”

20 **HOW SOME BANKS AND CREDIT UNIONS HAVE DISCLOSED THAT A SINGLE NSF**  
21 **ITEM CAN RESULT IN MULTIPLE OVERDRAFT FEES**

22 55. Similarly, banks and credit unions have been able to properly contract and disclose the  
23 practice of charging multiple fees for the representation of the same item. For example, Air Academy  
24 Federal Credit Union clearly states: an NSF fee is “\$32.00 per presentment.”

25 56. Central Pacific Bank contracts unambiguously:

26 Items and transactions (such as, for example, checks and electronic  
27 transactions/payments) returned unpaid due to insufficient/non-sufficient  
28 (“NSF”) funds in your account, may be resubmitted one or more times for  
payment, and a \$32 fee will be imposed on you each time an item and

transaction resubmitted for payment is returned due to insufficient/nonsufficient funds.

57. Delta Community Credit Union states its NSF fee is “\$35 per presentment.” Further, in its Account Agreement, Delta unambiguously states as follows:

The Credit Union reserves the right to charge you an overdraft/insufficient funds fee if you write a check or initiate an electronic transaction that, if posted, would overdraw your Checking Account. Note that you may be charged an NSF fee each time a check or ACH is presented to us, even if it was previously submitted and rejected.

58. Glendale Federal Credit Union lists its NSF fee as “\$30 per presentment.”

59. First Financial Bank contracts unambiguously:

Merchants or payees may present an item multiple times for payment if the initial or subsequent presentment is rejected due to insufficient funds or other reason (representation). Each presentment is considered an item and will be charged accordingly.”

60. First Northern Credit Union lists its NSF fee as “\$22.00 per each presentment and any subsequent presentment(s).” Further, in its Account Agreement, First Northern unambiguously states as follows:

You further agree that we may charge a NSF fee each time an item is presented for payment even if the same item is presented for payment multiple times. For example, if you wrote a check to a merchant who submitted the payment to us and we returned the item (resulting in a NSF fee), the merchant may re-present the check for payment again. If the second and any subsequent presentments are returned unpaid, we may charge a NSF fee for each time we return the item. You understand this means you could be charged multiple NSF fees for one check that you wrote as that check could be presented and returned more than once. Similarly, if you authorize a merchant (or other individual or entity) to electronically debit your account, such as an ACH debit, you understand there could be multiple submissions of the electronic debit request which could result in multiple NSF fees.

61. Liberty Financial states its NSF fee is “27.00 per presentment.”

62. Los Angeles Federal Credit Union lists its NSF fee as “\$29 per presentment.”

63. Members First Credit Union states:

We reserve the right to charge an 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 representation . . . .

1 64. Meriwest Credit Union lists its fee as “\$35.00/item per presentment.”

2 65. Partners 1<sup>st</sup> Federal Credit Union states:

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

9 66. Regions Bank states:

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

18 67. Tyndall Federal Credit Union lists its NSF fee as “\$28.00 per presentment (maximum 5  
19 per day).”

20 **HOW SOME BANKS AND CREDIT UNIONS HAVE DISCLOSED THEIR USE OF**  
21 **AVAILABLE BALANCE RATHER THAN THE ACTUAL BALANCE TO ASSESS**  
22 **OVERDRAFT FEES IN THE REGULATION E OPT-IN AGREEMENTS**

23 68. Numerous banks and credit unions that utilize the artificial “available balance” rather  
24 than the money in the account (“balance”) to assess overdraft fees contract and affirmatively disclose  
25 this practice in their Opt-in Agreements. As just one example, TD Bank’s Opt-in Agreement states as  
26 follows: “An overdraft occurs when your available balance is not sufficient to cover a transaction, but  
27 we pay it anyway. Your available balance is reduced by any ‘pending’ debit card transactions  
28 (purchases and ATM withdrawals), and includes any deposited funds that have been made available  
pursuant to our Funds Availability Policy.”

69. As another example, Credit Union 1, a credit union with over 87,000 members, states in  
its Opt-in Agreement, “[a]n overdraft occurs when you do not have enough available money (i.e., less  
any holds) in your checking account to cover a transaction, but we pay it anyway.”

70. Similarly, Communication Federal Credit Union’s Opt-in Agreement states, “[a]n  
overdraft occurs when you do not have enough money in your account to cover a transaction, or the

1 transaction exceeds your available balance, but we pay it anyway. ‘Available Balance’ is your account  
2 balance less any holds placed on your account.”

3 71. Further, the Opt-in Agreement for San Diego County Credit Union, recognizing that  
4 “available balance” is at best an ambiguous term, explains on the same page, as follows: “In determining  
5 the available balance in your account, we will consider all transactions that have posted to your account,  
6 any holds that may be in place on deposits you have made and pending transactions (such as pending  
7 debit card purchases) that [have been] authorized but that have not yet posted to your account.”

8 72. The Opt-in Agreement for EECU explains for five-pages on the same form requiring  
9 signature, pursuant to Regulation E for overdraft coverage, including on page two, that “Your available  
10 balance takes into account holds that have been placed on deposits and pending transactions (such as  
11 pending debit card transactions) that the credit union has authorized but that have not yet posted to your  
12 account. **In other words, the available balance is [your] actual balance less any pending ATM  
13 withdrawals, debit card purchases, ACH transaction, checks being processed or other pending  
14 withdrawals from [your] account and less any deposits that are not yet available due to the credit  
15 union’s funds availability policy.**” (Emphasis in original.)

16 73. There are countless other examples of financial institutions accurately explaining the  
17 basis for imposing overdraft fees in their Opt-in Agreements. Financial institutions can accurately  
18 describe their overdraft programs in their Opt-in Agreements and Regulation E does not preclude them  
19 from doing so. When they fail to accurately describe, mislead, or misrepresent their overdraft policies in  
20 their Opt-in Agreements, financial institutions breach those contracts, as well as violate Regulation E.  
21 Further, financial institutions that fail to comply with other requirements of Regulation E as laid out in  
22 Paragraphs 39-44, *supra*, have not obtained the affirmative consent needed to assess any overdraft fees  
23 as governed by Regulation E, not just those assessed on a positive balance.

24 74. The importance of transparent checking account fee disclosures for both comparison  
25 shopping prior to opening an account, and avoiding overdraft and other fees after opening an account,  
26 are foremost:

27 Bank accounts are an essential financial product, used by 9 in 10  
28 American households, and need to be safe and transparent. Account  
agreements and fee schedules provide customers with account costs,  
terms, and conditions. Among the largest U.S. banks, however, the

1 median length of checking account disclosure documents is 40 pages, and  
2 the information is presented in varied formats with inconsistent wording,  
3 making it difficult for consumers to easily find the information they need  
4 to comparison shop, avoid overdraft and other fees, and manage their  
5 money.

6 (The Pew Charitable Trusts, *The Benefits of Uniform Checking Account Disclosures*, at p. 1 (Nov.  
7 2015), (internal footnotes omitted), [https://www.pewtrusts.org/-](https://www.pewtrusts.org/-/media/assets/2015/11/consumerbanking_accountdisclosurebrief.pdf)  
8 [/media/assets/2015/11/consumerbanking\\_accountdisclosurebrief.pdf](https://www.pewtrusts.org/-/media/assets/2015/11/consumerbanking_accountdisclosurebrief.pdf) [last viewed April 22, 2020].)  
9 Accordingly, courts have come down heavy on banks and credit unions that have failed to accurately  
10 describe and misrepresent their overdraft and NSF fee practices.

11 **FACTUAL ALLEGATIONS AGAINST DEFENDANT**

12 75. At all relevant times, Defendant has had an overdraft and NSF fee program in place  
13 which, *inter alia*, is: 1) contrary to the express and implied terms of its contracts with members;  
14 2) contrary to Defendant’s representations about its overdraft and NSF fee program to its members; and  
15 3) contrary to its members’ expectations regarding the assessment of such fees.

16 76. Defendant entered into a uniform written contract with Plaintiff and the other Class  
17 Members titled “Deposit Account & Services Agreement” (hereinafter “Account Agreement”). (The  
18 Account Agreement attached hereto as Ex. 1, dated January 1, 2014, is believed to be one of the  
19 operative agreements during the class period and representative of the account agreements in the class  
20 period regarding overdraft policies.) The Account Agreement promised that Defendant would not  
21 charge overdraft or NSF fees for any type of transaction when there was enough money in the account to  
22 pay for the transaction. It stated in a section called “Overdraft and Courtesy Clearing:” “If a check,  
23 preauthorized withdrawal, ACH, ATM or debit/check card transaction drawn on your account attempts  
24 to clear and there are not sufficient funds in the account to pay the item . . . ,” Overdraft Protection or  
25 Courtesy Pay may apply. Specifically, under “Courtesy Pay Overdraft Services,” it stated: “USECU  
26 offers Courtesy Pay Overdraft Services which allow the account to go into a negative status to pay items  
27 which would otherwise be returned unpaid. A fee applies for each item.” In the Account Agreement,  
28 Defendant described an overdraft as occurring when an item would “overdraw the account balance,” or  
when the account goes “into negative status” or there is a “negative balance,” and that an account would  
remain overdrawn “until the negative balance is paid” or the account is brought “positive.”



1           77.     The language “overdraw the account balance,” “account into negative status,” “not  
2 sufficient funds,” and “negative balance” refer to the “balance” or all of the money in the account. In  
3 other words, the Account Agreement did not authorize Defendant to assess an overdraft or NSF fee—  
4 because an overdraft or NSF situation had not occurred—unless there was a negative account balance or  
5 a transaction exceeded the account’s actual balance. Nowhere did the Account Agreement state that to  
6 determine whether there was money in an account to cover a transaction, Defendant would not look to  
7 the actual amount of money in the account but, instead, to the money in the account only *after deducting*  
8 *holds placed on deposits and after also deducting holds placed on pending debit card transactions.*  
9 Despite the Account Agreement’s express language, Defendant charged overdraft and NSF fees not  
10 based on the money in the account, but instead based on the money in the account after deducting for  
11 deposit holds and pending debit transactions (the artificial “available balance”).

12           78.     The Account Agreement, at most, stated in a separate section pertaining to deposits rather  
13 than overdraft and NSF fees, that temporary holds might be placed on certain deposited items before  
14 they could be withdrawn (the “collected balance”). But this section did not state that such holds could  
15 result in fees, and it certainly did not state the holds placed on funds earmarked for pending debit card  
16 transactions (the artificial “available balance”) could result in an overdraft or NSF fee.

17           79.     Here, Defendant charges expensive overdraft and NSF fees when the artificial “available  
18 balance” is negative but the account contains as much or more money than has been requested.  
19 Defendant’s practice of charging overdraft and NSF fees, even when there is enough money in the  
20 account to cover a transaction presented for payment, is inconsistent with the Account Agreement. And  
21 Defendant’s practices are inconsistent with its representations to its members, including where  
22 Defendant sells its members on the fact that it is a “not-for-profit” cooperative. This is despite the fact  
23 that Defendant charges a \$27 or \$33 fee that is in no way related to an overdraft.

24           80.     Defendant also has an improper practice of charging multiple fees for the same electronic  
25 transaction or item. Defendant charges a \$27 or \$33 fee when an electronic transaction or item is first  
26 processed for payment and Defendant determines that there is not enough money in the account to cover  
27 the transaction. Defendant then charges an *additional* NSF or overdraft fee if the same item is presented  
28 for processing again by the payee.

1 81. Defendant’s practice of charging additional NSF or overdraft fees for the representment  
2 of the same item violates its Account Agreement. The Account Agreement states under Courtesy Pay,  
3 subsection “Returned Items”: “Items may be returned unpaid. A fee may apply.” In other words, the  
4 Account Agreement drafted by Defendant states, in the singular, “ a fee” may apply, not plural  
5 “multiple fees” will apply. And the term “item” means a single electronic transaction, and a  
6 “representment” or “retry” of an “item” does not change it into a new or different item. It is still the  
7 same “item” being presented by the same merchant in the same dollar amount; not a new “item.” An  
8 electronic item reprocessed after an initial return for insufficient funds, especially through no action by  
9 the customer, cannot and does not fairly become a new, unique additional “item” for fee assessment  
10 purposes.

11 82. Moreover, Defendant’s Fee Schedule during the operative class periods also refers to an  
12 NSF fee as “27.00/ea” for “1-5 items (within a 12-month period)” or “\$33.00/ea” for “6+ items (within a  
13 12-month period).” It does not state the Defendant can assess multiple fees per item each time, or for  
14 the retry or representment of an item. (See Fee Schedule, dated February 1, 2014, Ex. 2.)

15 Overdraft/Non-sufficient Funds (NSF):

16 Applies to checks, Bill Pay, ACH, ATM/POS and other electronic  
debits that are paid or returned.

17 • Overdraft paid by Courtesy Pay:

(waived if resulting balance is less than \$10 negative)

- 18 ▶ 1-5 items (within a 12-month period) ..... \$27.00/ea
- 19 ▶ 6+ items (within a 12-month period) .....\$33.00/ea

20 • Overdraft paid by transfer:

(from savings, checking, line of credit or credit card): ..... \$10.00/ea

21 • Non-sufficient Funds (NSF):

22 Applies to checks, Bill Pay, ACH, ATM/POS and other electronic  
debits that are paid or returned.

- 23 ▶ 1-5 items (within a 12-month period) ..... \$27.00/ea
- ▶ 6+ items (within a 12-month period) .....\$33.00/ea

24 83. Defendant’s standardized Account Agreement and Fee Schedule did not disclose this  
25 practice and misrepresented to customers that Defendant would only charge a single fee for a returned  
26 item. Further, because Defendant charged NSF fees improperly, and because Defendant’s improper  
27 deduction of the additional, improper fees from a member’s account further decreased the member’s  
28 “balance” or “available balance,” it likely generated even more NSF fees or overdraft fees to the

1 account.

2 84. On October 1, 2019, Defendant added language to its Fee Schedule disclosing its  
3 assessment of multiple fees on a single item. However, Defendant did not provide its revised Fee  
4 Schedule to members. The language was not provided to members until it was added to the Account  
5 Agreement on July 1, 2020.

6 85. Courts in various jurisdictions have recognized that when banks and credit unions charge  
7 multiple NSF fees on the same item while failing to clearly disclose such practice, it gives rise to claims  
8 and causes of action on a class wide basis. (See e.g., *Morris v. Bank of America* (W.D.N.C., March 29,  
9 2019) No. 3:18-cv-00157-RJC-DSC, 2019 WL 1274928 (Order denying motion to dismiss allegations  
10 regarding improper repeat NSF claims); *Tannehill v. Simmons Bank* (E.D. Ark., Oct. 21, 2019) No.  
11 3:19-cv-140-DPM, Docket No. 23 (Order denying motion to dismiss repeat NSF claims); *Garcia v.*  
12 *UMB Bank NA* (Jackson Co., Missouri, Circuit Court, Oct. 18, 2019) No. 1916-CV01874 (Order  
13 denying motion to dismiss repeat NSF claims); *Tisdale v. Wilson Bank and Trust* (Davidson Co. Tenn.,  
14 Chancery Court, Oct. 17, 2019) No. 19-400-BC (Order denying motion to dismiss repeat NSF claims);  
15 *Noe v. City National Bank of West Virginia* (S.D.W.V. Feb. 19, 2020) Civil Action No. 3:19-0690  
16 (Order denying motion to dismiss repeat NSF claims); *Ingram v. Teachers Credit Union* (Indiana  
17 Commercial Court, Marion County Superior Court) Cause No. 49D01-1908-PL-035431 (Order denying  
18 motion to dismiss repeat NSF claims); *Perks, et al. v. TD Bank, N.A.* (S.D.N.Y. Mar. 17, 2020) Civil  
19 Action No. 18-CV-11176 (Order denying motion to dismiss breach of contract claim for repeat NSF  
20 fees); and *Coleman, et al. v. Alaska USA Federal Credit Union*, (D. Alaska Apr. 14, 2020) Civil Action  
21 No. 3:19-cv-0229-HRH (Order denying motion to dismiss plaintiffs’ breach of contract and good faith  
22 and fair dealing claims for repeat NSF fees.)

23 86. In addition to the Account Agreement, Defendant entered into an identical Regulation E  
24 Opt-in Agreement with Plaintiff and all putative Class Members who wanted to join Defendant’s  
25 Regulation E overdraft program. The Opt-in Agreement defined an overdraft as occurring when “you  
26 do not have enough money in your account to cover a transaction, but [Defendant] pay[s] it anyway.”  
27 [Ex. 3 – USE Opt-in Agreement.]

1           87. This definition of overdraft would disclose and be interpreted by reasonable members to  
2 mean as follows: (1) “do not have the money in your checking account” means the Actual  
3 balance/Current Balance/Ledger Balance in the account, and (2) “we will pay the item” means that  
4 Defendant has advanced or loaned the member its own money to pay the transaction. However, as  
5 Defendant determines overdraft fees based on the “available balance” that factors in credit and debit  
6 holds, approximately 10-20% of overdraft fees are assessed on transactions when there was money in  
7 the account to cover the transaction at the time it was posted and paid, and Defendant did not advance or  
8 loan the member any money to pay the transaction.

9           88. The Opt-in Agreement did not accurately and in a clear and easily understandable way  
10 describe what constitutes an overdraft and under what circumstances the member would be assessed an  
11 overdraft fee, and as such the Opt-in Agreement does not comply with Regulation E’s requirements.

12           89. Several of Defendant’s other practices also violate Regulation E. Regulation E  
13 discourages financial institutions from aggressively marketing their overdraft programs, or for making  
14 them appear as credit lines. But in total disregard for Regulation E, Defendant’s training materials for  
15 member-facing employees actively encourage employees to promote Defendant’s overdraft program.  
16 These materials focus solely on the benefits of the overdraft coverage but not the costs, including the  
17 exorbitant fees. Defendant also improperly markets its overdraft program as a line of credit. Defendant  
18 discloses its overdraft coverage limit to members (which ranges from \$250-\$2,000 depending on  
19 account type), which encourages members to utilize the coverage like a credit line. Notably, the Office  
20 of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System  
21 (Board); Federal Deposit Insurance Corporation (FDIC); and National Credit Union Administration  
22 (NCUA) issued a Joint Guidance cautioning financial institutions from “promoting overdrafts in a  
23 manner that leads consumers to believe that it is a line of credit by informing consumers that their  
24 account includes an overdraft protection limit of a specified dollar amount.” *See* Joint Guidance on  
25 Overdraft Protection Programs, 70 FR 9127-01. If a limit is included, the Joint Guidance counseled that  
26 disclosures should also “clearly disclos[e] the terms and conditions of the service, including how fees  
27 reduce overdraft protection dollar limits, and how the service differs from a line of credit.” *Id.* Further,  
28 Defendant’s overdraft program allows members 14 days to repay, making it appear as a short-term credit

1 facility rather than a fee-based courtesy. In addition, before a member qualifies for courtesy pay, they  
2 must have a certain score assigned by the Chex System, which takes into account at least certain aspects  
3 of traditional credit scoring, further increasing the similarity to a credit line.

4 90. Regulation E also requires financial institutions to follow certain procedures when they  
5 opt-in customers to Regulation E overdraft coverage for one-time debit card and ATM transactions. For  
6 instance, members must be provided the Opt-in Agreement prior to a customer opting-in. However, for  
7 at least those members of Defendant who opt into Regulation E coverage by telephone,  
8 Defendant does not read or otherwise provide them the language in the Opt-in Agreement before they  
9 affirmatively consent to be included in the program. And when members opt-in online, there is no  
10 requirement that they have to open the Opt-in Agreement and read its provisions before opting-in. Both  
11 of these violate Regulation E's requirement that customers be provided the Opt-in Agreement prior to  
12 opt-in. Moreover, on information and belief, Defendant does not routinely provide members with a  
13 copy of their signed Opt-in Agreements or confirmation letters, as required by Regulation E.<sup>1</sup> Discovery  
14 is ongoing and further Regulation E violations may be discovered and included in Plaintiff's claim  
15 against Defendant for violation of Regulation E.

16 91. Plaintiff and the Class Members have performed all conditions, covenants, and promises  
17 required by each of them in accordance with the terms and conditions of the contracts.

18 92. Meanwhile, Plaintiff and the Class Members could not reasonably have anticipated the  
19 harm resulting from Defendant's practice throughout the class period. The money in the account,  
20 without deductions for holds on pending transactions or on deposits, as already stated, is known as the  
21 "balance," and is considered the official balance of the account. It is the balance provided to members  
22 in monthly statements, which is the official record of activity in the account. It is the balance Defendant  
23 uses to determine interest on deposits and any minimum balance requirements; the balance Defendant  
24 uses to report its deposits to regulators, shareholders, and the public; the balance Defendant provides to  
25 regulators in call reports and reserve reports; the balance Defendant uses in financial reports to  
26 shareholders; and the balance Defendant uses for internal financial reporting. When Defendant refers to

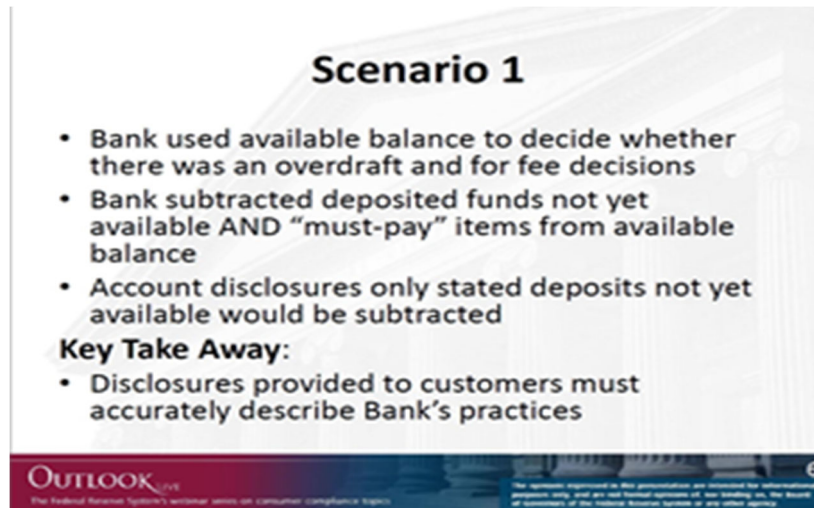
27 <sup>1</sup> Defendant has not provided Plaintiff with a copy of his signed Opt-in Agreement or the  
28 confirmation letter that purportedly would have been sent to him, thus raising concern that this may not  
have been a routine practice in further violation of Regulation E.

1 an account in “negative status” or “account balance” or “negative balance” it is reasonable to interpret  
2 and understand these terms as referring to the account’s official balance—the balance without deducting  
3 for pending debit card transactions or holds on deposits. Further, the Account Agreement and Fee  
4 Schedule specifically stated that only a singular fee would be charged for a returned item. Moreover,  
5 the Opt-in Agreement fails to accurately describe Defendant’s overdraft policies which are based on use  
6 of the “available balance” when the Opt-in Agreement describes use of the actual balance for overdraft  
7 fee assessments. Thus, by assessing overdraft fees on one-time debit card and ATM transactions using  
8 the available balance, Defendant breached the terms of its Opt-in Agreement. Further, by using an  
9 inaccurate Opt-in Agreement, failing to follow proper opt-in procedures, and by aggressively marketing  
10 the benefits of the overdraft program (including promoting it like a credit line), Defendant violated  
11 Regulation E and was not entitled to assess any overdraft fees on one-time debit card and ATM  
12 transactions, not just those assessed on a positive balance

13 93. In its study, the CFPB concluded that when a financial institution creates the “overall  
14 impression” that it will determine overdraft transactions and fees based on the balance in the account  
15 rather than an artificially created balance deducting pending transactions, then the “disclosures were  
16 misleading or likely to mislead, and because such misimpressions could be material to a reasonable  
17 consumer’s decision-making and actions, examiners found the practice to be deceptive.” The CFPB  
18 further found that “consumers could not reasonably avoid the fees (given the misimpressions created by  
19 the disclosures).” (CFPB, *Supervisory Highlights*, at p. 9 (Winter 2015),  
20 [https://files.consumerfinance.gov/f/201503\\_cfpb\\_supervisory-highlights-winter-2015.pdf](https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf) [last viewed  
21 April 22, 2020].)

22 94. Yet contrary to the Account Agreement and Opt-in Agreement, Defendant’s policy and  
23 practice during the class period was to ignore whether there was money in the account or a negative  
24 balance for purposes of assessing overdraft or NSF fees. Instead, Defendant assessed overdraft and NSF  
25 fees based on the artificial “available balance,” rather than using the actual money in the account as the  
26 Account Agreement required.

1 95. In a recent Federal Interagency Compliance Discussion regarding improper overdraft  
2 fees, the CFPB condemned exactly the conduct Plaintiff challenges in this lawsuit, and called what  
3 Defendant is doing here during the relevant class period an “Unfair Practice”:



4  
5  
6  
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11  
12 (Excerpts from Interagency Overdraft Services Consumer Compliance Discussion Presentation Slides,  
13 dated Nov. 9, 2016, [https://www.consumercomplianceoutlook.org/outlook-live/2016/interagency-  
14 overdraft-services-consumer-compliance-discussion/](https://www.consumercomplianceoutlook.org/outlook-live/2016/interagency-overdraft-services-consumer-compliance-discussion/) [last viewed April 22, 2020].)

15 96. At the time of the overdrafts and NSF fees that predated the applicable statute of  
16 limitations, Plaintiff did not and could not have discovered he had been injured or known the actual  
17 cause of his injuries, even exercising reasonable diligence. While Plaintiff understood that he was  
18 assessed fees, he did not understand the cause of those fees within the statute of limitations period  
19 because Defendant hid its actual practice from its members by describing a different practice in its  
20 contracts and other materials disseminated to its members. This not only reasonably delayed discovery,  
21 but Defendant’s affirmative representations and actions also equitably toll any statute of limitations, and  
22 additionally equitably estop Defendant.

23 97. Therefore, Plaintiff, on behalf of himself and all others similarly situated, seeks relief as  
24 set forth below.

25 **PLAINTIFF HAS BEEN DAMAGED AND HAS STANDING TO BRING THIS LAWSUIT**

26 98. Plaintiff and the Class Members were harmed by Defendant’s policy and practice of  
27 charging overdraft or NSF fees when there was money in the account to cover the transaction and other  
28 illegal overdraft and NSF practices as set forth here and established in discovery. By doing so,

1 Defendant breached its contracts with Plaintiff and the absent Class Members and/or violated  
2 regulations and statutes. It will be necessary to obtain Defendant's records to determine each instance of  
3 such a wrongful overdraft or NSF fee. As just a few examples, on or about November 30, 2018,  
4 Plaintiff had a positive balance of \$1,093.46 in his account. He made a payment in the amount of  
5 \$685.63, which left him with a positive balance of \$407.83. Yet, Defendant charged Plaintiff a \$27.00  
6 "Courtesy Pay Overdraft Fee" anyway. On or about December 4, 2018, Plaintiff had a positive balance  
7 of \$200.93 in his account. He made a payment in the amount of \$187.68, which left him with a positive  
8 balance of \$13.25. Yet, Defendant charged Plaintiff a \$27.00 "Courtesy Pay Overdraft Fee." Likewise,  
9 on December 31, 2018, Plaintiff had a positive balance of \$159.97 in his account. He made a payment  
10 in the amount of \$145.95, which left him with a positive balance of \$14.02, but he was charged a \$27.00  
11 "Courtesy Pay Overdraft Fee" anyway. Additionally, on May 25, 2020, Plaintiff made a card purchase  
12 for \$160.00, leaving him with a positive balance of \$40.00, but Defendant charged him a \$27.00  
13 "Courtesy Pay Overdraft Fee." And on August 26, 2019, Plaintiff made a POS card purchase at 7-  
14 Eleven for \$27.01 leaving him with a positive balance of \$543.67. Yet, Defendant charged him a \$27.00  
15 "Courtesy Pay Overdraft Fee" anyway. Plaintiff has a reasonable belief that discovery and a complete  
16 review of Defendant's records, including Plaintiff's monthly statements and transaction history, will  
17 show multiple instances in which Defendant improperly charged Plaintiff overdraft and NSF fees for  
18 transactions despite the fact that he had enough money in his account to cover the transactions.

19 99. In addition, Plaintiff and the Class Members were harmed by Defendant's policy and  
20 practice of charging an NSF fee more than once for the same "item." By doing so, Defendant breached  
21 its contracts with Plaintiff and the absent Class Members. It will be necessary to obtain Defendant's  
22 records to determine each instance of such a wrongful NSF fee; however, Plaintiff has already  
23 uncovered at least one example. Specifically, on August 9, 2019, Defendant charged Plaintiff a \$27.00  
24 NSF fee for a transaction item with BARCLAYCARD US. This fee is not in dispute as it was a \$27.00  
25 NSF fee for that item. However, what was not authorized by the Account Agreement was Defendant  
26 charging Plaintiff another \$27.00 in NSF fees on August 13 when BARCLAYCARD US resubmitted  
27 the same item listed as "RETRY" for payment and Defendant again returned it unpaid. In charging a  
28 second \$27.00 fee for the same item, Defendant increased the fee for the returned item from \$27.00 to



1 \$54.00. That was not authorized and is in direct conflict with the Account Agreement and Fee Schedule  
2 that identifies a \$27 fee for a NSF returned item—not a \$54.00 fee.

3 100. Moreover, Defendant’s assessment and unilateral taking of improper overdraft and NSF  
4 fees further reduced the balance and amount of funds in members’ accounts, resulting in and  
5 aggressively causing subsequent, otherwise non-overdraft or non-NSF transactions to be improperly  
6 treated as transactions for which Defendant assessed further overdraft or NSF fees. This practice was  
7 deemed to be deceptive and substantially harmful to customers by the CFPB, which concluded in its  
8 studies:

9 Examiners also observed at one or more institutions the following  
10 sequence of events after the institutions switched balance-calculation  
11 methods: a financial institution authorized an electronic transaction, which  
12 reduced a customer’s available balance but did not result in an overdraft at  
13 the time of authorization; settlement of a subsequent unrelated transaction  
14 that further lowered the customer’s available balance and pushed the  
15 account into overdraft status; and when the original electronic transaction  
16 was later presented for settlement, because of the intervening transaction  
17 and overdraft fee, the electronic transaction also posted as an overdraft and  
18 an additional overdraft fee was charged. Because such fees caused harm  
19 to consumers, one or more supervised entities were found to have acted  
20 unfairly when they charged fees in the manner described above.  
21 Consumers likely had no reason to anticipate this practice, which was not  
22 appropriately disclosed. They therefore could not reasonably avoid  
23 incurring the overdraft fees charged. Consistent with the deception  
24 findings summarized above, examiners found that the failure to properly  
25 disclose the practice of charging overdraft fees in these circumstances was  
26 deceptive.

27 (*Infra*, Supervisory Highlights, Winter 2015, at pp. 8-9.) A complete evaluation of Defendant’s records  
28 is necessary to determine the full extent of Plaintiff’s harm from this practice.

29 **CLASS ACTION ALLEGATIONS**

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

32 102. Plaintiff brings this case, and each of his respective causes of action, as a class action.

33 103. The “Class” is composed of one of the following:

34 **The Sufficient Funds Class:**

35 **All members of Defendant who have or have had accounts with**  
36 **Defendant who incurred an overdraft fee(s) or NSF fee(s) when the**  
37 **balance in the checking account was sufficient to cover the**  
38

1 transaction(s) during the period beginning four years preceding the  
2 filing of this Complaint and ending on the date the class is certified.

3 **The Repeat NSF Class:**

4 All members of Defendant who have or have had accounts with  
5 Defendant who incurred more than one NSF fee or an NSF fee  
6 followed by an overdraft fee for the same item during the period  
7 beginning four years preceding the filing of this Complaint and  
8 ending on June 30, 2020.

9 **The UCL Class:**

10 All members of Defendant who have been assessed overdraft and/or  
11 NSF fees that were in violation of the Account Agreement, Opt-in  
12 Agreement, TISA, and/or Regulation E, pursuant to California Unfair  
13 Competition Law, Bus. & Prof. Code, §§ 17200, *et seq.*, during the  
14 class period beginning four years preceding the filing of this  
15 Complaint and ending on the date the Class is certified. Following  
16 discovery, this definition will be amended as appropriate.

17 **The Regulation E Class:**

18 All members of Defendant who have or have had accounts with  
19 Defendant who incurred an overdraft fee(s) for ATM or non-  
20 recurring debit card transaction(s) during the period beginning June  
21 2, 2019, and ending on the date the Class is certified.

22 104. Excluded from the Classes are: 1) any entity in which Defendant has a controlling  
23 interest; 2) officers or directors of Defendant; 3) this Court and any of its employees assigned to work on  
24 the case; and 4) all employees of the law firms representing Plaintiff and the Class Members.

25 105. This action has been brought and may be properly maintained on behalf of each member  
26 of the Class pursuant to Code of Civil Procedure section 382, *et seq.*

27 106. **Numerosity** – The members of the Classes are so numerous that joinder of all members  
28 would be impracticable. While the exact number of Class Members is presently unknown to Plaintiff,  
and can only be determined through appropriate discovery, Plaintiff believes based on the percentage of  
customers that are harmed by these practices with credit unions with similar practices, that the Classes  
are likely to include thousands of members.

107. Upon information and belief, Defendant has databases, and/or other documentation, of its  
members’ transactions and account enrollment. These databases and/or documents can be analyzed by  
an expert to ascertain which of Defendant’s members has been harmed by its practices and thus qualify  
as a Class Member. Further, the Class(es) definitions identify groups of unnamed plaintiffs by

1 describing a set of common characteristics sufficient to allow a member of that group to identify himself  
2 or herself as having a right to recover. Other than by direct notice through mail or email, alternative  
3 proper and sufficient notice of this action may be provided to the Class Members through notice  
4 published in newspapers or other publications.

5 108. **Commonality** – This action involves common questions of law and fact. The questions  
6 of law and fact common to both Plaintiff and the Class Members include, but are not limited to, the  
7 following:

- 8 • whether, pursuant to the Account Agreement, Defendant promised to Plaintiff and the  
9 Class Members that it would not charge an overdraft or NSF fee when there was enough  
10 money in the account to cover the transaction;
- 11 • whether Defendant breached the Account Agreement by assessing overdraft or NSF fees  
12 for transactions when members’ accounts contained enough money to cover the  
13 transactions;
- 14 • whether, pursuant to the Account Agreement and/or Fee Schedule, Defendant contracted  
15 that it would only charge a single fee for an NSF item rather than charge repeat fees for  
16 the same item;
- 17 • whether Defendant breached the Account Agreement and/or Fee Schedule by assessing  
18 repeat fees on the same item;
- 19 • whether Defendant breached the Account Agreement, Opt-in Agreement, TISA or  
20 Regulation E when it assessed overdraft and NSF fees on its members;
- 21 • whether the language in the Account Agreement and/or Fee Schedule is ambiguous;
- 22 • whether Defendant is liable for breach of the covenant of good faith and fair dealing,  
23 unjust enrichment and money had and received; and
- 24 • whether Defendant’s conduct violated state consumer protection laws.

25 109. **Typicality** – Plaintiff’s claims are typical of all Class Members. The evidence and the  
26 legal theories regarding Defendant’s alleged wrongful conduct committed against Plaintiff and all of the  
27 Class Members are substantially the same because all of the relevant agreements between Defendant and  
28 its members were identical as to all relevant terms, and also because, *inter alia*, the challenged practices

1 of charging members for overdraft fees or NSF fees when there were sufficient funds in the accounts to  
2 pay for the transactions at issue and charging members multiple fees for the same item are uniform for  
3 Plaintiff and all Class Members. Accordingly, in pursuing his own self-interest in litigating his claims,  
4 Plaintiff will also serve the interests of the other Class Members.

5 110. **Adequacy** – Plaintiff will fairly and adequately protect the interests of the Class  
6 Members. Plaintiff has retained competent counsel experienced in class action litigation to ensure such  
7 protection. There are no material conflicts between the claims of the representative Plaintiff and the  
8 members of the Classes that would make class certification inappropriate. Plaintiff and his counsel  
9 intend to prosecute this action vigorously.

10 111. **Predominance and Superiority** – The matter is properly maintained as a class action  
11 because the common questions of law or fact identified herein and to be identified through discovery  
12 predominate over questions that may affect only individual Class Members. Further, the class action is  
13 superior to all other available methods for the fair and efficient adjudication of this matter. Because the  
14 injuries suffered by the individual Class Members are relatively small, the expense and burden of  
15 individual litigation would make it virtually impossible for Plaintiff and Class Members to individually  
16 seek redress for Defendant’s wrongful conduct. Even if any individual person or group(s) of Class  
17 Members could afford individual litigation, it would be unduly burdensome to the courts in which the  
18 individual litigation would proceed. The class action device is preferable to individual litigation because  
19 it provides the benefits of unitary adjudication, economies of scale, and comprehensive adjudication by a  
20 single court. In contrast, the prosecution of separate actions by individual Class Members would create  
21 a risk of inconsistent or varying adjudications with respect to individual Class Members that would  
22 establish incompatible standards of conduct for the party (or parties) opposing the Classes and would  
23 lead to repetitious trials of the numerous common questions of fact and law. Plaintiff knows of no  
24 difficulty that will be encountered in the management of this litigation that would preclude its  
25 maintenance as a class action. As a result, a class action is superior to other available methods for the  
26 fair and efficient adjudication of this controversy. Absent a class action, Plaintiff and the Class  
27 Members will continue to suffer losses, thereby allowing Defendant’s violations of law to proceed  
28 without remedy and allowing Defendant to retain the proceeds of its ill-gotten gains.

1 112. Plaintiff is not aware of any separate litigation instituted by any of the Class Members  
2 against Defendant. Plaintiff does not believe that any other Class Members' interests in individually  
3 controlling a separate action are significant, in that Plaintiff has demonstrated above that his claims are  
4 typical of the other Class Members and that he will adequately represent the Class. This particular  
5 forum is desirable for this litigation because Defendant's headquarters are located in this County and the  
6 claims arose from activities that occurred largely in this County. Plaintiff does not foresee significant  
7 difficulties in managing the class action in that the major issues in dispute are susceptible to class proof.

8 113. Plaintiff anticipates the issuance of notice, setting forth the subject and nature of the  
9 instant action, to the proposed Class Members. Upon information and belief, Defendant's own business  
10 records and/or electronic media can be utilized for the contemplated notices. To the extent that any  
11 further notices may be required, Plaintiff anticipates using additional media and/or mailings.

12 114. This matter is properly maintained as a class action pursuant to Code of Civil Procedure  
13 section 382, *et seq.*, in that without class certification and determination of declaratory, injunctive,  
14 statutory and other legal questions within the class format, prosecution of separate actions by individual  
15 members of the Classes will create the risk of:

- 16 • inconsistent or varying adjudications with respect to individual members of the Classes  
17 which would establish incompatible standards of conduct for the parties opposing the  
18 Classes; or
- 19 • adjudication with respect to individual members of the Classes would, as a practical  
20 matter, be dispositive of the interests of the other members not parties to the adjudication  
21 or substantially impair or impede their ability to protect their interests.

22 115. Common questions of law and fact exist as to the members of the Classes and  
23 predominate over any questions affecting only individual members, and a class action is superior to  
24 other available methods of the fair and efficient adjudication of the controversy, including consideration  
25 of:

- 26 • the interests of the members of the Classes in individually controlling the prosecution or  
27 defense of separate actions;
- 28 • the extent and nature of any litigation concerning the controversy already commenced by

1 or against members of the Classes;

- 2 • the desirability or undesirability of concentrating the litigation of the claims in the
- 3 particular forum; and
- 4 • the difficulties likely to be encountered in the management of a class action.

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Contract – Account Agreement)**

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

9 117. Plaintiff and each of the Class Members entered into the Account Agreement, attached  
10 hereto as Ex. 1, with Defendant covering the subject of overdraft and NSF fees. This contract was  
11 drafted by and binding on Defendant.

12 118. Among other promises Defendant made in the Account Agreement, Defendant promised  
13 that it would not assess overdraft and NSF fees for any type of transaction when there was enough  
14 money in the account to pay for the transaction. It stated in a section called “Overdrafts” and a  
15 subsection called “Overdraft and Courtesy Clearing:” “If a check, preauthorized withdrawal, ACH,  
16 ATM or debit/check card transaction drawn on your account attempts to clear and there are not  
17 sufficient funds in the account to pay the item . . . ,” Overdraft Protection or Courtesy Pay may apply.  
18 Specifically, under Courtesy Pay, it stated: “USECU offers Courtesy Pay Overdraft Services which  
19 allow the account to go into a negative status to pay items” and “[a] fee applies for each item.” In the  
20 Account Agreement, Defendant described an overdraft as occurring when an item would “overdraw the  
21 account balance,” or when the account goes “into negative status,” and that an account would remain  
22 overdrawn “until the negative balance is paid” or the account is brought “positive.”

23 119. Nowhere did the Account Agreement explain that Defendant would create an artificial  
24 system by which it would deduct pending debit transactions or holds on deposits for purposes of  
25 determining whether an account was overdrawn such that an overdraft or NSF fee would be assessed.

26 120. Defendant also promised in the Account Agreement that it would only assess a single  
27 NSF fee for an unpaid, returned item due to purported insufficient funds when, in practice, it charged a  
28 \$27 or \$33 fee when an electronic transaction or item was first processed for payment and Defendant

1 determined there was not enough money in the account to cover the transaction, and then charged an  
2 *additional* NSF or overdraft fee if the same item was presented for processing again by the payee, even  
3 though the account holder took no action to resubmit the item for payment.

4 121. Defendant’s practice violates the Account Agreement which states under Courtesy Pay,  
5 subsection “Returned Items”: “Items may be returned unpaid” and “[a]” fee may apply.” This means  
6 that Defendant can charge a singular fee for an item. Yet Defendant wrongfully treated a “retry” or  
7 “representment” of an item as a new and separate “item” justifying additional NSF or overdraft fees in  
8 violation of the Account Agreement.

9 122. Plaintiff and the Class Members have performed all conditions, covenants, and promises  
10 required by each of them on their part to be performed in accordance with the terms and conditions of  
11 the Account Agreement, except for those they were prevented from performing or which were waived or  
12 excused by Defendant’s misconduct.

13 123. Defendant breached the terms of the Account Agreement by, *inter alia*, assessing  
14 overdraft or NSF fees when there was enough money in the account to cover the transaction and by  
15 assessing multiple fees for the same electronic transaction or item.

16 124. As a proximate result of Defendant’s breaches, Plaintiff and the Class Members have  
17 been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

18 **SECOND CAUSE OF ACTION**

19 **(Breach of Contract – Opt-in Agreement)**

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

22 126. Plaintiff and Class Members entered into the Opt-in Agreement with Defendant covering  
23 the subject of overdraft fees. This contract was drafted by and is binding upon Defendant.

24 127. In the Opt-in Agreement, Defendant promised it would assess overdraft fees only when  
25 there was not enough money in the account to cover the transaction.

26 128. The contract incorporated by reference all applicable laws regarding its subject matter,  
27 including 12 C.F.R. § 1005.17, which mandates that all Opt-in Agreements for assessing overdraft fees  
28 for ATM and non-recurring debit card transactions be separate from the Account Agreement and

1 accurately describe the overdraft fee practice, and bars financial institutions from assessing fees for non-  
2 recurring debit card and ATM transactions if they have not fully complied with that section's  
3 requirements.

4 129. Plaintiff and Class Members have performed all conditions, covenants, and promises  
5 required by each of them on their part to be performed in accordance with the terms and conditions of  
6 the Opt-in Agreement, except for those they were prevented from performing or which were waived or  
7 excused by Defendant's misconduct.

8 130. Defendant breached the express terms of the Opt-in Agreement by, *inter alia*, assessing  
9 overdraft fees when there was money in the account to cover the transaction or transactions at issue.

10 131. As a proximate of Defendant's breach of the Opt-in Agreement, Plaintiff and the Class  
11 Members have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer  
12 below.

13 **THIRD CAUSE OF ACTION**

14 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

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

17 133. Plaintiff and each of the Class Members entered into contracts with Defendant covering  
18 the subject of overdraft and/or NSF transactions, which have been identified herein as the Account  
19 Agreement and Opt-in Agreement. The Account Agreement and Opt-in Agreement were drafted by and  
20 are binding upon Defendant.

21 134. In the contracts, Defendant promised that it would only assess overdraft or NSF fees  
22 when there was not enough money in the account to cover the transaction. Yet Defendant assessed such  
23 fees when Plaintiff and Class Members had enough money in the account to cover the transaction.  
24 Defendant also promised that it would only charge a single NSF fee for an item, when in reality  
25 Defendant assessed NSF and/or overdraft fees multiple times for the same electronic item.

26 135. Further, good faith is an element of every contract. Whether by common law or statute,  
27 all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing,  
28 in connection with executing contracts and discharging performance and other duties according to their



1 terms, means preserving the spirit—not merely the letter—of the bargain. Thus, the parties to a contract  
2 are mutually obligated to comply with the substance of their contract in addition to its form. Evading  
3 the spirit of the bargain and abusing the power to specify terms, constitute examples of bad faith in the  
4 performance of contracts.

5 136. The material terms of the contracts therefore include the implied covenant of good faith  
6 and fair dealing, whereby Defendant covenanted that it would, in good faith and in the exercise of fair  
7 dealing, deal with Plaintiff and each Class Member fairly and honestly and do nothing to impair,  
8 interfere with, hinder, or potentially injure Plaintiff and the Class Members’ rights and benefits under  
9 the contracts.

10 137. Plaintiff and the Class Members have performed all conditions, covenants, and promises  
11 required by each of them on their part to be performed in accordance with the terms and conditions of  
12 the contracts, except for those they were prevented from performing or which were waived or excused  
13 by Defendant’s misconduct.

14 138. Defendant breached the implied covenant of good faith and fair dealing based, *inter alia*,  
15 on its practices of assessing fees when there was enough money in the account to cover the transaction.  
16 Defendant could easily have avoided acting in this manner by simply changing the programming in its  
17 software to charge overdraft and NSF fees only when there really was not enough money in the account  
18 to cover the transaction in question and to only charge a fee once per item. Instead, Defendant  
19 unilaterally elected to and did program its software to create an accounting gimmick, the artificial  
20 “available balance,” which would maximize its overdraft and NSF fees. It also programmed the  
21 software to charge multiple fees each time the same item was represented for payment by a merchant.  
22 In so doing, and in implementing its overdraft and NSF fee programs for the purpose of increasing and  
23 maximizing overdraft and NSF fees, Defendant executed its contractual obligations, including any  
24 discretion it had, in bad faith, depriving Plaintiff and the Class Members of the full benefit of the  
25 contracts.

26 139. As a proximate result of Defendant’s breach of the implied covenant of good faith and  
27 fair dealing, Plaintiff and the Class Members have been damaged in an amount to be proven at trial and  
28 seek relief as set forth in the Prayer below.

**FOURTH CAUSE OF ACTION**

**(Unjust Enrichment/Restitution)**

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

141. As a result of the wrongful misconduct alleged above, Defendant unjustly received millions of dollars in overdraft and NSF fees.

142. Because Plaintiff and the Class Members paid the erroneous overdraft and NSF fees assessed by Defendant, Plaintiff and the Class Members have conferred a benefit on Defendant, albeit undeservingly. Defendant has knowledge of this benefit, as well as the wrongful circumstances under which it was conveyed, and yet has voluntarily accepted and retained the benefit conferred. Should it be allowed to retain such funds, Defendant would be unjustly enriched. Therefore, Plaintiff and the Class Members seek relief as set forth in the Prayer below.

**FIFTH CAUSE OF ACTION**

**(Money Had and Received)**

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

144. Defendant has obtained money from Plaintiff and the Class Members by the exercise of undue influence, menace or threat, compulsion or duress, and/or mistake of law and/or fact.

145. As a result, Defendant has in its possession money which, in equity, belongs to Plaintiff and the Class Members, and thus, this money should be refunded to Plaintiff and the Class Members. Therefore, Plaintiff and the Class Members seek relief as set forth in the Prayer below.

**SIXTH CAUSE OF ACTION**

**(Violation of California Unfair Competition Law, Bus. & Prof. Code, §§ 17200, et seq.)**

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

147. Defendant’s conduct described herein violates California’s Unfair Competition Law (the “UCL”), codified at Business and Professions Code section 17200, et seq. The UCL prohibits, and provides civil remedies for, unlawful and unfair competition. Its purpose is to protect both consumers

1 and competitors by promoting fair competition in commercial markets for goods and services. In  
2 service of that purpose, the Legislature framed the UCL’s substantive provisions in broad, sweeping  
3 language. By defining unfair competition to include any “any unlawful, unfair or fraudulent business  
4 act or practice,” the UCL permits violations of other laws to serve as the basis of an independently  
5 actionable unfair competition claim, and sweeps within its scope acts and practices not specifically  
6 proscribed by any other law.

7 148. The UCL expressly provides for injunctive relief, and contains provisions denoting its  
8 public purpose. A claim for injunctive relief under the UCL is brought by a plaintiff acting in the  
9 capacity of a private attorney general. Although the private litigant controls the litigation of an unfair  
10 competition claim, he or she is not entitled to recover compensatory damages for his or her own benefit,  
11 but only disgorgement of profits made by the defendant through unfair or deceptive practices in  
12 violation of the statutory scheme, or restitution to victims of the unfair competition.

13 149. As further alleged herein, Defendant’s conduct violates the UCL’s “unfair” prong insofar  
14 as Defendant charges overdraft or NSF fees when there is enough money in an account to cover a  
15 transaction or by charging multiple fees for the same electronic item, in violation of the public policy  
16 and/or text of TISA and/or Regulation E. Defendant’s conduct was not motivated by any legitimate  
17 business or economic need or rationale. The harm and adverse impact of Defendant’s conduct on  
18 members of the general public was neither outweighed nor justified by any legitimate reasons,  
19 justifications, or motives. The harm to Plaintiff and Class Members arising from Defendant’s unfair  
20 practices relating to the imposition of the improper fees outweighs the utility, if any, of those practices.

21 150. Defendant’s unfair business practices as alleged herein are immoral, unethical,  
22 oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff, Class Members,  
23 and the general public. Defendant’s conduct was substantially injurious to consumers in that they have  
24 been forced to pay improper, abusive, and/or unconscionable NSF or overdraft fees.

25 151. Moreover, Defendant’s conduct also violates the UCL’s unlawful prong to the extent  
26 Defendant violated Regulation E and TISA by failing to accurately describe the circumstances when  
27 Plaintiff and Class Members would be assessed an overdraft fee and/or NSF fee.

28

1           152. Regulation E provides: “a financial institution . . . *shall not assess a fee or charge . . .*  
2 pursuant to the institution’s overdraft service, *unless* the institution: (i) [p]rovides the consumer with a  
3 notice in writing [the opt-in notice] . . . *describing the institution’s overdraft service,*” and  
4 (ii) “[p]rovides a reasonable opportunity for the consumer to *affirmatively consent*” to enter into the  
5 overdraft program. (*Id.*) The notice “shall be clear and readily understandable.” (12 C.F.R.  
6 § 205.4(a)(1).) To comply with the affirmative consent requirement, a financial institution must provide  
7 a segregated description of its overdraft practices that is accurate, non-misleading and truthful and that  
8 conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide its customers a reasonable  
9 opportunity to opt-in after receiving the description. The affirmative consent must be provided in a way  
10 mandated by 12 C.F.R. § 1005.17, and the financial institution must provide confirmation of the opt-in  
11 in a manner that conforms to 12 C.F.R. § 1005.17. The intent and purpose of this is to “assist customers  
12 in understanding how overdraft services provided by their institutions operate . . . by explaining the  
13 institution’s overdraft service . . . in a clear and readily understandable way”—as stated in the Official  
14 Staff Commentary, (74 Fed. Reg. 59033, 59035, 59037, 5940, 5948), which is “the CFPB’s official  
15 interpretation of its own regulation,” and “warrants deference from the courts unless ‘demonstrably  
16 irrational,’” and should therefore be treated as “a definitive interpretation” of Regulation E. (*Strubel v.*  
17 *Capital One Bank (USA)* (S.D. N.Y. 2016) 179 F.Supp.3d 320 (quoting *Chase Bank USA v. McCoy*  
18 (2011) 562 U.S. 195, 211) (so holding for the CFPB’s Official Staff Commentary for the Truth In  
19 Lending Act’s Reg Z).)

20           153. Here, Defendant has violated the unlawful prong of California’s UCL as a result of  
21 violating Regulation E’s prohibitions against using an Opt-in Agreement that misinformed customers  
22 about both the standard overdraft policies and the Regulation E specific overdraft policies by falsely  
23 stating that overdrafts were assessed only when there was not enough money to cover the transaction  
24 (actual “balance”) when instead the Defendant used the bookkeeping artificial “available balance” to  
25 assess overdraft fees. Defendant further improperly advertised/marketed its overdraft program in  
26 violation of Regulation E and did not follow proper procedures when opting-in members by telephone  
27 and online. Further, Defendant may not have routinely provided members with proper confirmation of  
28 their decision to opt-in.

1 154. In addition, under TISA, credit union disclosures must be presented in a format allowing  
2 members to readily review the terms of the account and use consistent terminology to describe terms,  
3 which includes the overdraft terms in the account disclosure, fee agreement and monthly statements.  
4 (12 C.F.R. § 707.3.) When a credit union promotes the payment of overdrafts in advertisements, it must  
5 do so accurately, clearly, and conspicuously. (12 C.F.R. § 707.8; 12 C.F.R. § 707.11 (b).) Further, in its  
6 account disclosure, a credit union must specifically authorize the fee it is charging, 12 C.F.R.  
7 § 707.4(b)(4), and it must *list the conditions* under which the fee may be imposed. (*Id.* (emphasis  
8 added).) It must also list the various type of transactions that may be subject to an overdraft. (12 C.F.R.  
9 § 707, App. C.)

10 155. Defendant has violated the unlawful prong of California’s UCL as a result of violating  
11 TISA by, among other things, providing inaccurate disclosures and agreements and failing to clearly and  
12 conspicuously identify its true overdraft practices and fees.

13 156. As a result of Defendant’s violations of the UCL, Plaintiff and Class Members have paid  
14 improper NSF and overdraft fees and thereby have suffered actual loss of money. Absent injunctive  
15 relief forcing Defendant to disgorge itself of its ill-gotten gains and public injunctive relief prohibiting  
16 Defendant from misrepresenting and omitting material information concerning its NSF and overdraft fee  
17 policy at issue in this action in the future, Plaintiff and other existing account tholders, and the general  
18 public, will suffer from and be exposed to Defendant’s conduct violative of the UCL.

19 **SEVENTH CAUSE OF ACTION**  
20 **(Violation of Electronic Fund Transfer Act (Regulation E), 12 C.F.R. §§ 1005, et seq., (authority**  
21 **derived from 15 U.S.C. §§ 1693, et seq.))**

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

24 158. By charging overdraft fees on ATM and nonrecurring transactions, Defendant violated  
25 Regulation E, 12 C.F.R. §§ 1005, et seq., whose “primary objective” is “the protection of individual  
26 consumers,” 12 C.F.R. § 1005.1(b), and which “carries out the purposes of the Electronic Fund Transfer  
27 Act [15 U.S.C. §§ 1693, et seq.], the ‘EFTA,’” 12 C.F.R. § 1005.1(b)).

28 159. Specifically, the charges violated what is known as the “Opt-in Rule” of Regulation E. 12  
C.F.R. § 1005.17. The Opt-in Rule states: “a financial institution . . . shall not assess a fee or charge . . .

1 pursuant to the institution’s overdraft service, unless the institution: (i) [p]rovides the consumer with a  
2 notice in writing [the opt-in notice] . . . *describing the institution’s overdraft service*” and (ii)  
3 “[p]rovides a reasonable opportunity for the consumer to *affirmatively consent*” to enter into the  
4 overdraft program. *Id.* (emphasis added). The notice “shall be clear and readily understandable.” 12  
5 C.F.R. § 1005.4(a)(1). To comply with the affirmative consent requirement, a financial institution must  
6 provide a segregated description of its overdraft practices that is accurate, non-misleading and truthful  
7 and that conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide a reasonable opportunity  
8 to opt-in after receiving the description. The affirmative consent must be provided in a way mandated by  
9 12 C.F.R. § 1005.17, and the financial institution must provide confirmation of the opt-in in a manner  
10 that conforms to 12 C.F.R. § 1005.17. Furthermore, choosing not to “opt-in” cannot adversely affect any  
11 other feature of the account.

12 160. The intent and purpose of this Opt-in Agreement is to “assist customers in understanding  
13 how overdraft services provided by their institutions operate . . . by explaining the institution’s overdraft  
14 service . . . in a clear and readily understandable way”—as stated in the Official Staff Commentary, 74  
15 Fed. Reg. 59033, 59035, 59037, 59040, 59048, which is “the CFPB’s official interpretation of its own  
16 regulation,” “warrants deference from the courts unless ‘demonstrably irrational,’” and should therefore  
17 be treated as “a definitive interpretation” of Regulation E. *Strubel v. Capital One Bank (USA)*, 179 F.  
18 Supp. 3d 320, 324 (S.D. N.Y. 2016) (quoting *Chase Bank USA v. McCoy*, 562 U.S. 195, 211 (2011)) (so  
19 holding for the CFPB’s Official Staff Commentary for the Truth In Lending Act’s Reg Z).

20 161. Defendant failed to comply with Regulation E, 12 C.F.R. § 1005.17, which requires  
21 affirmative consent before a financial institution is permitted to assess overdraft fees against customers’  
22 accounts through an overdraft program for ATM and non-recurring debit card transactions. Defendant  
23 has failed to comply with the 12 C.F.R. § 1005.17 opt-in requirements, including failing to provide its  
24 customers in a “clear and readily understandable way” a valid description of the overdraft program  
25 which meets the strictures of 12 C.F.R. § 1005.17. Defendant’s opt-in method fails to satisfy 12 C.F.R. §  
26 1005.17 because, *inter alia*, it states that an overdraft occurs when there is not enough money in the  
27 account to cover a transaction but Defendant pays it anyway, when, in fact, Defendant assesses overdraft  
28 fees when there is enough money in the account to pay for the transaction at issue and Defendant needs

1 to advance no funds at all. This is accomplished by using the internal bookkeeping available balance to  
2 assess overdraft fees, rather than the actual and official balance of the account. Defendant failed to use  
3 language to describe the overdraft service that identified that it was using the available balance to assess  
4 overdraft fees, which meant that in a significant percentage of transactions that were the subject of the  
5 overdraft fee, there was money in the account to cover the transaction and Defendant did not have to  
6 advance any money – yet Defendant assessed an overdraft fee anyway.

7 162. Defendant commits numerous other Regulation E violations including, but not limited to,  
8 aggressively marketing its overdraft program touting only its benefits without disclosing the detriments  
9 and making it appear as though use of the program operated as a credit line. Defendant also failed to use  
10 proper opt-in procedures by failing to provide those members who opted in by telephone or online with  
11 a copy of the Opt-in Agreement before they provided affirmative consent to be included in the program.  
12 Finally, Defendant may have failed to provide its members with proper confirmation of their decision to  
13 opt-in as required by Regulation E.

14 163. As a result of violating Regulation E’s prohibition against assessing overdraft fees on  
15 ATM and non-recurring debit card transactions without obtaining affirmative consent to do so,  
16 Defendant was not legally permitted to assess any overdraft fees on one-time debit card or ATM  
17 transactions, and it has harmed Plaintiff and the Class Members by assessing overdraft fees on one-time  
18 debit card and ATM transactions.

19 164. As the result of Defendant’s violation of Regulation E, 12 C.F.R. § 1005, *et seq.*, Plaintiff  
20 and members of the Class are entitled to actual damages, including all overdraft fees improperly  
21 assessed as a result of violating Regulation E, statutory damages of up to \$500,000.00 for each failure to  
22 comply, as well as attorneys’ fees and costs of suit, pursuant to 15 U.S.C.A. § 1693m. The actual and  
23 statutory damages based on the number of violations per person will be proven and decided at trial.

24 **PRAYER**

25 WHEREFORE, PLAINTIFF and CLASS MEMBERS pray for judgment as follows:

- 26 a. For an order certifying this action as a class action;
- 27 b. For compensatory damages on all applicable claims and in an amount to be proven at
- 28 trial;

- 1 c. For an order requiring Defendant to disgorge, restore, and return all monies wrongfully
- 2 obtained together with interest calculated at the maximum legal rate;
- 3 d. For monetary and/or actual damages;
- 4 e. For statutory damages;
- 5 f. For an order enjoining the wrongful conduct alleged herein;
- 6 g. For costs;
- 7 h. For pre-judgment and post-judgment interest as provided by law;
- 8 i. For attorneys’ fees under the Civil Code section 1021.5 and the Electronic Fund Transfer
- 9 Act, the common fund doctrine, and all other applicable law; and
- 10 j. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

11  
12 PLAINTIFF, on behalf of himself, and all others similarly situated, demands a jury trial with  
13 respect to all issues triable of right by jury.

14 DATED: March 17, 2022

Respectfully submitted,

MCCUNE WRIGHT AREVALO, LLP

16  
17 By: 

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22 Attorneys for CESAR E. CORTES individually,  
23 and on behalf of all others similarly situated



# **EXHIBIT 1**



Better Together

January 1, 2014

*Deposit  
Account  
& Services  
Agreement*

**TABLE OF CONTENTS**

	Page
<b>TERMS AND CONDITIONS</b> .....	2
Important Information About Procedures for Opening a New Account .....	2
Agreement.....	2
Bylaws .....	2
Liability .....	2
Deposits .....	3
Withdrawals.....	3
Overdraft and Courtesy Clearing.....	3
Ownership of Account and Beneficiary Designation .....	4
CUTMA Account.....	5
Fiduciary Accounts.....	5
Stop Payments.....	5
Transfer Limitations.....	6
Amendments and Termination .....	6
Statements .....	6
Account Transfer.....	7
Direct Deposits.....	7
Temporary Account Agreement .....	7
Right to Repayment of Indebtedness.....	7
Restrictive Legends.....	8
Pledges .....	8
Waiver of Notices .....	8
ACH and Wire Transfers .....	8
Fictitious Business Name Accounts .....	8
Facsimile Signatures .....	8
Power of Attorney.....	8
Stale-Dated Checks .....	9
NCUA Insurance .....	9
Endorsements .....	9
Payment Order of Items .....	10
Dormant Account.....	10
Death or Incompetence .....	10
Cash Transaction Reporting.....	10
Unclaimed Property.....	10
Backup Withholding/TIN Certification.....	10
Credit Verification .....	10
Lost, Destroyed, or Stolen Certified, Cashier's, or Teller's Checks.....	10
Changing Account Products.....	11
Transactions by Mail .....	11
Legal Actions Affecting Your Accounts .....	11
Check Processing .....	11
Check Storage and Copies .....	11
Check Cashing .....	11
Check Copies .....	11
Truncation, Substitute Checks, and Other Check Images .....	11
Security .....	12
Remotely Created Checks .....	12
Monitoring and Recording Telephone Calls .....	12
Telephonic Instructions .....	12
Claim of Loss.....	12
Early Withdrawal Penalties.....	13
Address or Name Changes .....	13
Resolving Account Disputes.....	13
Unauthorized Use.....	13
Endorsement of Checks.....	13
Wrongful Dishonor.....	13
<b>SUBSTITUTE CHECKS</b> .....	13
<b>ELECTRONIC DISCLOSURES AND NOTICES</b> .....	14
<b>NOTICE OF NEGATIVE INFORMATION</b> .....	15
<b>ELECTRONIC FUND TRANSFERS</b> .....	15
<b>FUNDS AVAILABILITY DISCLOSURE</b> .....	20
<b>TRUTH-IN-SAVINGS DISCLOSURE</b> .....	21

## TERMS AND CONDITIONS OF YOUR ACCOUNT

**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 license and/or other identifying documents and we may retain an image.

**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 California 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.

As used in this document the words "we," "our," and "us" mean USE Credit Union ("USECU") as 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.

**BYLAWS** - Our bylaws, which we may amend from time to time, establish basic rules about our credit union policies and operations which affect your account and membership. You may obtain a copy of the bylaws on request. Our right to require you to give us notice of your intention to withdraw funds from your account is described in the bylaws. Unless we have agreed otherwise, you are not entitled to receive any original item after it is paid, although you may request that we send you an item(s) or a copy of an item(s). Dividends are based on current earnings and available earnings of the credit union, after providing for required reserves.

**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.

**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 endorsement or lack of endorsement 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. 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, on a Saturday, 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 endorsers to verify or guarantee their endorsements, or endorse in our presence. We reserve the right to not accept a deposit or an addition to an account or limit its size.

### 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 endorse 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. 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.

**OVERDRAFT AND COURTESY CLEARING** - If a check, preauthorized withdrawal, ACH, ATM or debit/check card transaction drawn on your account attempts to clear and there are not sufficient funds in the account to pay the item, the following may occur.

- **Overdraft Protection/Overdraft Transfer:** The item may be paid by transferring funds from one of your other USECU accounts in accordance with the Overdraft Protection/Transfer instructions, if any, you have provided. Credit card or line of credit loan and certain deposit accounts such as savings, money market and checking can be used to pay items which would otherwise create an overdraft. Transfers will occur in increments of \$100 or other such sums as established from time to time and may be subject to transfer limitations as described in this booklet. A fee may apply for each transfer (refer to the Schedule of Fees and Charges). Funds will be transferred/advanced only if sufficient funds/credit is available and your account is in good standing. **Caution:** If your checking account is held jointly, Overdraft Protection makes it possible for the joint account holder to write checks or otherwise order debits from the checking account which could cause a transfer from your other accounts and loans which may be held individually if set up as overdraft transfer sources.
- **Courtesy Pay Overdraft Services:** USECU offers Courtesy Pay Overdraft Services which allow the account to go into a negative status to pay items which would otherwise be returned unpaid. A fee applies for each item (refer to the Schedule of Fees and Charges). You must pay any negative balance within fourteen (14) calendar days of the overdraft. The maximum dollar amount the account will be taken negative to pay an item including the fee is based on the checking product type and is subject to change without notice (currently: Student Checking \$250, Free Checking with E-Statements \$1500, Membership Checking \$1500, Premier Checking \$2000). USECU reserves the right to limit participation and/or stop overdrafting items at any time, without notice. We may place a hold on or use balances in any other account where you are listed as an account holder until the negative balance is paid or to bring the account positive, and we may offset the amount of the overdraft against accounts to which your salary, Social Security, disability benefits or other benefits are directly deposited by the payer or loan accounts according to the terms of this Account Agreement.
  - **Overdraft Service for Checks/ACH:** You qualify for Courtesy Pay Overdraft Service for Checks/ACH when you successfully qualify for a checking account. Through this service, USECU may pay a check, preauthorized withdrawal or ACH transaction creating an overdraft or negative balance in your account. Checks negotiated in person are not eligible for courtesy clearing.
  - **Debit Card Courtesy Pay Overdraft Service:** If you have opted-in, debit/check card, ATM and Point of Sale (POS) transactions may be cleared creating an overdraft or negative balance in your account.

You may opt out of either of the Courtesy Pay Overdraft Services above by contacting us through online banking, by calling us, or by visiting a branch location.

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 transfer 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.

- **Returned Items:** Items may be returned unpaid. A fee may apply (refer to the Schedule of Fees and Charges).

We may terminate, without notice, any account with repeated overdraft or insufficient funds activity. In addition, the account may be reported to consumer reporting agencies.

**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.

**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 reserve the right to refuse some forms of ownership on any or all of our accounts. 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. As used in this agreement "party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account other than as an agent.

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

**Joint Account** - This membership account or certificate is owned by the named parties where each has full ownership right including withdrawal and closure, and each may pledge all or part of the account funds for any purpose to which we agree. Upon the death of any of them, ownership passes to the survivor(s). A joint tenant on any account offered by this credit union cannot vote, borrow money, or hold office, unless the joint tenant is within the field of membership of this credit union and is also a qualified member.

**P.O.D. Account with Single Party** - This account or certificate is owned by the named party. Upon the death of that party, ownership passes to the named pay-on-death payee(s).

**P.O.D. Account with Multiple Parties** - This account or certificate is owned by the named parties. Upon the death of any of them, ownership passes to the survivor(s). Upon the death of all of them, ownership passes to the named pay-on-death payee(s).

**Trust Account Subject to Separate Agreement** - We will abide by the terms of any separate agreement which clearly pertains to this account and which you file with us. Any additional consistent terms stated on this form will also apply.

**Sole Proprietorship Accounts** - You may pay out funds in your name or the name of the proprietorship. You may accept and/or endorse checks made payable to you or the sole proprietorship.

**BUSINESS, ORGANIZATION AND ASSOCIATION ACCOUNTS** - If these account types are offered, 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.

**CUTMA Account** - A CUTMA account is an account where funds are held in the name of the minor under the California Uniform Transfers to Minors Act. The account may only be accessed by the custodian and the funds must be used for the benefit of the minor as allowed by law. We act only as the depository for these funds and have no duty or agreement to monitor or ensure the custodian acts for the benefit of the minor.

**FIDUCIARY ACCOUNTS** - Accounts may be opened or managed 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. This account may be opened and/or maintained by a person or persons named as a trustee under a written trust agreement, executors, administrators, guardian or conservators under court orders or through an agent named in a Power of Attorney. You understand that by merely opening or maintaining 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 the acts of any agent in connection with a Power of Attorney or to monitor and enforce the terms of the trust or letters.

**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.

We may accept an order to stop payment on any item from any one of you. You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. When you place your stop-payment order we will tell you what information we need to stop payment. This information must be exact since stop-payment orders are handled by computers. If your information is not exact your order will not be effective and we will not be responsible for failure to stop payment.

You may stop payment on any item drawn on your account whether you sign the item or not. 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 verbal 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.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

We may, but are not obligated to pay a personal check presented for payment more than six months after its date. If you do not want us to pay a stale-dated check, you must place a stop-payment order on the check.

A Cashier's Check is a promise to pay made by the institution issuing the check not the person who purchases the item. Accordingly, you do not have the right to stop payment on a USE Credit Union Cashier's Check. In certain circumstances you may be able to assert a claim if the check is lost, stolen or destroyed and obtain a refund if still eligible 90 days after the date of the check, refer to the LOST, DESTROYED, OR STOLEN CERTIFIED, CASHIER'S, OR TELLER'S CHECKS section for additional information.

**TRANSFER LIMITATIONS** - For savings and money market accounts you may make up to six transfers or withdrawals by means of a preauthorized, automatic, or telephonic transfer to another account of yours or to a third party or by check, debit card, or similar order to a third party during any calendar month (or statement cycle of at least four weeks). A preauthorized transfer includes any arrangement with us to pay a third party from your account at (i) a predetermined time; (ii) on a fixed schedule or (iii) upon oral or written orders including orders received through the automated clearing house (ACH). If the transfer or withdrawal is initiated in person, by mail, or at an ATM then there is no limit on the number of payments that may be made directly to you, directly to us for amounts you owe us, or transfers to other accounts you have with us. Withdrawals by phone are also unlimited if you are requesting that a check be mailed to you.

**AMENDMENTS AND TERMINATION** - We may change our bylaws and any term of this agreement. Rules governing changes in 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 close this account if your membership in the credit union terminates, or by giving 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 and charges 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. At our option, we may suspend your rights to member services if you violate the terms of this agreement. You must keep us informed of your current address at all times. Notice from us to any one of you is notice to all of you. 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).

**STATEMENTS** - Statements are a valuable tool to help prevent fraudulent or mistaken transactions. Your statement will show the transactions that occurred in connection with your account during the statement period.

**Your duty to report unauthorized signatures, alterations and forgeries** - Your statement will provide sufficient information for you to reasonably identify the items paid (item number, amount, and date of payment). You should keep a record of each transaction as it is made so that when we give you the information in the statement, you will have a complete understanding of each transaction listed.

You have some responsibilities in connection with your statement. You must examine your statement with "reasonable promptness." Also, 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 must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we contributed to the loss). The loss you

might bear, in whole or part, could be not only with respect to items listed on the statement, but also other items with unauthorized signatures or alterations by the same wrongdoer. Of course, an attempt can be made to recover the loss from the thief, but this is often unsuccessful.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but you will not, in any circumstance, have a total of more than 30 days from when we first send or make the statement 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 exercised ordinary care. The limitation in this paragraph is in addition to those contained in the second paragraph of this section.

Contact us if you do not receive your regular statement. If this is a business account, you agree that you will have at least two people review your statements, notices, and returned checks, or in the alternative, the person who reviews these will be someone who does not have authority to transact business on the account.

**Your duty to report other errors** - In addition to the Commercial Code and other state law, you agree there is a common law duty to promptly review your statement for errors in addition to unauthorized signatures, alterations or forgeries. Promptly reviewing your statement is valuable to both you and us because it can help identify, correct and prevent future mistakes.

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. You agree that the time you have to examine your statement and report to us will depend on the circumstances. However, such time period shall not exceed 60 days. Failure to examine your statement and report any such 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 such errors on items identified in that statement and as between you and us the loss will be entirely yours. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may, at our discretion, extend the 60 day time period to report other errors.

**Errors relating to electronic fund transfers or substitute checks** - 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, contact the credit union at (866) 873-4968.

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

**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. If Benefit funds are transferred to another account, we reserve the right to debit that other account except as prohibited by law.

**TEMPORARY ACCOUNT AGREEMENT** - If this option is offered and selected, this is a temporary account agreement. This means that all account owners have not yet signed the signature card, or that some other account opening requirement has not been completed. We may give you a duplicate signature card so that you can obtain all of the necessary signatures and return it to us. 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.

**RIGHT TO REPAYMENT OF INDEBTEDNESS** - You each agree that we may (without prior notice and when permitted by law) charge against and deduct from this account any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we charge the account, including any balance the due date for which we properly accelerate under the note.

In addition to these contract rights, we may also have rights under a "statutory lien." A "lien" on property is a creditor's right to obtain ownership of the

property in the event a debtor defaults on a debt. A "statutory lien" is one created by federal or state statute. If federal or state law provides us with a statutory lien, then we are authorized to apply, without prior notice, your shares and dividends to any debt you owe us, in accord with the statutory lien.

Neither our contract rights nor rights under a statutory lien apply to this account if prohibited by law. For example, neither our contract rights nor rights under a statutory lien 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 arises only in a representative capacity. We will not be liable for the dishonor of any check or draft when the dishonor occurs because we charge and deduct an amount you owe us from your account. You agree to hold us harmless from any claim arising as a result of our exercise of our right to repayment.

**RESTRICTIVE LEGENDS** - The automated processing of the large volume of checks we receive prevents us from inspecting or looking for special instructions or "restrictive legends" 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." For this reason, we are not required to honor any restrictive legend placed on checks you write unless we have agreed in writing to the restriction. We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

**PLEDGES** - Each owner of an account may pledge all or any part of the funds in it for any purpose to which we agree. Any pledge of an account must first be satisfied before the rights of any surviving account owner or account beneficiary become effective.

**WAIVER OF NOTICES** - You waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account.

**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. 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. Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statements we provide to you.

**FICTITIOUS BUSINESS NAME ACCOUNTS** - If the name in which the account is held is fictitious, each account holder represents that one or more of the account holders have the right to use that name and have fulfilled all legal requirements for using and or doing business under that name.

**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.

**POWER OF ATTORNEY** - You may wish to appoint an agent to conduct transactions on your behalf. (We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the agent are for your benefit.) This may be done by allowing your agent to sign in that capacity on the signature card or by separate form, such as a power of attorney. A power of attorney continues until your death or the death of the person given the power. If the power of attorney is not "durable," it is revoked when you become incapacitated. We may continue to honor the transactions of the agent until:

(a) we have received written notice or have actual knowledge of the termination of the authority or the death of an owner, and (b) we have had a reasonable opportunity to act on that notice or knowledge. You agree not to hold us responsible for any loss or damage you may incur as a result of our following instructions given by an agent acting under a valid power of attorney.

**STALE-DATED CHECKS** - We are not obligated to, but may at our option, pay a check, other than a certified check, presented for payment more than six months after its date. If you do not want us to pay a stale-dated check, you must place a stop-payment order on the check in the manner we have described elsewhere.

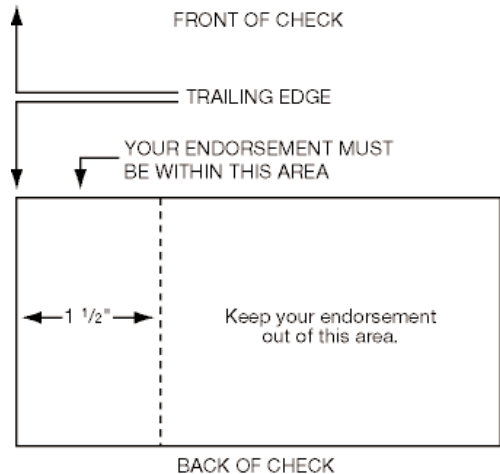
**NCUA INSURANCE** - Funds in your account(s) with us are insured by the National Credit Union Administration (NCUA) and backed by the full faith and credit of the United States. The amount of insurance coverage you have depends on the number of accounts you have with us that are of different "ownership." An individual account is one unique form of "ownership"; a joint account, a pay-on-death account, and a self directed qualified retirement account (e.g., an IRA) are examples of some of the others. Share insurance for a person's self directed qualified retirement account is up to \$250,000. (An IRA is a self directed qualified retirement account as is any account where the owner decides where and how to invest the balance.) Funds are insured to \$250,000 per depositor for the total of funds combined in all of your other insured accounts with us. If you want a more detailed explanation or additional information, you may ask us or contact the NCUA. You can also visit the NCUA website at [www.ncua.gov](http://www.ncua.gov) and click on the Share Insurance link. The link includes detailed contact information as well as a share insurance estimator.

**ENDORSEMENTS** - We may accept for deposit any item payable to you or your order, even if they are not endorsed by you. We may give cash back to any one of you. We may supply any missing endorsement(s) for any item we accept for deposit or collection, and you warrant that all endorsements are genuine.

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

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 endorsement information within 1 1/2" of that edge.

Name	7654
Address, City, State	_____20_____
Pay to the order of	_____ \$ _____
	_____dollars
Bank Name and Location	_____
Memo	_____
⑆ 2 3 4 5 6 7 8 9 ⑆ 7 6 5 4	



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

These endorsement guidelines apply to both personal and business checks.

We reserve the right not to accept any item at our sole discretion.

**PAYMENT ORDER OF ITEMS** - We pay items drawn on your account in the order that they are received. The order in which items are paid is important if there is not enough money in your account to pay all of the items that are presented. There is no policy that is favorable in every instance. By paying items in the order received, there is a balance between minimizing additional cost to you and paying your more important (generally larger) items. We encourage you to make careful records and practice good account management. This helps you avoid writing checks or drafts without sufficient funds and incurring the resulting fees.

**DORMANT ACCOUNT** - An account shall be considered dormant when there has been no activity after 12 months, at which point online banking, telephone transfers, etc. will not be allowed to the account until you contact the credit union in person to re-establish contact on the account. Dormancy/Inactivity Fees may apply. Please refer to the Schedule of Fees & Charges for any applicable fee amount.

**UNCLAIMED PROPERTY** - The law establishes procedures under which unclaimed property must be surrendered ("escheated") to the state. (We may have our own rules regarding dormant accounts, and if we charge a fee for dormant accounts it will be disclosed to you in the Schedule of Fees & Charges.) Generally, the funds in your account are considered unclaimed if you have not had any activity or communication with us regarding your account over a period of three years. We will send due diligence notices to you if you have property value of fifty (\$50) or more in a dormant account status prior to us reporting the accounts to the State Controller's Office. If your funds are surrendered to the state, you may be able to reclaim them, but your claim must be presented to the state. Once your funds are surrendered, we no longer have any liability or responsibility with respect to the funds.

**DEATH OR INCOMPETENCE** - You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or becomes legally incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or 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 legal incompetence for up to ten (10) days after your death or legal incompetence unless ordered to stop payment by someone claiming an interest in the account.

**CASH TRANSACTION REPORTING** - To help law enforcement agencies detect illegal activities, the law requires all financial institutions to gather and report information on some types of cash transactions. If the information we need to complete the report is not provided, we are required to refuse to handle the transaction. If you have any questions regarding these rules, please contact your local Internal Revenue Service office.

**BACKUP WITHHOLDING/TIN CERTIFICATION** - Federal tax law requires certain dividend, interest and bonus payments be reported each year. These reports include your taxpayer identification number (TIN) (the taxpayer identification number is your social security number if you are an individual). In some circumstances, federal law requires us to withhold and pay to the IRS a percentage of the dividends earned on funds in your accounts. This is known as backup withholding. The IRS requires that you certify your TIN and certify that you are not subject to backup withholding when you open the account and in certain other circumstances. (There are special rules if you are a foreign person.)

**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. We may also obtain related information from a consumer reporting agency.

**LOST, DESTROYED, OR STOLEN CERTIFIED, CASHIER'S, OR TELLER'S CHECKS** - Under some circumstances you may be able to assert a claim for the amount of a lost, destroyed, or stolen certified, cashier's or teller's check. To assert the claim: (a) you must be the remitter (or drawer of a certified check) or payee of the check, (b) we must receive notice from you describing the check with reasonable certainty and asking for payment of the amount of the check, (c) we must receive the notice in time for us to have a reasonable

opportunity to act on it, and (d) you must give us a declaration (in a form we require) of your loss with respect to the check. You can ask us for a declaration form. Even if all of these conditions are met, your claim may not be enforceable. We may require you to provide a surety bond to assure that you can pay us if we suffer a loss.

**CHANGING ACCOUNT PRODUCTS** - We may change your account to another product offered by us at any time by giving you notice that your account will be changed to another product on a specified date. If your account is a time account, the change will not occur before the next maturity date of your account. If you do not close your account before the date specified in the notice, we may change your account to that other product on the date specified in the notice.

**TRANSACTIONS BY MAIL** - You may deposit checks by mail. You should endorse the check being sent through the mail with the words "For Deposit Only" and should include your correct account number underneath to ensure the check is credited to the correct account. You should use the pre-encoded checking deposit slips found behind your checks in your checkbook or deposit slip supplied by the credit union. If you do not use your deposit slip or provide us with instructions indicating how or where the check should be credited, we may apply it to any account or any loan balance you have with us or we may return the check to you. Receipts for such transactions will not be mailed to you. Following your deposit, examine your statement carefully or call us to ensure that we received the item. Do not send cash through the mail for deposit.

**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.

To help law enforcement agencies detect illegal activities, the law requires all financial institutions to gather and report information on some types of transactions, for example large cash transactions. If the information needed to complete the report is not provided, we may refuse the transaction.

**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 endorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have not failed to exercise ordinary care solely because we use our automated system to process items and do not inspect all items processed in such a manner. Using an automated process helps us keep costs down for you and all account holders.

**CHECK STORAGE AND COPIES** - You agree that you will not receive your canceled checks. We will store your canceled checks or copies of them for a reasonable retention period. You may request copies from us in the manner we require. You may also view checks through Online Banking.

**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. We reserve the right to refuse to cash any item.

**CHECK COPIES** - We will store your canceled checks or copies of them for a reasonable retention period. You may request copies from us in the manner we require. You may also view images of recent paid checks through online banking.

**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.

**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 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. If you provide your account number in response to a telephone or electronic solicitation for the purpose of making a transfer (to purchase a service or merchandise, for example), 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. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

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.

**REMOVELY 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. For example, if a person provides an account number in response to a telephone solicitation, the telephone solicitor can use the account number to issue a remotely created check to withdraw money from that account.

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.

**MONITORING AND RECORDING TELEPHONE CALLS** - We may monitor or record phone calls for security reasons 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.

**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.

**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.

**EARLY WITHDRAWAL PENALTIES (and involuntary withdrawals)** - We may impose early withdrawal penalties on a withdrawal from a time/certificate 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.

**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. You may notify us by sending a written and signed notice to USE Credit Union, P.O. Box 881109, San Diego, CA 92168-1109 or you can complete the address change request through Online Banking. Informing us of your address or name change on a check reorder form is not sufficient. Any owner may authorize changes for any other owner, including mailing address on the membership for statements, notices, etc. 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.

**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) by 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.

**UNAUTHORIZED USE** - You also agree to pursue all rights you may have under any insurance coverage you maintain and to provide us with all reasonable information about your coverage, including your insurance carrier, policy number, policy limits, and applicable deductibles. Our liability is reduced by the amount of all insurance proceeds you receive or are entitled to receive. At our request, you agree to assign to us your rights under your insurance policy.

**ENDORSEMENT OF CHECKS** - You agree to hold us harmless from any loss, liability or damage you incur due to endorsements, written terms, carbon bands or other marks that obscure the area reserved for the depository institution's endorsement.

**WRONGFUL DISHONOR** - In the event of wrongful dishonor that occurs by mistake, liability shall be limited to the actual damages you prove. In the event that any check or other debit is dishonored, our determination of whether sufficient funds exist in your account may be made at any time between the time the item is received and the time it is returned. If we should choose to make a subsequent account balance check, we must use the last figure in deciding whether to dishonor the check or other debit. 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.

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## SUBSTITUTE CHECKS

The following Substitute Check Disclosure provides information about substitute checks and your rights.

**What is a substitute check?** - To make check processing faster, federal law permits financial institutions to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to



electronic debits to your account. However, you have rights under other law with respect to those transactions.

**What are my rights regarding substitute checks?** - In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to dividends on the amount of your refund if your account is a dividend-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus dividends if your account earns dividends) within ten (10) business days after we received your claim and the remainder of your refund (plus dividends if your account earns dividends) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any dividends on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

**How do I make a claim for a refund?** - If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us by telephone, in writing or by visiting any of our branch locations.

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include –

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: the check number, the amount of the check, the date of the check and the name of the person to whom you wrote the check.

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## ELECTRONIC DISCLOSURES AND NOTICES

This disclosure describes the process that must occur before we can provide you with electronic disclosures and notices (such as by email or website). It also describes your rights in the event you consent to receiving electronic disclosures and notices. First we must inform you as to the computer hardware and software requirements to receive and keep the electronic disclosures and notices. Then we must make an electronic request for your consent. Finally, you must give your consent electronically in response to our request. You understand prior to giving your consent that:

- (1) Your consent applies only to disclosures and notices regarding your deposit/share accounts, including your periodic account statements;
- (2) Unless you consent, you have the right to receive all required disclosures in paper or non-electronic form;
- (3) Even after consent, if you want to receive a paper copy of the disclosure in addition to the electronic disclosure you can obtain one free of charge by calling us;
- (4) You can withdraw your consent at any time by calling us; and
- (5) You must promptly provide us with the information (such as an email address) needed to communicate with you electronically and update us as to any changes in such information by calling us.

We reserve the right to provide any disclosures or notices in writing, rather than electronically. Except as otherwise provided in this or other agreements, by law, or on our website, you cannot give us notices electronically, and all notices from you must be in writing.

## NOTICE OF NEGATIVE INFORMATION

Federal law requires us to provide the following notice to members before any "negative information" may be furnished to a nationwide consumer reporting agency. "Negative information" includes information concerning delinquencies, overdrafts or any form of default. This notice does not mean that we will be reporting such information about you, only that we may report such information about members that have not done what they are required to do under our agreement.

After providing this notice, additional negative information may be submitted without providing another notice.

**We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.**

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## ELECTRONIC FUND TRANSFERS YOUR RIGHTS AND RESPONSIBILITIES

Indicated below are types of Electronic Fund Transfers we are capable of handling, some of which may not apply to your account. Please read this disclosure carefully because it tells you your rights and obligations for the transactions listed. You should keep this notice for future reference.

**Cut-Off Times.** Payments or transfers entered on our system before 5:00 P.M. PST Monday through Friday except holidays will be scheduled and begin processing on the same business day. Earlier cutoff times may apply to wire transfers. Payments or transfers that are received or entered after this cut-off time or on a Saturday, Sunday or holiday will be scheduled and processed the next business day. Payments and transfers applicable to cut-off times include payments made to loans, lines of credit, or credit card accounts; transfers and payments between accounts (or loans, lines of credit, or credit card accounts) within the same member number; and transfers and payments between accounts (or loans, lines of credit, or credit card accounts) of different member numbers.

**Electronic Fund Transfers Initiated By Third Parties.** You may authorize a third party to initiate electronic fund transfers between your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check or draft to an electronic fund transfer or to electronically pay a returned check or draft charge can occur when a merchant provides you with notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, these third party transfers will require you to provide the third party with your account number and credit union information. This information can be found on your check or draft as well as on a deposit or withdrawal slip. Thus, you should only provide your credit union and account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

- **Preauthorized credits.** You may make arrangements for certain direct deposits (such as U.S. Treasury (Social Security) or some employers payroll) to be accepted into your checking or savings account(s).
- **Preauthorized payments.** You may make arrangements to pay certain recurring bills from your checking or savings account(s).
- **Electronic check or draft conversion.** You may authorize a merchant or other payee to make a one-time electronic payment from your checking or share draft account using information from your check or draft to pay for purchases or pay bills.
- **Electronic returned check or draft charge.** You may authorize a merchant or other payee to initiate an electronic funds transfer to collect a charge in the event a check or draft is returned for insufficient funds.

**Telephone Banking Transfers - types of transactions** - You may access your account by telephone 24 hours a day at 1-866-USE-24-4-U (866-873-2448) using your personal identification number, a touch tone phone, and your account numbers, to:

- transfer funds from checking to checking
- transfer funds from checking to savings

- transfer funds from savings to checking
- transfer funds from savings to savings
- transfer funds from line of credit to checking
- transfer funds from line of credit to savings
- make payments from checking to loan accounts with us
- make payments from savings to loan accounts with us
- reorder checks
- report a lost/stolen ATM, debit, or credit card
- request a withdrawal by check (minimum of \$10.00)
- place a stop payment on a check
- get information about:
  - the account balance of checking accounts
  - the last 90 days deposits to checking accounts
  - the last 90 days withdrawals from checking accounts
  - the account balance of savings accounts
  - the last 90 days deposits to savings accounts
  - the last 90 days withdrawals from savings accounts

**ATM Transfers - types of transfers, dollar limitations and charges** - You may access your account(s) by ATM using your ATM card and personal identification number or your MasterCard® Debit/ATM Card and personal identification number, to:

- make deposits to checking account(s) (only at CO-OP ATMs that accept deposits)
- make deposits to savings account(s) (only at CO-OP ATMs that accept deposits)
- get cash withdrawals from checking, savings or line of credit account(s)
  - you may withdraw no more than \$610.00 per 24 hour period
  - Refer to the current MasterCard® Debit/ATM Card Agreement and Electronic Services Disclosure
- transfer funds from savings to checking account(s)
- transfer funds from checking to savings account(s)
- transfer funds from line of credit to checking or savings account(s)
- transfer funds from checking or savings to line of credit account(s)
- get information about:
  - the account balance of your checking account(s)
    - Refer to the current MasterCard® Debit/ATM Card Agreement and Electronic Services Disclosure
  - the account balance of your savings accounts
    - Refer to the current MasterCard® Debit/ATM Card Agreement and Electronic Services Disclosure

Some of these services may not be available at all terminals.

**Types of MasterCard® Debit/ATM Card Point-of-Sale Transactions** - You may access your checking account(s) to purchase goods (in person, online, or by phone), pay for services (in person, online, or by phone), get cash from a merchant, if the merchant permits, or from a participating financial institution, or do anything that a participating merchant will accept.

**Point-of-Sale Transactions - dollar limitations** - Using your card:

- you may not exceed \$1,510.00 in PIN based transactions (POS and ATM combined) per 24 hour period with the MasterCard® Debit/ATM Card and \$5,000.00 in signature based transactions per 24 hour period with the MasterCard® Debit/ATM Card

**Currency Conversion and Cross-Border Transaction Fees.** When you use your MasterCard® Debit/ATM Card for international transactions (at a merchant or location that settles in currency other than US Dollars or where the merchant is located outside the US), the charge will be converted into US Dollars. The currency conversion rate used to determine the transaction account in US Dollars is either a government-mandated exchange rate or a rate selected by MasterCard® (or the processing network if not processed by MasterCard®) for the applicable central processing date. The rate may differ from the rate in effect on the date of purchase or the date the transaction is posted to the account. Processing networks (including MasterCard®) charge for currency conversion services when applicable and charge cross border

service assessments for all international transactions regardless of whether there is a currency conversion. As a result, we charge a foreign/international transaction fee of 1% on all international transactions.

**Advisory Against Illegal Use.** You agree not to use your card(s) for illegal gambling or other illegal purpose. Display of a payment card logo by, for example, an online merchant does not necessarily mean that transactions are lawful in all jurisdictions in which the cardholder may be located.

**Online Banking Computer Transfers - types of transfers and charges** - You may access your account(s) by computer through the internet by logging onto our website at [www.usecu.org](http://www.usecu.org) and using your personal identification number and member number, to:

- transfer funds from checking to checking
- transfer funds from checking to savings
- transfer funds from savings to checking
- transfer funds from savings to savings
- transfer funds from line of credit to checking
- transfer funds from line of credit to savings
- make payments from checking to loan account(s) with us
- make payments from checking to third parties with Bill Pay
  - refer to separate fee schedule for applicable fees
- make payments from savings to loan account(s) with us
- get information about:
  - the account balance of checking account(s)
  - the last 90 days deposits to checking accounts
  - the last 90 days withdrawals from checking accounts
  - the account balance of savings account(s)
  - the last 90 days deposits to savings accounts
  - the last 90 days withdrawals from savings accounts

#### FEES

- We do not charge for direct deposits to any type of account.
- We do not charge for preauthorized payments from any type of account.

Except as indicated elsewhere, we do not charge for these electronic fund transfers.

**ATM Operator/Network Fees.** When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

#### DOCUMENTATION

- **Terminal transfers.** You can get a receipt at the time you make a transfer to or from your account using an automated teller machine or point-of-sale terminal. However, you may not get a receipt if the amount of the transfer is \$15 or less.
- **Preauthorized credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 866-USE-4-YOU (866-873-4968) to find out whether or not the deposit has been made.
- **Periodic statements.**

You will get a monthly account statement from us for your checking accounts.

You will get a monthly account statement from us for your savings accounts, unless there are no electronic transfers in a particular month. In any case, you will get a statement at least quarterly.

#### PREAUTHORIZED PAYMENTS

- **Right to stop payment and procedure for doing so.** If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here is how:

Call or write us at the telephone number or address listed in this brochure in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.

Please refer to our separate fee schedule for the amount we will charge you for each stop-payment order you give.

- **Notice of varying amounts.** If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

- **Liability for failure to stop payment of preauthorized transfer.** If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

#### FINANCIAL INSTITUTION'S LIABILITY

**Liability for failure to make transfers.** If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (1) If, through no fault of ours, you do not have enough money in your account to make the transfer.
- (2) If you have an overdraft line and the transfer would go over the credit limit.
- (3) If the automated teller machine where you are making the transfer does not have enough cash.
- (4) If the terminal or system was not working properly and you knew about the breakdown when you started the transfer.
- (5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- (6) There may be other exceptions stated in our agreement with you.

#### CONFIDENTIALITY

We will disclose information to third parties about your account or the transfers you make:

- (1) where it is necessary for completing transfers; or
- (2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
- (3) in order to comply with government agency or court orders; or
- (4) as explained in the separate Privacy Disclosure.

#### UNAUTHORIZED TRANSFERS

##### (a) Consumer liability.

- **Generally.** Tell us at once if you believe your card and/or code has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check or draft. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you believe your card and/or code has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft of your card and/or code you can lose no more than \$50 if someone used your card and/or code without your permission. Also, if you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers made by card, code or other means that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

- **Limited Liability for MasterCard® Debit/ATM Card.** Your liability is further limited if your card can be used to initiate a transaction for which you are not required to provide identifying information, such as a Personal Identification Number. You could lose all the money in your account. Your liability for the unauthorized use of your card will be no more than \$50 if you notify us of the unauthorized use. However, you will not be liable for any point-of-sale transactions, if: (i) you can demonstrate that you have exercised reasonable care in safeguarding your card from the risk of loss or theft, (ii) you have not reported to us two or more incidents of unauthorized use within the prior twelve-month period, and (iii) your account is in good standing. This additional limitation on liability does not apply to PIN-based transactions or transactions not processed by MasterCard®. If any of these conditions are not met, your liability is the lesser of \$50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to us.

If you fail to notify us of an unauthorized use that appears on a periodic statement within 60 days of our transmittal of the statement, and we can establish that we could have prevented the unauthorized use if you had notified us within this period, you will be liable for each unauthorized transfer (other than MasterCard® point-of-sale transactions) that occurs after the close of the 60 days and before you give us notice. Regardless, your liability for unauthorized point-of-sale transactions will be no more than \$50, as described above.

If you fail to notify us because of extenuating circumstances beyond your control that contributed to your delay in notifying us, such as a serious physical impairment or hospitalization, this time period may be extended.

**(b) Contact in event of unauthorized transfer.** If you believe your card and/or code has been lost or stolen, call us at the telephone number or write us at the address listed in this brochure. You should also call the number or write to the address listed in this brochure if you believe a transfer has been made using the information from your check or draft without your permission.

#### ERROR RESOLUTION NOTICE

In Case of Errors or Questions About Your Electronic Transfers, Call or Write us at the telephone number or address listed in this brochure, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (20 business days if the transfer involved a new account) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days (90 days if the transfer involved a new account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days (20 business days if the transfer involved a new account) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. Your account is considered a new account for the first 30 days after the first deposit is made, unless each of you already has an established account with us before this account is opened.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

USE CREDIT UNION  
10120 PACIFIC HEIGHTS BLVD., SUITE 100  
SAN DIEGO, CA 92121

Business Days: Monday through Friday  
Excluding USE Posted Holidays  
Phone: 858-795-6000

MORE DETAILED INFORMATION IS AVAILABLE  
ON REQUEST

#### NOTICE OF ATM/NIGHT DEPOSIT FACILITY USER PRECAUTIONS

As with all financial transactions, please exercise discretion when using an automated teller machine (ATM) or night deposit facility. For your own safety, be careful. The following suggestions may be helpful.

1. Prepare for your transactions at home (for instance, by filling out a deposit slip) to minimize your time at the ATM or night deposit facility.
2. Mark each transaction in your account record, but not while at the ATM or night deposit facility. Always save your ATM receipts. Don't leave them at the ATM or night deposit facility because they may contain important account information.
3. Compare your records with the account statements you receive.
4. Don't lend your ATM card to anyone.
5. Remember, do not leave your card at the ATM. Do not leave any documents at a night deposit facility.
6. Protect the secrecy of your Personal Identification Number (PIN). Protect your ATM card as though it were cash. Don't tell anyone your PIN. Don't give anyone information regarding your ATM card or PIN over the telephone. Never enter your PIN in any ATM that does not look genuine, has been modified, has a suspicious device attached, or is operating in a suspicious manner. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.

7. Prevent others from seeing you enter your PIN by using your body to shield their view.
8. If you lose your ATM card or if it is stolen, promptly notify us. You should consult the other disclosures you have received about electronic fund transfers for additional information about what to do if your card is lost or stolen.
9. When you make a transaction, be aware of your surroundings. Look out for suspicious activity near the ATM or night deposit facility, particularly if it is after sunset. At night, be sure that the facility (including the parking area and walkways) is well lit. Consider having someone accompany you when you use the facility, especially after sunset. If you observe any problem, go to another ATM or night deposit facility.
10. Don't accept assistance from anyone you don't know when using an ATM or night deposit facility.
11. If you notice anything suspicious or if any other problem arises after you have begun an ATM transaction, you may want to cancel the transaction, pocket your card and leave. You might consider using another ATM or coming back later.
12. Don't display your cash; pocket it as soon as the ATM transaction is completed and count the cash later when you are in the safety of your own car, home, or other secure surrounding.
13. At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.
14. We want the ATM and night deposit facility to be safe and convenient for you. Therefore, please tell us if you know of any problem with a facility. For instance, let us know if a light is not working or there is any damage to a facility. Please report any suspicious activity or crimes to both the operator of the facility and the local law enforcement officials immediately.

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## YOUR ABILITY TO WITHDRAW FUNDS

This policy statement applies to all accounts.

Our policy is to make funds from your cash and check deposits available to you on the first business day after the day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use them to pay checks that you have written.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before closing on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after closing or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

If you make a deposit at an ATM before 12:00 P.M. (noon) Pacific Standard Time on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit at an ATM after 12:00 P.M. (noon) Pacific Standard Time or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

### LONGER DELAYS MAY APPLY

**Case-by-case delays.** In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$200 of your deposits, however, will be available on the first business day.

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

**Safeguard exceptions.** In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

### SPECIAL RULES FOR NEW ACCOUNTS

If you are a new member, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the day of your deposit.

Funds from all other check deposits will be available on the seventh business day after the day of your deposit.

### DEPOSITS AT AUTOMATED TELLER MACHINES

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we own or operate will be available on the second business day after the day of deposit, except that U.S. Treasury checks that are payable to you will be available on the first business day after the day of deposit. Also, the first \$200 of a deposit will be available on the first business day after the day of deposit. Checks drawn on USE Credit Union will be available on the first business day after the day of deposit if the deposit is made at an ATM located on our premises.

All ATMs that we own or operate are identified as our machines.

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## TRUTH-IN-SAVINGS DISCLOSURE

### Rate Information:

Refer to the Deposit Rate schedule for information regarding current dividend rates and annual percentage yields (APYs). All dividend rates and APYs are the anticipated rates and yields as determined by the credit union board of directors.

**Compounding and crediting:** For checking and money market accounts that earn dividends, the dividends are compounded and credited monthly. For savings accounts that earn dividends, dividends are compounded and credited quarterly, except for the Holiday Savings Account where dividends are credited once annually in November with no compounding.

**Dividend period:** For accounts that are credited dividends monthly, the dividend period is each calendar month, for example, the beginning date of the first dividend period of the calendar year is January 1, and the ending date of such dividend period is January 31. All other dividend periods follow this same pattern of dates. The dividend declaration date is the last day of the dividend period and for the example above is January 31.

For accounts that are credited dividends quarterly, the dividend period is each calendar quarter, for example, the beginning date of the first dividend period of the calendar year is January 1, and the ending date of such dividend period is March 31. All other dividend periods follow this same pattern of dates. The dividend declaration date is the last day of the dividend period and for the example above is March 31.

**Daily balance computation method:** Dividends are calculated by the daily balance method which applies a daily periodic rate to the balance in the account each day.

**Transaction limitations:** Refer to the Transfer Limitations section of this disclosure and agreement.

**Minimum Balance:** Refer to the Deposit Rate schedule and the Schedule of Fees and Charges for minimum balance information.

**Promotional Bonuses:** Any Promotional Bonus may end at any time. Promotional bonuses valued in excess of \$10.00 will be included as dividends earned or as miscellaneous payments and will be reported to the IRS on form 1099-INT or form 1099-MISC, as appropriate.



# Schedule of Fees & Charges

Effective February 1, 2014

## MEMBERSHIP

New Membership (through USECU): .....	\$5.00
New membership (through third-party partner): .....	\$15.00

## CHECKING ACCOUNTS

Printed checks: ..... Varies by selection

### Free Checking With E-Statements ..... FREE

Accounts not enrolled in E-Statements: .....	\$5.00/mo
Minimum balance to open: .....	\$100.00

### Membership Checking ..... FREE

With a minimum daily balance below \$500: .....	\$5.95/mo
Minimum balance to open: .....	\$100.00

### Merchant Checking ..... \$15.00

Deposit correction: .....	\$5.00/ea
Minimum balance to open: .....	\$100.00

### Premier Membership Checking ..... FREE

With a minimum daily balance below \$10,000: .....	\$15.00/mo
Minimum balance to open: .....	\$100.00

### Student Checking ..... FREE

Accounts not enrolled in E-Statements: .....	\$5.00/mo
Minimum balance to open: .....	\$25.00

## SAVINGS ACCOUNTS

### Regular Savings: ..... FREE

With a minimum daily balance below \$200 .....	\$5.00/mo
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### Advantage Savings: ..... FREE

With a minimum daily balance below \$200 or without a minimum \$35 monthly automatic transfer from a USECU Checking Account .....	\$5.00/mo
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### Penny Savings (for minors\*): ..... FREE

\*Converts to Regular Savings when child reaches age 18.

## MONEY MARKET ACCOUNTS

### Market Rate Plus Account ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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### Membership Money Market Account ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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### Money Market Advantage ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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### Wall Street Index Account

### (High-Yield Money Market Checking Account) ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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## INDIVIDUAL RETIREMENT ACCOUNTS (IRAs)

Account closure: .....	\$20.00
Transfer to another institution: .....	\$20.00/ea
Premature distribution: .....	\$10.00/ea

## ADDITIONAL SERVICES/CHARGES

Check ordering: .....	Varies
Early account closure (if open less than 90 calendar days): .....	\$15.00
Excess withdrawals (exceeds Reg D limit): .....	\$5.00/ea
IdentitySecure <sup>SM</sup> :	
• 1st 30 days: .....	FREE
• Primary Member: .....	\$9.95/mo
• Secondary Member: .....	\$6.95/mo
Rewards Package subscription: .....	\$5.00/mo
Temporary checks (per sheet of 3): .....	\$3.00/ea
Account research and reconciliation: .....	\$25.00/hr
Cashier's checks: .....	\$5.00/ea
Check cashing:	
• Members with a combined balance of less than \$400: .....	\$5.00/ea
• Non-Members cashing a Member check: .....	\$5.00/ea
Collection item (incoming, outgoing, or foreign): .....	\$25.00/ea*
*Or USECU cost, whichever is greater.	
Compliance with legal order: .....	\$50.00/ea
Copies:	
• Cancelled check:	
Two per statement cycle .....	FREE
Additional .....	\$3.00/ea*
*Note: Check viewing in Online Banking is free	
• Cancelled check in-branch/Contact Center request: .....	\$3.00/ea
• Cashier's check: .....	\$3.00/ea
• Deposited check (deposit or loan payment): .....	\$3.00/ea
• Photocopies: .....	\$3.00/pg
(must relate to USECU business)	
• Statement or account history: .....	\$3.00/ea
Locator fee (determine acct. holder address): .....	\$5.00/occurrence
Notary service: .....	\$10.00/signature
Notice of escheatment: .....	\$2.00/ea
Overdraft/Non-sufficient Funds (NSF):	
Applies to checks, Bill Pay, ACH, ATM/POS and other electronic debits that are paid or returned.	
• Overdraft paid by Courtesy Pay:	
(waived if resulting balance is less than \$10 negative)	
▶ 1-5 items (within a 12-month period) .....	\$27.00/ea
▶ 6+ items (within a 12-month period) .....	\$33.00/ea
• Overdraft paid by transfer:	
(from savings, checking, line of credit or credit card): .....	
\$10.00/ea	
• Non-sufficient Funds (NSF):	
Applies to checks, Bill Pay, ACH, ATM/POS and other electronic debits that are paid or returned.	
▶ 1-5 items (within a 12-month period) .....	\$27.00/ea
▶ 6+ items (within a 12-month period) .....	\$33.00/ea
Returned deposit items: .....	\$28.00/ea
Returned statement/account-related correspondence .....	\$5.00/ea
Shared branching cash withdrawal (USECU members): .....	\$2.00/ea
Additional shared branching fees: .....	Varies*
*Refer to CU Service Centers fee schedule posted in branches and online	
Stop payment-initial & renewal: .....	\$28.00/ea
Verification of deposit: .....	\$10.00/ea
Wire transfers:	
• Incoming: .....	\$10.00/ea
• Outgoing (domestic): .....	\$25.00/ea
• Outgoing (foreign): .....	\$40.00/ea*
*Plus third-party processing fees	

## Schedule of Fees & Charges (continued)

Effective February 1, 2014

### SAFE DEPOSIT BOXES

**Available at UCSD and Mission Valley Branches Only**

Annual rental:

3"x5": .....	\$29.00
5"x5": .....	\$45.00
3"x10": .....	\$55.00
6"x10": .....	\$65.00
9"x10": .....	\$100.00
5"x16": .....	\$110.00

Miscellaneous:

- Key deposit: .....\$20.00/box
- Key replacement: .....\$50.00/key
- Drilling of box: .....\$100.00\*
- \*Or actual cost, whichever is greater.
- Late fee: .....\$5.00

### ELECTRONIC SERVICES

Bill Pay monthly service: .....	FREE
• Stop payment: .....	\$28.00/ea
• Non-sufficient Funds (NSF): .....	\$28.00/ea
Expedited payments:	
• Electronic: .....	\$9.95/ea
• Overnight check: .....	\$30.00/ea
FinanceWorks™ online money management: .....	FREE
Mobile and Text Banking monthly service: .....	FREE
Mobile Apps: .....	FREE
Online Banking monthly service: .....	FREE
Online check deposit (MyDeposit) monthly service: .....	FREE
Speed Pay (for USECU Home Loans):	
• Mortgage Servicing call center: .....	\$17.50/ea
• My Mortgage Center (fee based on payment from due date):	
Day 1: .....	FREE
Day 2-5: .....	\$1.50
Day 6-10: .....	\$7.50
Day 11-15: .....	\$12.50
Day 16+: .....	\$15.00

### DEBIT/ATM CARD

Additional cards (other than joint owner card): .....	\$5.00/ea
Non-USECU ATM Funds Transfer: .....	\$1.50/ea
Balance inquiries (non-USECU ATM): .....	\$1.25/ea
Instant Issue: .....	\$5.00/ea
Point of Sale transaction – PIN or Signature based: .....	FREE
Replacement card or PIN: .....	\$5.00/ea
Rush card/PIN or alternate address request: .....	\$35.00/ea
ATM withdrawals (at non-USECU and non-CO-OP ATMs): .....	\$2.25/ea

### CREDIT CARD

Annual fees:

- Platinum Secured-SV, Platinum-V1, Platinum-PV, Platinum-GV .....
- Platinum-CB: .....
- Platinum-CV: .....
- Platinum-MV: .....

Penalty fees:

- Late payment: .....\$10.00  
(if minimum monthly payment is more than 10 days late)
- Returned payment: .....\$28.00

Transaction fees:

- Balance transfer: .....FREE
- Cash advance: .....FREE
- Foreign transaction: .....1% of each transaction in U.S. dollars

### HOME LOANS/LINES OF CREDIT

**Home Loans:**

Document redraw:	
• 1st Mortgage: .....	\$125.00/ea
• 2nd Mortgage: .....	\$125.00/ea
• HELOC: .....	\$125.00/ea
Late charge: .....	5% of late payment due or \$5 minimum
Reconveyance: .....	\$69.00/ea (plus additional recording costs)
Revised demand: .....	\$15.00/ea
Subordination: .....	\$200.00

**Home Equity Lines of Credit:**

Annual fee: .....	\$50.00/yr*
*Waived for the first year. Thereafter, waived if the outstanding balance is \$10,000 or greater at the time of assessment.	
Early closure: .....	\$500.00*
*Charged with credit limits of \$250,000 or less if account is closed within the first three years from date of origination.	
Late charge: .....	5% of late payments due or \$5 minimum
Over the limit charge: .....	\$10.00

### POWERHOUSE SIGNATURE LOAN\*

Late charge: .....	5% of late payments due or \$5 minimum
*Product discontinued (fee applicable to existing account holders)	

### DEALER DIRECT VEHICLE LOANS

Late charge: .....	5% of late payments due
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### TURBO VEHICLE PRODUCTS

Late charge: .....	5% of late payments due or \$5 minimum
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### CONSUMER LOANS

Check-by-Phone: .....	\$10.00/ea
• Payment by phone with a check issued: .....	\$10.00
• Payment by phone with ACH debit issued: .....	\$10.00
• Payment by phone with debit/credit card charged: .....	\$20.00
• Establish a recurring ACH loan payment: .....	FREE
• Use of an online channel (e.g. website) to initiate a loan payment via ACH: .....	FREE
DMV title changes: .....	\$50.00/ea
Late fee: .....	5% of late payments due or \$5 minimum
Loan coupon book replacement: .....	\$25.00
Loan extension or modification: .....	\$35.00
Loan payment by phone (debit/credit card): .....	\$20.00/ea
Loan wire: .....	\$25.00/ea
Payment deferral: .....	\$50.00/ea
Payoff demand: .....	\$30.00
Skip-A-Payment: .....	\$50.00/ea



www.usecu.org | 866.873.4968



Federally Insured by NCUA.



www.usecu.org | (866) USE-4-YOU



www.usecu.org

**Corporate Headquarters:**

10120 Pacific Heights Blvd., Suite 100, San Diego, CA 92121  
(858) 795-6100

Member Service  
(866) USE-4-YOU (873-4968)

24-Hour Telephone Banking  
(866) USE-24-4-U (873-2448)

Online Banking  
www.usecu.org

Your savings federally insured to at least \$250,000  
and backed by the full faith and credit of the United States Government

**NCUA**

National Credit Union Administration, a U.S. Government Agency

# **EXHIBIT 2**





# Schedule of Fees & Charges

Effective February 1, 2014

## MEMBERSHIP

New Membership (through USECU): .....	\$5.00
New membership (through third-party partner): .....	\$15.00

## CHECKING ACCOUNTS

Printed checks: ..... Varies by selection

### Free Checking With E-Statements ..... FREE

Accounts not enrolled in E-Statements: .....	\$5.00/mo
Minimum balance to open: .....	\$100.00

### Membership Checking ..... FREE

With a minimum daily balance below \$500: .....	\$5.95/mo
Minimum balance to open: .....	\$100.00

### Merchant Checking ..... \$15.00

Deposit correction: .....	\$5.00/ea
Minimum balance to open: .....	\$100.00

### Premier Membership Checking ..... FREE

With a minimum daily balance below \$10,000: .....	\$15.00/mo
Minimum balance to open: .....	\$100.00

### Student Checking ..... FREE

Accounts not enrolled in E-Statements: .....	\$5.00/mo
Minimum balance to open: .....	\$25.00

## SAVINGS ACCOUNTS

### Regular Savings: ..... FREE

With a minimum daily balance below \$200 .....	\$5.00/mo
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### Advantage Savings: ..... FREE

With a minimum daily balance below \$200 or without a minimum \$35 monthly automatic transfer from a USECU Checking Account .....	\$5.00/mo
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### Penny Savings (for minors\*): ..... FREE

\*Converts to Regular Savings when child reaches age 18.

## MONEY MARKET ACCOUNTS

### Market Rate Plus Account ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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### Membership Money Market Account ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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### Money Market Advantage ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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### Wall Street Index Account

### (High-Yield Money Market Checking Account) ..... FREE

With a minimum daily balance below \$2,500 .....	\$10.00/mo
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## INDIVIDUAL RETIREMENT ACCOUNTS (IRAs)

Account closure: .....	\$20.00
Transfer to another institution: .....	\$20.00/ea
Premature distribution: .....	\$10.00/ea

## ADDITIONAL SERVICES/CHARGES

Check ordering: .....	Varies
Early account closure (if open less than 90 calendar days): .....	\$15.00
Excess withdrawals (exceeds Reg D limit): .....	\$5.00/ea
IdentitySecure <sup>SM</sup> :	
• 1st 30 days: .....	FREE
• Primary Member: .....	\$9.95/mo
• Secondary Member: .....	\$6.95/mo
Rewards Package subscription: .....	\$5.00/mo
Temporary checks (per sheet of 3): .....	\$3.00/ea
Account research and reconciliation: .....	\$25.00/hr
Cashier's checks: .....	\$5.00/ea
Check cashing:	
• Members with a combined balance of less than \$400: .....	\$5.00/ea
• Non-Members cashing a Member check: .....	\$5.00/ea
Collection item (incoming, outgoing, or foreign): .....	\$25.00/ea*
*Or USECU cost, whichever is greater.	
Compliance with legal order: .....	\$50.00/ea
Copies:	
• Cancelled check:	
Two per statement cycle .....	FREE
Additional .....	\$3.00/ea*
*Note: Check viewing in Online Banking is free	
• Cancelled check in-branch/Contact Center request: .....	\$3.00/ea
• Cashier's check: .....	\$3.00/ea
• Deposited check (deposit or loan payment): .....	\$3.00/ea
• Photocopies: .....	\$3.00/pg
(must relate to USECU business)	
• Statement or account history: .....	\$3.00/ea
Locator fee (determine acct. holder address): .....	\$5.00/occurrence
Notary service: .....	\$10.00/signature
Notice of escheatment: .....	\$2.00/ea
Overdraft/Non-sufficient Funds (NSF):	
Applies to checks, Bill Pay, ACH, ATM/POS and other electronic debits that are paid or returned.	
• Overdraft paid by Courtesy Pay:	
(waived if resulting balance is less than \$10 negative)	
▶ 1-5 items (within a 12-month period) .....	\$27.00/ea
▶ 6+ items (within a 12-month period) .....	\$33.00/ea
• Overdraft paid by transfer:	
(from savings, checking, line of credit or credit card): .....	
\$10.00/ea	
• Non-sufficient Funds (NSF):	
Applies to checks, Bill Pay, ACH, ATM/POS and other electronic debits that are paid or returned.	
▶ 1-5 items (within a 12-month period) .....	\$27.00/ea
▶ 6+ items (within a 12-month period) .....	\$33.00/ea
Returned deposit items: .....	\$28.00/ea
Returned statement/account-related correspondence .....	\$5.00/ea
Shared branching cash withdrawal (USECU members): .....	\$2.00/ea
Additional shared branching fees: .....	Varies*
*Refer to CU Service Centers fee schedule posted in branches and online	
Stop payment-initial & renewal: .....	\$28.00/ea
Verification of deposit: .....	\$10.00/ea
Wire transfers:	
• Incoming: .....	\$10.00/ea
• Outgoing (domestic): .....	\$25.00/ea
• Outgoing (foreign): .....	\$40.00/ea*
*Plus third-party processing fees	

## Schedule of Fees & Charges (continued)

Effective February 1, 2014

### SAFE DEPOSIT BOXES

#### Available at UCSD and Mission Valley Branches Only

Annual rental:

3"x5": .....	\$29.00
5"x5": .....	\$45.00
3"x10": .....	\$55.00
6"x10": .....	\$65.00
9"x10": .....	\$100.00
5"x16": .....	\$110.00

Miscellaneous:

- Key deposit: .....\$20.00/box
- Key replacement: .....\$50.00/key
- Drilling of box: .....\$100.00\*
- \*Or actual cost, whichever is greater.
- Late fee: .....\$5.00

### ELECTRONIC SERVICES

Bill Pay monthly service: .....	FREE
• Stop payment: .....	\$28.00/ea
• Non-sufficient Funds (NSF): .....	\$28.00/ea
Expedited payments:	
• Electronic: .....	\$9.95/ea
• Overnight check: .....	\$30.00/ea
FinanceWorks™ online money management: .....	FREE
Mobile and Text Banking monthly service: .....	FREE
Mobile Apps: .....	FREE
Online Banking monthly service: .....	FREE
Online check deposit (MyDeposit) monthly service: .....	FREE
Speed Pay (for USECU Home Loans):	
• Mortgage Servicing call center: .....	\$17.50/ea
• My Mortgage Center (fee based on payment from due date):	
Day 1: .....	FREE
Day 2-5: .....	\$1.50
Day 6-10: .....	\$7.50
Day 11-15: .....	\$12.50
Day 16+: .....	\$15.00

### DEBIT/ATM CARD

Additional cards (other than joint owner card): .....	\$5.00/ea
Non-USECU ATM Funds Transfer: .....	\$1.50/ea
Balance inquiries (non-USECU ATM): .....	\$1.25/ea
Instant Issue: .....	\$5.00/ea
Point of Sale transaction – PIN or Signature based: .....	FREE
Replacement card or PIN: .....	\$5.00/ea
Rush card/PIN or alternate address request: .....	\$35.00/ea
ATM withdrawals (at non-USECU and non-CO-OP ATMs): .....	\$2.25/ea

### CREDIT CARD

Annual fees:

- Platinum Secured-SV, Platinum-V1, Platinum-PV, Platinum-GV .....
- Platinum-CB: .....
- Platinum-CV: .....
- Platinum-MV: .....

Penalty fees:

- Late payment: .....
- (if minimum monthly payment is more than 10 days late)
- Returned payment: .....

Transaction fees:

- Balance transfer: .....
- Cash advance: .....
- Foreign transaction: ..... 1% of each transaction in U.S. dollars

### HOME LOANS/LINES OF CREDIT

#### Home Loans:

Document redraw:	
• 1st Mortgage: .....	\$125.00/ea
• 2nd Mortgage: .....	\$125.00/ea
• HELOC: .....	\$125.00/ea
Late charge: .....	5% of late payment due or \$5 minimum
Reconveyance: .....	\$69.00/ea (plus additional recording costs)
Revised demand: .....	\$15.00/ea
Subordination: .....	\$200.00

#### Home Equity Lines of Credit:

Annual fee: .....	\$50.00/yr*
*Waived for the first year. Thereafter, waived if the outstanding balance is \$10,000 or greater at the time of assessment.	
Early closure: .....	\$500.00*
*Charged with credit limits of \$250,000 or less if account is closed within the first three years from date of origination.	
Late charge: .....	5% of late payments due or \$5 minimum
Over the limit charge: .....	\$10.00

### POWERHOUSE SIGNATURE LOAN\*

Late charge: .....	5% of late payments due or \$5 minimum
*Product discontinued (fee applicable to existing account holders)	

### DEALER DIRECT VEHICLE LOANS

Late charge: .....	5% of late payments due
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### TURBO VEHICLE PRODUCTS

Late charge: .....	5% of late payments due or \$5 minimum
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### CONSUMER LOANS

Check-by-Phone: .....	\$10.00/ea
• Payment by phone with a check issued: .....	\$10.00
• Payment by phone with ACH debit issued: .....	\$10.00
• Payment by phone with debit/credit card charged: .....	\$20.00
• Establish a recurring ACH loan payment: .....	FREE
• Use of an online channel (e.g. website) to initiate a loan payment via ACH: .....	FREE
DMV title changes: .....	\$50.00/ea
Late fee: .....	5% of late payments due or \$5 minimum
Loan coupon book replacement: .....	\$25.00
Loan extension or modification: .....	\$35.00
Loan payment by phone (debit/credit card): .....	\$20.00/ea
Loan wire: .....	\$25.00/ea
Payment deferral: .....	\$50.00/ea
Payoff demand: .....	\$30.00
Skip-A-Payment: .....	\$50.00/ea



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# **EXHIBIT 3**



# What You Need to Know about USE Credit Union Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

• **What are the standard overdraft practices that come with my account?**

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

• **What fees will I be charged if USE Credit Union pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of **\$27** per item for each overdraft paid. (Fees are waived if the account is less than \$10 negative.)
- We do not charge an additional daily fee for negative balance accounts.
- There is no limit on the total fees we can charge you for overdrawing your account.

• **What if I want USE Credit Union to authorize and pay overdrafts on my ATM and everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions:

- Call us at (866) USE-4-YOU (866-873-4968)
- Visit [www.usecu.org](http://www.usecu.org)
- Complete this form and present it any USE Credit union branch location

\_\_\_\_\_ I want USE Credit Union to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Signature \_\_\_\_\_ Printed Name \_\_\_\_\_

Member Number \_\_\_\_\_ Date \_\_\_\_\_

**For Credit Union Use Only**

Date Received \_\_\_\_\_ Completed by \_\_\_\_\_ Teller# \_\_\_\_\_



**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO )

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years and not a party to the within action; my business address is 3281 East Guasti Road, Suite 100, Ontario, California, 91761.

On **March 17, 2022**, I served the foregoing document described as **PLAINTIFF’S FIRST AMENDED COMPLAINT** on the interested parties through their respective attorneys of record in this action, by placing a  true copy or  original thereof enclosed in sealed envelopes addressed as follows:

**LITCHFIELD CAVO LLP**  
Mark K. Worthge  
worthge@litchfieldcavo.com  
Alexandra K. Hobson  
hobson@litchfieldcavo.com  
2 North Lake Avenue,  
Suite 400 Pasadena, California 91101

*Attorneys for University & State Employees Credit Union*

**METHOD OF SERVICE:**

- (MAIL) I am readily familiar with the firm’s business practice for collection and processing of correspondence for mailing. Under that practice, I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Ontario, California.
- (ELECTRONIC MAIL) I caused such document to be delivered by electronic mail from [cs@mccunewright.com](mailto:cs@mccunewright.com) to the offices of the addressee(s).
- (FACSIMILE) I caused such documents to be transmitted by facsimile to the offices of the addressee(s) to the facsimile number(s) listed above.
- (OVERNIGHT DELIVERY) I caused such document to be delivered by overnight delivery to the offices of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **March 17, 2022**, at Ontario, California.

  
\_\_\_\_\_  
CYNTHIA SORIA

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges University & State Employees Credit Union Charges Improper Overdraft Fees](#)

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