

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated,

Plaintiff,

V.

MICHIGAN STATE UNIVERSITY  
FEDERAL CREDIT UNION and DOES  
1 through 100,

Defendants.

Case No.

Honorable:

## CLASS ACTION COMPLAINT

Plaintiff Tiffany K. Coleman-Weathersbee (“Plaintiff”), by her attorneys, hereby brings this class and representative action against Michigan State University Federal Credit Union and DOES 1 through 100 (collectively “MSUFCU” or “Defendant”).

## NATURE OF THE ACTION

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

2. This is a class and representative action brought by Plaintiff to assert claims in her own right, and in her capacity as the class representative of all other persons similarly situated, and in her capacity as a private attorney general on behalf of the members of the general public.

MSUFCU wrongfully charged Plaintiff and the Class Members overdraft fees and Non-Sufficient Funds fees.

3. This class action seeks monetary damages, restitution, and injunctive relief due to, *inter alia*, MSUFCU's policy and practice of assessing an overdraft fee or NSF fee on transactions when there was enough money in the checking account to cover (pay for) the transactions presented for payment. The charging of such overdraft fees breaches MSUFCU's contracts with its members, who include Plaintiff and the members of the Class. This class action also seeks monetary damages, restitution, and injunctive relief due to MSUFCU's policy and practice of charging multiple Non-Sufficient Funds Fees ("NSF fees") on the *same* electronic transaction, a practice which also violates MSUFCU's contracts with its members, who include Plaintiff and the members of the class.

4. The charging for such overdraft fees also violates federal law. Because MSUFCU failed to describe its actual overdraft service in its Opt-In Contract by, *inter alia*, failing to describe accurately in its Opt-In Contract the actual method by which MSUFCU calculates its overdraft fees, and because, alternatively, MSUFCU also violated or did not fulfill other prerequisites of Regulation E (12 C.F.R. §§1005.17 *et seq.*) of the Electronic Fund Transfer Act (15 U.S.C.A. §§ 1693 *et seq.*) before being allowed to charge overdraft fees, it prohibited MSUFCU from assessing overdraft fees for automated teller machine (ATM) and non-recurring debit card transactions (12 C.F.R. §1005.17(b)(1)(i)), but MSUFCU did so anyway.

### **PARTIES**

5. Plaintiff is a resident of Warren, Michigan and was a member of MSUFCU at all times relevant to the class action allegations.

6. Based on information and belief, Defendant MSUFCU is and has been a federally chartered credit union with its headquarters located in East Lansing, Michigan. MSUFCU is a "financial institution" within the meaning of Regulation E (12 C.F.R. § 1005.2(i)).

7. Without limitation, defendants DOES 1 through 100, include agents, partners, joint ventures, subsidiaries and/or affiliates of MSUFCU and, upon information and belief, also

own and/or operate MSUFCU branch locations. Each of defendants DOES 1 through 100 is a “financial institution” within the meaning of Regulation E (12 C.F.R. § 1005.2(i)). As used herein, where appropriate, the term “MSUFCU” is also inclusive of Defendants DOES 1 through 100.

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

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

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

11. Whenever reference is made in this Complaint to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives who was actively engaged in the management, direction, control, or transaction of Defendant’s ordinary business and affairs.

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

### **VENUE AND JURISDICTION**

13. This Court has subject matter jurisdiction over this case pursuant to, *inter alia*, 28 U.S.C. § 1331.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is a resident of this District, and pursuant to § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

### **FACTUAL ALLEGATIONS**

#### **A. MSUFCU's Unlawful Charges of Overdraft Fees**

15. MSUFCU is a credit union with approximately 19 branches in Michigan with over 271,000 members, and holding approximately \$4.3 billion in assets. MSUFCU offers its consumer banking customers a checking account. One of the features of a MSUFCU checking account is a debit card, which can be used for a variety of transactions including the purchasing of goods and services. In addition to receiving a debit card, other features of a MSUFCU checking account include: the ability to write checks; withdraw money from ATMs; schedule Automated Clearing House (ACH) transactions (certain recurring payments); and other types of transactions that debit from a checking account.

16. In connection with its processing of debit transactions (debit card, ATM, check, ACH, and other similar transactions), MSUFCU assesses overdraft fees and NSF fees to customer accounts when it claims to have determined that a customer's account has been overdrawn.

17. Overdraft fees and NSF fees constitute the primary fee generators for banks and credit unions. In 2009 alone, banks generated an estimated \$37 billion from overdraft fees on debit purchases and ATM transactions. While credit unions portray themselves to customers as more overdraft and fee friendly than banks, a 2015 study conducted by Moebs Services confirmed that the median overdraft fees charged by credit unions are not statistically significantly less than the median overdraft fees charged by banks. For credit unions such as MSUFCU, overdraft fees and NSF fees are a major source of revenue and a profit center.

According to a 2010 report by Georgetown University Law Professor Adam Levitin, overdraft fees comprise 6% to 7% of the gross revenue of credit unions. (Filene Research Institute Report, Overdraft Regulation A Silver Lining In The Clouds? Filene Research Institute 2010).

18. The high cost of an overdraft fee is usually unfairly punitive. In a 2012 study, more than 90% of customers who were assessed overdraft fees overdrew their account by mistake. (May 2012 Pew Charitable Trust report entitled “Overdraft America: Confusion and Concerns about Bank Practices”, at p. 4). More than 60% of the transactions that resulted in a large overdraft fee were for less than \$50. (June 2014 Pew Charitable Trust report entitled “Overdrawn”, at p. 8). 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 paying the transaction into overdraft and charging a very large fee (*id.* at p. 10).

19. Unfortunately, the customers who are assessed these fees are the most vulnerable customers. Younger, lower-income, and non-white account holders are among those who were more 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). Non-whites are 83% more likely to pay an overdraft fee than whites. (*Id.* at p. 3).

20. As a result of banks and credit unions taking advantage of millions of customers through the unfair practice of charging overdraft fees through methodologies that maximize the possible number of expensive overdraft fees to be charged, there has been a substantial amount of litigation over the past few years. The outcome of these cases has predominantly fallen in favor of plaintiffs with the banks and credit unions repaying their customers over one billion dollars for the unlawfully assessed overdraft fees by way of jury verdicts and settlements.<sup>1</sup>

---

<sup>1</sup> [http://files.consumerfinance.gov/f/documents/CFPB\\_Arbitration\\_Agreements\\_Notice\\_of\\_Proposed\\_Rulemaking.pdf](http://files.consumerfinance.gov/f/documents/CFPB_Arbitration_Agreements_Notice_of_Proposed_Rulemaking.pdf), at p. 74-75.

21. The federal government has also stepped in to provide additional protections to customers with respect to abusive overdraft policies. In 2010, the Federal Reserve Board enacted regulations giving financial institutions the authority to charge overdraft fees on ATM and one-time debit card transactions only if the institution first obtained the affirmative consent of the customer to do so. (12 C.F.R. § 1005.17 (Regulation E's "Opt-In Rule")).

22. To qualify as affirmative consent, the Opt-In Contract must include, but is not limited to the following:

- The customer must be provided the overdraft policy, including the dollar amount of any fees that will be charged for an overdraft, and the maximum number of fees that can be assessed on any given day (if there is no maximum, that fact must be stated);
- The financial institution must state whether alternatives, such as linking the checking account to a secondary account or line of credit, are available.
- The opt-in consent must be obtained separately from other consents and acknowledgements;
- The consent cannot serve any purpose other than opting into the overdraft program;
- The consent cannot be a pre-selected checked box;
- The financial institution may not provide different terms for the account depending on whether the customer opted in to the overdraft program.

If the financial institution does not obtain proper, affirmative consent from the customer that meets all of the requirements of Regulation E's Opt-in Rule, including fulfilling each of the above requirements, then it is not permitted to charge overdraft fees on ATM and one-time debit card transactions. On information and belief, MSUFCU did not fulfill these prerequisites.

23. Further, at all relevant times, MSUFCU has had an overdraft program in place for assessing overdraft fees which, *inter alia*, is: (1) contrary to the express and implied terms of its

contract with members; (2) contrary to MSUFCU's representations about its overdraft program to its members; and (3) contrary to its members' expectations regarding the assessment of overdraft fees.

24. There are three balances in an account: the "balance;" the "collected available balance;" and, the "artificial available balance." The "balance" (sometimes called "actual balance" or "ledger balance") is the money in the account, without deductions for holds on pending transactions or on deposits. It is the official balance of the account. It is the balance provided to the customer in monthly statements, which is the official record of activity in the account. It is the balance used to determine interest on deposits and any minimum balance requirements. Further, based on information and belief, it is the balance which is used by Defendant MSUFCU to report its deposits to regulators, shareholders and the public. It is the balance provided to regulators in call reports and reserve reports. It is the balance used in financial reports to shareholders and the balance used for internal financial reporting. It is the balance used by credit reporting agencies in providing credit ratings of MSUFCU.

25. The "collected available balance" is the "balance" less holds placed on certain deposits pursuant to the financial institution's "Funds Availability Policy" ("FAP"). Regulation CC (12 CFR part 229) establishes maximum permissible hold periods for checks and other deposits and all financial institutions are required by it to have an FAP.

26. The "artificial available balance" as used by MSUFCU during the relevant class periods is a completely different calculation than the "collected available balance." Although the "artificial available balance" has the words "available balance" in it like the "collected available balance" has, the "artificial available balance" is an accounting gimmick which takes the "collected available balance" and then further deducts from it pending debit card transactions which have not yet posted (and which might or might not ever post), meaning the money is still in the account of the credit union member. MSUFCU does this so that it may increase the overdraft fees and NSF fees it charges its members. There is no requirement to use the "artificial available balance," and during the class period, MSUFCU had no authority or disclosure or

statement in any of its contracts with its members that it would use the “artificial available balance” for purposes of assessing overdraft fees.

27. Not only is the practice of using this “artificial available balance” rather than the “balance” or “collected available balance” to determine whether a transaction results in an overdraft or NSF fee contrary to MSUFCU’s contracts with its members during the class period, but such practices have resulted in MSUFCU improperly charging unlawful overdraft and NSF fees. MSUFCU created this “artificial available balance” accounting gimmick to increase overdraft and NSF fees it charged its members.

28. MSUFCU entered into a written contract with Plaintiff and the other Class Members titled “Membership and Account Agreement” (hereinafter referred to as the “Account Agreement”), which is attached hereto as Exhibit 1. The Account Agreement contains a promise in paragraph 17.a. that an overdraft only occurs, and an overdraft fee will only be charged, “[i]f on any day, you do not have adequate funds in your checking account to cover checks, fees, or other items drawn on your account . . . .” The Account Agreement further states that an overdraft takes place when an account “lacks sufficient funds to cover an item...” It is undisputable that the Account Agreement never states anywhere that holds will be placed on funds in the account for pending debit card transactions, and that those funds will be subtracted from the member’s “balance” to determine assessment by Defendant of overdraft fees. It is further undisputable that nowhere does the Account Agreement define “sufficient funds” or “adequate funds” in any manner, yet alone in this manner.

29. MSUFCU’s Account Agreement also describes a “Courtesy Pay” program in section 17.c. This section states, “Courtesy Pay is a discretionary service under which we may pay checks and ACH transactions drawn on insufficient funds up to an established limit, and for which you do not have funds available in a designated overdraft account.” Again, the terms “insufficient funds” or “funds available” are not defined. At best for MSUFCU, the use of these two terms interchangeably creates ambiguity in the Account Agreement, especially when earlier sections use the terms “adequate funds” or “sufficient funds”. It remains undisputable, though,



that the Account Agreement never states or discloses anywhere that holds will be placed on funds for pending debit card transactions and that those funds will be subtracted from the actual balance in the account to instead create an “artificial available balance” for the purpose of determining overdraft or NSF fees. At best for MSFCU there might be an arguable ambiguity as to whether MSUFCU somehow implied it was allowed to use “collected available balance” rather than “balance” for purposes of assessing overdraft and NSF fees, but under no circumstances is there even an implication that it could use the “artificial available balance” for this purpose.

30. There is also a second contract. MSUFCU was required by Regulation E to provide an Opt-In Contract to Plaintiff and the Class Members which governs the terms under which MSUFCU may assess Plaintiff and the Class Members overdraft fees for ATM and non-recurring debit card transactions, and must obtain their affirmative agreement to the contract before being allowed to charge overdraft fees for these debit card and ATM transactions.

31. The importance of Regulation E is highlighted by the fact that the Consumer Financial Protection Bureau’s study of actual practices found that: 1) ATM and debit card transactions are by far the most frequent transactions that occur; 2) overdraft fee policies entail expensive fees at very little risk to the financial institutions; and 3) opted-in accounts have seven times as many overdrafts that result in fees as not opted-in accounts.<sup>2</sup>

32. MSUFCU’s Opt-In Contract is a separate document entitled, “What You Need to Know about Overdrafts and Overdraft Fees” (hereafter referred to as the “Opt-In Contract”) and is attached as Exhibit 2. It defines an “overdraft” as follows: “An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway.” This promise means that MSUFCU is not authorized to assess an overdraft fee—because an overdraft has not occurred—unless there is not enough money in the customer’s account to cover the transaction. The Opt-In Contract does not in any way state that there will be deductions made

---

<sup>2</sup> [http://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf)

from the money in the member's account arising from holds placed on pending debit card transactions to create a different "artificial available balance" other than the "enough money in the account" on which overdraft fees would be assessed, nor does the Opt-In Contract state holds placed on deposits would lower the amount of money in the account and create a "collected available balance" for purposes of allowing an overdraft fee to be assessed.

Furthermore, because, *inter alia*, the Opt-In Contract does not describe MSUFCU's actual overdraft practice, the Opt-In Contract fails to comply with the requirements of Regulation E. The Opt-In Contract nonetheless contains promises to which MSUFCU is contractually bound.

33. In fact, MSUFCU charges overdraft and NSF fees when the balance contains as much or more money than has been requested, but the "artificial available balance" does not. MSUFCU's practice of charging overdraft and NSF fees, even when there is enough money in the account to cover a transaction presented for payment, is inconsistent with how MSUFCU's Account Agreement and Opt-In Contract expressly describe the circumstances under which overdraft and NSF fees are assessed.

34. MSUFCU also has an improper practice of charging multiple NSF fees for the same electronic transaction. MSUFCU charges a \$30 fee when an electronic transaction is first processed for payment and MSUFCU determines that there is not enough money in the account to cover the transaction (a practice that wrongfully uses the "artificial available balance" described above). MSUFCU then charges an *additional* NSF fee if the same transaction is presented for processing again by the payee, even though the account holder took no action to resubmit the transaction for payment. This violates the Account Agreement, *inter alia*, at paragraph 17.a., which states that a fee may be charged when "an account lacks sufficient funds to cover *an item* . . . ." "An item" means a single electronic transaction, and not "multiple items" or a "retry" attempt to process payment for the same electronic transaction a second or third time. An electronic item reprocessed after an initial return for insufficient funds, especially through no action by the customer, cannot and does not fairly become a new, unique additional item for fee assessment purposes.

35. MSUFCU's practice of charging multiple NSF fees for a single electronic transaction is particularly egregious because, as described, MSUFCU assesses such fees using an improper calculation of the balance available in a member's account (the "artificial available balance"), including causing additional confusion and ambiguity. MSUFCU often charges an NSF fee improperly, and that improper \$30 deduction from a member's balance further decreases the "balance", generating even more NSF fees or overdraft fees.

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

37. Meanwhile, Plaintiff and the Class Members could not have anticipated the harm resulting from Defendant's practice throughout the class periods. The money in the account, without deductions for holds on pending transactions or on deposits, as already stated, is known as the "balance," and is considered the official balance of the account. It is the balance provided to the customer in monthly statements, which is the official record of activity in the account. It is the balance used by MSUFCU to determine interest on deposits and any minimum balance requirements, the balance used by MSUFCU to report its deposits to regulators, shareholders and the public, the balance provided to regulators in call reports and reserve reports, and the balance used in financial reports to shareholders and the balance used for internal financial reporting. When MSUFCU refers to balance or funds or money in the account, it is reasonable to interpret and understand that as referring to the official balance in the account—which is the balance without deduction for pending debit card transactions and without deduction for holds on deposits. In its study, the Bureau concluded that when a financial institution creates the "overall impression" that it would determine overdraft transactions and fees based on the balance in the account rather than an artificially created balance which has deducted pending transactions, then the "disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive." The Bureau further found that "consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures)." (Supervisory Highlights, Winter 2015, at

p. 9.)

38. Contrary to the promises in the Account Agreement and the Opt-In Contract, MSUFCU's policy and practice during relevant times of the class period was to ignore whether there was money in the account or a negative balance. Instead, MSUFCU's policy and practice was at all times relevant herein to assess overdraft fees and NSF fees based on the artificial internal calculation by which it deducts holds it has placed on pending debit card transactions and deposits, the "artificial available balance," rather than use the actual money in the account as required by the Opt-In Contract, or the funds in the account as required by the Account Agreement, without deduction for pending debit card transactions, or holds placed on deposits, to determine whether an overdraft or NSF has occurred for purposes of assessing an overdraft or NSF fee.

39. Under the Account Agreement, although Plaintiff disputes it, the only funds which even *arguably* might not be considered "available" for purposes of overdrafts or NSFs were those which were subject to temporary holds immediately upon deposit pursuant to the institution's Funds Availability Policy, meaning "collected available balance" (even though this is not stated or disclosed in the section pertaining to overdrafts), but not even *arguably* funds on which holds were placed due to pending transactions, *ie*, "artificial available balance." Although it is Plaintiff's position that during the class period MSUFCU, under its contractual terms with the Class Members, could only charge an overdraft fee or NSF fee if the balance in the account became negative without regard to any deductions for holds on deposits, or any other holds, the absolute best case scenario for MSUFCU is that there might be an arguable ambiguity in the contract which might have allowed MSUFCU in certain circumstances to place holds on recently deposited, *i.e.*, uncollected, funds in the account, and deduct those funds from the account balance in determining whether or not an overdraft or NSF has occurred (meaning use of the "collected available balance"). But in no case was MSUFCU even arguably permitted to deduct from the account on which holds had been placed for transactions which had not yet gone through (meaning use of the "artificial available balance"). This was not contracted or disclosed

or mentioned anywhere.

40. In the alternative, MSUFCU violated its own Funds Availability Policy during the class period because, *inter alia*, that section clearly identifies the situations under which funds might not be available, and MSUFCU expanded it, in practice, to include holds placed on funds earmarked for pending transactions.

41. MSUFCU's contractual promises in the Account Agreement and Opt-In Contract to assess overdraft fees only when there is not enough money in the account to cover the item was also repeated to customers in other disclosures and marketing materials.

42. Unlike MSUFCU, numerous other financial institutions' account agreements explain exactly how those institutions place holds on pending debit card transactions and how those holds reduce the amount of funds which are consulted to determine when overdrafts occur. For example, the account agreement of Affinity Federal Credit Union states, in bold, that "[a] temporary debit authorization hold affects your account balance." The language beneath this header explains that "the amount of funds in your account available for other transactions will be reduced by the amount of the temporary hold." Likewise, GTE Federal Credit Union's account agreement has contained the following language since June 2016:

**YOUR CHECKING ACCOUNT BALANCE:** Your checking account has two kinds of balances...It is important to understand how the two balances work so that you know how much money is in your account at any given time...Any purchases, holds, fees, charges, or deposits made on your account that have not yet posted will not appear in your actual balance...Your available balance is the amount of money in your account that is available to you to use without incurring an overdraft or NSF fee. The available balance takes into account things like holds placed on deposits and pending transactions (such as pending debit card purchases) that the Credit Union has authorized but have not yet posted to your account..."

Logix Credit Union has also adopted an account agreement which specifically states debit holds can cause overdrafts:

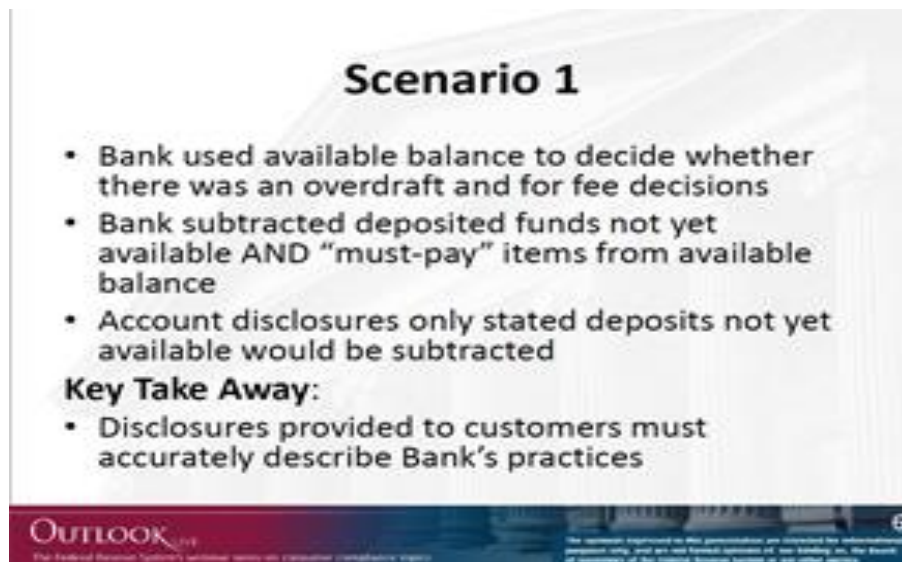
"The available balance takes into account things like holds placed on deposits and payments that have been authorized but have not yet posted to your account (such as pending debit card purchases). For example, assume you have an actual balance of \$50 and an available balance of \$50. If you were to swipe your debit card at a restaurant to

buy lunch for \$20, then that merchant could ask us to pre-authorize the payment. In that case, we will reduce your available balance by \$20. Your actual balance would still be \$50 because this transaction has not yet posted, but your available balance would be \$30 because you have committed to pay the restaurant \$20. When the restaurant submits the transaction to us (which could be a few days later), we will post the payment transaction to your account and your actual balance will be reduced by \$20.”

Baxter Credit Union has an account agreement which states that “[a]vailable balance is used to determine when there are insufficient funds to pay an item presented for payment from the account” and describes the available balance as “generally equal to the actual balance, less the amount of any holds placed on recent deposits, holds for other reasons, and holds for pending transactions (such as pending debit card purchases) that the Credit Union has authorized but that have not yet posted to your account.” Southland Credit Union’s account agreement also states that for purposes of determining whether to assess an overdraft fee it, “[t]akes into account factors such as holds placed on deposits and pending transactions (such as pending debit card purchases) that the Credit Union has authorized but that have not yet posted to your account.” Similarly, State Employees Credit Union of Maryland discloses that for purposes of assessing an overdraft fee it, “[t]akes into account things such as holds placed on deposits and decreases in 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.” MidFlorida Credit Union has put forward a separate Overdraft Agreement which states that it, “[t]akes into account things like holds placed on deposits and pending transactions (such as pending debit card purchases) that the Credit Union has authorized but that have not yet posted to your account.” Point Loma Credit Union explains in its account agreement that for purposes of assessing overdraft fees “[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.” San Diego County Credit Union’s account agreement states that in determining whether an overdraft fee will be assessed against a member, “[w]e will

consider all transactions that have posted to your account, any holds that may be in place on deposits you have made, and pending transactions (such as pending debit card purchases) that the Credit Union has authorized but that have not yet posted to your account.” It also contains a section on authorization holds, titled, “Authorization Holds for Debit Card Transactions,” which states, “[w]e generally place a temporary hold against some or all of the funds in the account linked to your debit card if and when an authorization request is obtained,” and that “[t]he amount of the authorization hold will be subtracted from your available balance.” In contrast to these account agreements, and dozens of others across the country, MSUFCU’s Account Agreement and Opt-In Contract state no such thing, not even remotely.

43. The Consumer Finance Protection Bureau (“CFPB”), in a recent Federal Interagency Compliance Discussion regarding improper overdraft fees, condemned exactly the sort of conduct being challenged by Plaintiff in this lawsuit, and called what Defendant was doing here during the relevant class period an “Unfair Practice”



(Excerpts from Interagency Overdraft Services Consumer Compliance Discussion, dated Nov. 9, 2016).

44. As shown, the CFPB has actually condemned as deceptive the very practice at

issue in this case.

45. Plaintiff did not and could not have, exercising reasonable diligence, discovered both that she had been injured and the actual cause of that injury until she met with her attorneys in or about May of 2019. While Plaintiff understood that she was assessed fees, she did not understand the cause of those fees until about May 2019 because Defendant hid its actual practice from its members by describing a different practice in its contracts and other materials disseminated to its members. This not only reasonably delayed discovery, but Defendant's affirmative representations and actions also equitably toll any statute of limitations, and also additionally equitably estop Defendant.

46. Therefore, Plaintiff, on behalf of herself and all others similarly situated, seeks relief as set forth below.

47. Plaintiff was harmed by Defendant's policy and practice of charging overdraft fees when there was money in her account to cover the transaction. As stated, Plaintiff entered into contracts with MSUFCU during the relevant class periods wherein MSUFCU contracted to charge overdraft fees or NSF fees only if her account did not have enough money to cover the transaction. By nonetheless charging Plaintiff overdraft fees and NSF fees when her account did contain enough money to cover the transaction at issue, MSUFCU breached its contracts with Plaintiff. It will be necessary to obtain Defendant's records to determine each instance of such a wrongful overdraft fee. However, to give one example, on March 27, 2019, Plaintiff had a balance of \$213.34 and engaged in a \$210.00 transaction, leaving her with a balance of \$3.34 in her account. Nonetheless, Defendant imposed a \$30 "Courtesy Fee" on her for the transaction.

48. Plaintiff has a reasonable belief that a complete review of Plaintiff's and MSUFCU's records will show multiple additional instances in which MSUFCU improperly



charged Plaintiff overdraft fees and NSF fees for transactions despite the fact that Plaintiff had enough money in her account to cover the transactions.

49. Plaintiff also has a reasonable belief that a complete review of Plaintiff's and MSUFCU's records will show multiple instances in which Plaintiff was charged multiple NSF fees for the same electronic transaction, even though MSUFCU's Account Agreement states that a fee will only be charged when "an item" cannot be paid because there is not enough money in the member's account. A resubmission of the same item or transaction does not create a new "item", and cannot result in an additional NSF fee, pursuant to MSUFCU's own contracts.

50. Moreover, the assessment and unilateral taking of improper overdraft fees further reduces the balance and amount of funds in the account, resulting in and aggressively causing subsequent, otherwise non-overdraft transactions to be improperly treated as transactions for which MSUFCU assesses further overdraft or NSF fees. This practice was deemed to be deceptive and substantially harmful to customers by the CFPB, which made the following conclusions in its studies:

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

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

51. Additionally, because the Opt-In Contract did not describe MSUFCU's actual overdraft service, and/or because it contained other deficiencies, MSUFCU violated Regulation E by charging overdraft fees on ATM and non-recurring debit card transactions. Because it failed to provide the full and accurate disclosures to Plaintiff required by Regulation E, MSUFCU failed to obtain Plaintiff's fully informed consent as required by Regulation E in order for MSUFCU to be authorized to charge such overdraft fees. Because MSUFCU was not legally authorized to enroll Plaintiff into the program for non-recurring debit card and ATM transactions, MSUFCU violated Regulation E when it assessed any overdraft fees against Plaintiff for non-recurring debit card and ATM transactions.

52. Plaintiff was harmed by these practices when she was assessed overdraft fees and NSF fees when she not have been. A complete evaluation of MSUFCU's records is necessary to determine the full extent of Plaintiff's harm from this practice as well.

#### **CLASS ACTION ALLEGATIONS**

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

54. Plaintiff brings this case, and each of her respective causes of action, as a class action pursuant to Federal Rule of Civil Procedure 23(a)(b)(1), (b)(2) and (b)(3) on behalf of the following class.

55. The "Class" is composed of three classes:

##### **The Account Balance Class:**

**All United States residents who have or have had accounts with MSUFCU who incurred an overdraft fee or NSF fee when the balance in the checking account was sufficient to cover the at issue during the period beginning six**

**years preceding the filing of this Complaint and ending on the date the class is certified.**

**The Regulation E Class:**

**All United States residents who have or have had accounts with MSUFCU who incurred an overdraft fee or overdraft fees for ATM or non-recurring debit card transaction(s) during the period beginning six years preceding the filing of this Complaint and ending on the date the class is certified.**

**The Repeat NSF Class:**

**All United States residents who have or have had accounts with MSUFCU who incurred an NSF fee more than once for the same item during the period beginning six years preceding the filing of this Complaint and ending on the date the class is certified.**

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

57. This action has been brought and may be properly maintained on behalf of each member of the Class pursuant to Federal Rule of Civil Procedure 23.

58. **Numerosity** – The members of the Class are so numerous that a joinder of all members 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 that the Classes are likely to include thousands of members based on the fact that MSUFCU has approximately \$4.3 billion in assets and operates approximately 19 branches in Michigan with over 271,000 members.

59. Upon information and belief, Defendants have databases, and/or other

documentation, of its customers' transactions and account enrollment. These databases and/or documents can be analyzed by an expert to ascertain which of MSUFCU's members have been harmed by its practices and thus qualify as Class Members. Further, the Class definition identifies groups of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover. Other than by direct notice by mail or email, alternatively proper and sufficient notice of this action may be provided to the Class Members through notice published in newspapers or other publications.

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

- a. Whether, pursuant to the Opt-In Contract, Defendant promised to Plaintiff and the Class Members that it would not charge an overdraft fee if there was enough money in the account to cover the transaction;
- b. Whether, pursuant to the Account Agreement, Defendant promised to Plaintiff and the Class Members that it would not charge an overdraft fee or NSF fee if there was enough money in the account to cover the transaction;
- c. Whether, pursuant to the Account Agreement, Defendant promised to Plaintiff and the Class Members that it would only charge an NSF fee one time for each electronic transaction, and would not charge repeat NSF fees each time the same "item" was presented for payment;
- d. Whether Defendant breached the Opt-In Contract or the Account Agreement by assessing overdraft fees or NSF fees for transactions when

customers' checking accounts contained enough money to cover the transactions;

e. Whether the language in the Opt-In Contract accurately described Defendant's overdraft service pursuant to which Defendant assessed overdraft fees;

f. Whether Defendant is liable under claims of breach of the covenant of good faith and fair dealing, unjust enrichment and money had and received;

g. Whether Defendant's conduct violated state consumer protection laws; and

h. Whether Defendant's conduct violated 12 C.F.R. § 1005.17.

61. **Typicality** – Plaintiff's claims are typical of all of the members of the Class. The evidence and the legal theories regarding Defendant's alleged wrongful conduct committed against Plaintiff and all of the Class Members are substantially the same because all of the relevant agreements between Defendant and its customers, including the Account Agreement and the Opt-In Contract, were identical as to all relevant terms, and also because, *inter alia*, the challenged practices of charging customers for overdraft fees or NSF fees when there were sufficient funds in the accounts to pay for the transactions at issue, and of assessing multiple NSF fees for the same electronic transaction or item, are uniform for Plaintiff and all Class Members. Accordingly, in pursuing her own self-interest in litigating her claims, Plaintiff will also serve the interests of the other Class Members.

62. **Adequacy** – Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff has retained competent counsel experienced in class action litigation to ensure such protection. There are no material conflicts between the claims of the representative

Plaintiff and the members of the Class that would make class certification inappropriate.

Plaintiff and his counsel intend to prosecute this action vigorously.

63. **Predominance and Superiority** – The matter is properly maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because the common questions of law or fact identified herein and to be identified through discovery predominate over questions that may affect only individual Class Members. Further, the class action is superior to all other available methods for the fair and efficient adjudication of this matter. Because the injuries suffered by the individual Class Members are relatively small, the expense and burden of individual litigation would make it virtually impossible for Plaintiff and Class Members to individually seek redress for Defendant's wrongful conduct. Even if any individual person or group(s) of Class Members could afford individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and comprehensive adjudication by a single court. In contrast, the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the party (or parties) opposing the Class and would lead to repetitious trials of the numerous common questions of fact and law. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Plaintiff and the Class Members will continue to suffer losses, thereby allowing Defendant's violations of law to proceed without remedy and allowing Defendant to retain the proceeds of their ill-gotten gains.

64. Plaintiff is not aware of any separate litigation instituted by any of the Class Members against Defendant. Plaintiff does not believe that any other Class Members' interest in individually controlling a separate action is significant, in that Plaintiff has demonstrated above that her claims are typical of the other Class Members and that she will adequately represent the Class. This particular forum is a desirable forum for this litigation because both Plaintiff resides in this District, where Defendant operates at least one branch office, and because the claims arose from activities which occurred primarily in this District. Plaintiff does not foresee significant difficulties in managing the class action in that the major issues in dispute are susceptible to class proof.

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

66. This matter is properly maintained as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure in that:

- a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the Class format, prosecution of separate actions by individual members of the Class will create the risk of:
  1. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or
  2. Adjudication with respect to individual members of the Class,

which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests. The parties opposing the Class have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.

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

1. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
2. The extent and nature of any litigation concerning controversy already commenced by or against members of the Class;
3. The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
4. The difficulties likely to be encountered in the management of a class action.

**FIRST CAUSE OF ACTION**  
**(Breach of The Opt-In Contract)**

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



68. Plaintiff and each of the Class Members entered into the Opt-In Contract, attached hereto as Exhibit 2, with Defendant covering the subject of overdraft transactions. This contract was drafted by and binding upon Defendant.

69. In the Opt-In Contract, Defendant promised that MSUFCU would assess overdraft fees only when there was not enough money in the account to cover the transaction.

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

71. Defendant breached the express terms of the Opt-In Contract by, *inter alia*, assessing overdraft fees when there was enough money in the account to cover the transaction or transactions at issue.

72. As a proximate result of Defendant's breach of the Opt-In Contract, Plaintiff and the Class Members have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

**SECOND CAUSE OF ACTION**  
**(Breach of the Account Agreement)**

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

74. Plaintiff and each of the Class Members entered into the Account Agreement, attached hereto as Exhibit 1, with Defendant covering the subject of overdraft and NSF transactions. This contract was drafted by and is binding upon Defendant.

75. In the Account Agreement, Defendant promised that MSUFCU would assess overdraft or NSF fees only when there were not "adequate funds" or "sufficient funds" in the account to cover "an item." Nowhere did the Account Agreement state that MSUFCU would deduct pending debit card transactions for purposes of determining whether sufficient funds or

adequate funds existed when assessing an overdraft fee.

76. Further, nowhere did the Account Agreement state that MSUFCU would assess an additional NSF fee every time an electronic transaction was presented for processing, or submitted as a “retry.” MSUFCU wrongfully treated a “retry” as a new and separate “item” in violation of the terms of the Account Agreement.

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

78. Defendant breached the express and implied terms of the Account Agreement by, *inter alia*, assessing overdraft or NSF fees when there were sufficient funds in the account to cover the transaction or transactions at issue, and by assessing multiple NSF fees for the same electronic transaction or item.

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

**THIRD CAUSE OF ACTION**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

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

81. Plaintiff and each of the Class Members entered into contracts with Defendant covering the subject of overdraft transactions, which has been identified herein as the Opt-In Contract, and the Account Agreement contract which covers overdraft fees and NSF fees. The contracts were drafted by and are binding upon Defendant.

82. In the contracts, Defendant promised that MSUFCU would only assess overdraft fees or NSF fees when there was not enough money in the account to cover the transaction. MSUFCU also promised that it would only assess “an” NSF fee for each “item” when it determined a member did not have enough money in his or her account to cover the item, not multiple NSF fees for the same item.

83. Further, good faith is an element of every contract. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Thus, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms, constitute examples of bad faith in the performance of contracts.

84. The material terms of the contracts therefore included the implied covenant of good faith and fair dealing, whereby Defendant covenanted that it would, in good faith and in the exercise of fair dealing, deal with Plaintiff and each Class member fairly and honestly and do nothing to impair, interfere with, hinder, or potentially injure Plaintiff’s and the Class Members’ rights and benefits under the contracts.

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

86. Defendant breached the implied covenant of good faith and fair dealing based, *inter alia*, on its practices of assessing fees when there was enough money in the account to

cover the transaction, and of assessing multiple NSF fees for the same electronic transaction or item. Defendant could easily have avoided acting in this manner by simply changing the programing in its software to charge overdraft fees and NSF fees only when there really was not enough money in the account to cover the transaction in question. Instead, Defendant unilaterally elected to and did program its software to create an accounting gimmick, the “artificial available balance,” which would maximize its overdraft and NSF fees. It also implemented a policy which it controlled of charging multiple NSF fees on the same attempted item. In so doing, and in implementing its overdraft and NSF fee programs for the purpose of increasing and maximizing overdraft fees, Defendant executed its contractual obligations in bad faith, depriving Plaintiff and the Class Members of the full benefit of the contracts.

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

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment/Restitution)**

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

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

90. The Consumer Finance Protection Bureau has concluded that inadequate disclosure of the type of balance-calculation used to determine overdraft transactions and their resultant fees that create additional overdraft fee harm constitutes an Unfair, Deceptive, or

Abusive Acts or Practice. (CFPB Bulletin 2013-07<sup>3</sup>, at p. 2 (defining Unfair, Deceptive, or Abusive Acts or Practices based on the FTC balancing test: “1) It causes or is likely to cause substantial injury to consumers; 2) The injury is not reasonably avoidable by consumers; and 3) The injury is not outweighed by countervailing benefits to consumers or to competition”); CFPB Supervisory Highlights, Winter 2015, at p. 9 (“Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.”).)

91. Because Plaintiff and the Class Members paid the erroneous overdraft and NSF fees and repeat 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.

**FOURTH CAUSE OF ACTION**  
**(Money Had and Received)**

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

93. Defendant has obtained money from Plaintiff and the Class Members by the

---

<sup>3</sup> [http://files.consumerfinance.gov/f/201307\\_cfpb\\_bulletin\\_unfair-deceptive-abusive-practices.pdf](http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf)

exercise of undue influence, menace or threat, compulsion or duress, and/or mistake of law and/or fact.

94. 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.

### **FIFTH CAUSE OF ACTION**

#### **(Violation of Electronic Fund Transfers Act (Regulation E)**

#### **C.F.R. § 1005 et seq. (authority derived from 15 U.S.C. § 1693 et seq.))**

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

96. By charging overdraft fees on ATM and nonrecurring transactions, MSUFCU violated Regulation E (12 C.F.R. §§1005 *et seq.*), whose “primary objective” is “the protection of consumers” (§1005.1(b)) and which “carries out the purposes of the [Electronic Fund Transfer Act (15 U.S.C. §§1693 *et seq.*), the “EFTA”] (§1005.1(b)), whose express “primary objective” is also “the provision of individual consumer rights” (15 U.S.C. §1693(b)).

97. Specifically, the charges violated what is known as the “Opt In Rule” of Reg E. (12 C.F.R. §1005.17.) The Opt In Rule states: “a financial institution ... *shall not assess a fee or charge ... pursuant to the institution’s overdraft service, unless the institution:* (i) [p]rovides the consumer with a notice in writing [the opt-in notice]... *describing the institution’s overdraft service*” and (ii) “[p]rovides a reasonable opportunity for the consumer to *affirmatively consent*” to enter into the overdraft program (*Id.*) The notice “shall be clear and readily understandable.” (12 C.F.R. §205.4(a)(1).) To comply with the affirmative consent requirement, a financial institution must provide a segregated description of its overdraft practices that is accurate, non-misleading and truthful and that conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide its customers a reasonable opportunity to opt-in after receiving the description. The affirmative consent must be provided in a way mandated by 12 C.F.R. § 1005.17, and the

financial institution must provide confirmation of the opt-in in a manner that conforms to 12 C.F.R. § 1005.17.

98. The intent and purpose of this Opt-In Contract is to “assist customers in understanding how overdraft services provided by their institutions operate .... by explaining the institution’s overdraft service ... in a clear and readily understandable way”—as stated in the Official Staff Commentary (74 Fed. Reg. 59033, 59035, 59037, 5940, 5948), which is “the CFPB’s official interpretation of its own regulation,” “warrants deference from the courts unless ‘demonstrably irrational,’” and should therefore be treated as “a definitive interpretation” of Reg E. *Strubel v. Capital One Bank (USA)*, 2016 U.S. Dist. LEXIS 41487, \*11 (S.D. N.Y. 2016) (quoting *Chase Bank USA v. McCoy*, 562 U.S. 195, 211 (2011)) (so holding for the CFPB’s Official Staff Commentary for the Truth In Lending Act’s Reg Z).

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

100. As a result of violating Regulation E’s prohibition against assessing overdraft fees on ATM and non-recurring debit card transactions without obtaining affirmative consent to do so MSUFCU has harmed Plaintiff and the Class.

101. Due to MSUFCU’s violation of Regulation E (12 C.F.R. § 1005.17), Plaintiff and members of the Class are entitled to actual and statutory damages, as well as attorneys’ fees and costs of suit pursuant to 15 U.S.C.A. § 1693m.

**PRAYER**

WHEREFORE, Plaintiff and the Class pray for judgment as follows:

1. For an order certifying this action as a class action;
2. For compensatory damages on all applicable claims and in an amount to be proven at trial;
3. For an order requiring Defendant to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;
4. For statutory damages;
5. For an order enjoining the wrongful conduct alleged herein;
6. For costs;
7. For pre-judgment and post-judgment interest as provided by law;
8. For attorneys' fees under the Electronic Fund Transfer Act, the common fund doctrine, and all other applicable law; and
9. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Class Members demand a trial by jury on all issues so triable.

Dated: June 6, 2019

Respectfully submitted,

---

Philip J. Goodman (P14168)  
Of Counsel  
Hubbard Snitchler & Parzianello, PLC  
801 W. Ann Arbor Trail, Ste 240  
Plymouth, MI 48170  
248-760-2996  
[PJGoodman1@aol.com](mailto:PJGoodman1@aol.com)



Taras Kick, CA Bar No. 143379\*

Taras@kicklawfirm.com

THE KICK LAW FIRM, APC

815 Moraga Drive

Los Angeles, California 90049

Telephone: (310) 395-2988

Facsimile: (310) 395-2088

[Taras@Kicklawfirm.com](mailto:Taras@Kicklawfirm.com)

\**Pro Hac Vice* applications to be submitted

Attorneys for Plaintiff Tiffany K. Coleman-

Weathersbee and the Putative Class

TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated,  
Plaintiff,

v.

MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100,  
Defendants.

# EXHIBIT 1



# MEMBERSHIP AND ACCOUNT AGREEMENT

This Membership and Account Agreement outlines the privileges and liabilities of Michigan State University Federal Credit Union (MSUFCU) and our members regarding the accounts and services we offer. In this Agreement the words "we," "us," and "our" refer to MSUFCU. The words "you" and "yours" mean any member of MSUFCU.

Your account plan(s) and the characteristics of your ownership rights are specified in your Membership Agreement. Your signature(s) on the Membership Agreement guarantees your agreement, jointly and individually, to the terms and conditions stated in this Membership and Account Agreement, the Membership Application, the Truth-in-Savings Disclosure, the Fee Schedule, the Rate Schedule, any Account Receipt included with this Agreement, the MSUFCU Bylaws, Policies and Procedures, and any changes made periodically to these terms and conditions, which collectively dictate your Membership and Accounts.

**1. Membership Eligibility.** To become a member of MSUFCU, you must satisfy the membership requirements, including the opening and maintenance of at least one (1) regular share account as set forth in the MSUFCU Bylaws. You authorize us to verify your membership qualifications or any other products or services you apply for by reviewing your account, credit, and employment history and by obtaining information from third parties, including, but not limited to, credit reporting companies.

**2. Taxpayer Identification Numbers and Backup Withholding.** If you cannot furnish your Taxpayer Identification Number (TIN) to us, we may not permit you to open an account until you can provide us with it. Incorrect TINs may cause backup withholding. Backup withholding on your account requires us to deduct a percentage of your dividends, interest, and certain other payments and remit such amount to the Internal Revenue Service (IRS). You may be subject to withholding if your W-8BEN form is expired.

**3. Single Party Accounts.** An account with only one owner is defined as a single party account. An owner is an individual who is eligible for membership. If the account owner dies, the ownership of the account passes to the decedent's estate, Payable on Death (POD) beneficiary/payee, or trust beneficiary, subject to other terms of this Membership and Account Agreement and applicable law relating to the processing of payments, transfers, and withdrawal requests of an owner, or owner's agent, before we are notified of an owner's death.

**4. Multiple Party Accounts.** Two or more people or entities jointly owning an account is considered a multiple party account and creates a "joint tenancy with rights of survivorship." Except as modified in this Agreement, joint accounts shall be subject to and governed by PA 41 of the Public Acts of 1968, as amended, being MCLA 490.51, and commonly known as the Credit Union Multiple-Party Accounts Act.

a. Control of Multiple Party Accounts. Any owner is allowed and deemed to have the authority to act on behalf of any other account owner(s) with respect to any and all account transactions. Each owner guarantees the signature of any other owner(s). Each owner appoints the other owner to be his/her irrevocable attorney. An owner does not need permission from the other owner(s) in order to withdraw funds, request stop payment on items, or authorize a transfer of all, or any part, of the savings. We are not obligated to inform any owner(s) about any transaction, except as required by law. We require signatures from all owners authorizing any material changes of the account. If we are informed, in writing, of a disagreement between account owners, or if there is a conflict in directions, between owners, on how to handle an account, we may place a hold on all funds in the account, close the account, or require a court order or written permission from all owners before taking any action with respect to the account.

b. Multiple Party Account Liability. If a deposited item in a multiple party account is returned due to insufficient funds, the account is overdrawn, or a final payment is not made on a transaction, the owners, jointly and individually, are responsible for reimbursing us the amount of the returned item, overdraft, or unpaid item and any fees that may be assessed, no matter who approved or initiated the transaction. We may exercise our rights against any account of any owner and any funds in the multiple party account to obtain reimbursement from any account owner indebted to us, regardless of who contributed such funds to the account.

c. Right of Survivorship. When one owner of a multiple party account dies, all rights and available funds in the account fall to the remaining account owner(s), unless otherwise authorized in the Membership Agreement. If a surviving owner does not exist, the last deceased owner's interest will go to his or her estate. If a surviving owner does exist, his or her share of the account is subject to any financial obligations, security interest, or pledge authorized by the decedent, even if the surviving owner did not agree to it.

**5. Accounts for Minors.** Any account opened with a minor designated as the primary owner shall be treated as if the minor is of full age of majority under the Bylaws of MSUFCU. Any joint owner shall be jointly and individually liable to us for any returned item, overdraft, or unpaid transaction on the minor's account. Transactions may be handled and dividends paid without approval from the co-owner of legal age. A parent or guardian is not permitted to access the minor's account unless he or she is the joint owner on the account. We are not obligated to question the use or purpose of any transaction.

**6. Uniform Transfers to Minors Account.** A Uniform Transfers to Minors Account (UTMA) is set up by a member, who shall be recognized as the custodian of the account, who deposits funds into the account as a gift to a minor. The minor is the recipient of the custodial funds in the account. The custodian holds proprietary rights and control of the account for the sole privilege and advantage of the minor and until the minor reaches the age of majority. The custodian is the only party authorized to contribute or withdraw funds or close the account, unless otherwise ordered by the court. We are not required to question the use or purpose of any transaction. We may delay any withdrawals from the account if the custodian dies until we have been instructed by any person permitted by law to withdraw funds, or a court orders us to make a withdrawal.

**7. Payable on Death Account.** A Payable on Death (POD) Account is established in order to designate any surviving POD beneficiary/payee of a single or multiple party account, excluding Individual Retirement Accounts (IRAs). If more than one POD or beneficiary/payee is named, the ownership of account benefits passes to all such beneficiaries/payees, without rights of survivorship. Designation of a beneficiary/payee for IRAs and Health Savings Accounts (HSAs) is separate from, and does not apply to, POD designations. We are not required to inform the beneficiary/payee of the establishment of any such account or his or her vesting interest in any account, unless required by law. If no person designated as a POD beneficiary/payee is living at the time of the death of the last surviving owner, the account shall be considered part of the owner's estate.

**8. Accounts for Trusts and Other Entities.** MSUFCU offers accounts for trusts and other entities such as estates, organizations, associations, sole proprietorships, corporations, limited liability companies, and partnerships that qualify for membership. These types of accounts are governed by separate account agreements specific to the type of entity and account. This Agreement does not apply to such accounts.

**9. Designation of an Account Agent.** An instruction given to MSUFCU by an account owner that permits another person to transact business on specified accounts is a designation of an account agent. A designation does not give the agent any ownership rights in an account or voting privileges with MSUFCU. We are not required to question the use or purpose of any transaction the agent makes.

**10. Silver Spartan.** Silver Spartan is a special package of benefits and services provided to members 55 years of age and older who have at least one of the following (you do not have to be retired):

- An MSUFCU checking account
- Net direct deposit, such as net paycheck, retirement income check, Social Security, military retirement, etc.
- One thousand dollars or more on deposit at MSUFCU

**11. Requirements for Depositing Funds.** You may deposit funds into any account using any approved method consistent with the conditions set forth by MSUFCU in the Truth-in-Savings Disclosure.

a. Endorsements. Transfers, checks, drafts, and other items may be received for deposit into any of your accounts if they are payable to, or to the order of, one or more account owner(s), even if all payees fail to endorse them. If we choose, we may furnish missing endorsements of any owner. If a check, draft, or item that is payable to two or more owners is unclear as to whether it is made out to either or both, we may process that check, draft, or item as though it is payable to either person. When you deposit items into your account, you warrant that all prior endorsements are genuine. MSUFCU reserves the right to verify all endorsements on third-party checks presented for payment or deposit either in person or by comparison with Member Account Agreements. If an insurance check, a government check, or other check or draft specifies endorsement requirements on the back of the check or draft, we may require exact endorsement as stated on the item. We require that endorsements be made on the back of the share draft or check within one inch of the upper edge, but we may choose to receive items that have been endorsed outside of that space. However, you are liable for any loss we incur from any delay or processing error due to an incorrect endorsement or other marks made by you or any previous endorser. MSUFCU may disregard information on any check other than the signature of the drawer and amount of the item and any magnetic encoded information. You agree that MSUFCU does not fail to use ordinary care in paying an item solely because its procedures do not provide for sight examination of items.

b. Collection of Items. So long as we exercise reasonable care, we are not accountable for handling items for deposit or collection, as we serve only as your agent. We do not claim responsibility for a deposit made by mail or at an Automated Teller Machine (ATM) until the item is in our possession. We are not accountable for any mishandling of an item by another party or its loss in transit. Each separate party will only be accountable for its own negligence. We reserve the right to send any item for collection. Items drawn on an institution not located in the United States are exclusively processed on a collection basis. You forgo the right to any notice of nonpayment, presentment, protest, or dishonor regarding the items we buy or acquire for credit or collection to your account.

c. Final Payment. Until we collect final payment, all items or Automated Clearing House (ACH) transfers posted to your account are provisional. We may charge your account the total amount of such items or ACH transfers and assess a return item fee to your account, as stated in the Fee Schedule, if final payment is not received. Any collection charges we incur may be charged to your account. We reserve the right to reject or return any item or funds transfer or to close your account.

d. Direct Deposits. We may accept direct deposits (e.g., payroll checks, retirement checks, or Social Security or other government checks) or preapproved transfers from other accounts. You must approve each direct deposit or automatic transfer beforehand by completing a form provided by us or the organization from which you receive the payment. A separate form must be completed for each direct deposit or automatic transfer. To cancel or modify a direct deposit or automatic transfer, you must notify the organization from which the payment is originated. If applicable, you must notify MSUFCU at least 30 days prior to any direct deposit or preapproved transfer if you wish to cancel or change the direct deposit or transfer. If you file for bankruptcy, all direct deposits that you have authorized will remain unchanged unless you cancel them. If it becomes mandatory that we reimburse the U.S. government for any payment made directly to your account, we may take the amount to be remunerated from any of your accounts, unless restricted by law.

e. Crediting of Deposits. Refer to our Funds Availability Policy Disclosure and Truth-in-Savings Disclosure for information regarding the crediting and availability of deposits.

## **12. Account Access.**

a. Authorized Signature. Your signature on the Membership Agreement permits you to access your account. We will not be responsible for refusing to accept any item or direction if we think it does not contain an authentic signature. You agree to the use of a facsimile of your signature, and that we may accept any draft with a facsimile signature that appears to match your signature on the Membership and Account Application, even if an unauthorized person made it. If you give your account information to a third party, you allow us to perform transactions originated by that person, even if you do not authorize a specific transaction.

b. Access Methods. You may withdraw or transfer funds from your account(s) by any method we offer, e.g., via ATM, Visa Debit Card, check, in person, by mail, MoneyLine, ComputerLine, or MSUFCU Mobile App as applicable. We may refuse to honor any draft drawn on a form we do not supply, and you are liable for any loss we incur handling such an item. We have the right to examine and authorize any form of power of attorney, and we may limit account withdrawals or transfers. We are not required to recognize any power of attorney. If any of your accounts become delinquent or overdrawn, we may restrict use of any and all access methods until such accounts are brought current.

c. ACH and Wire Transfers. You may originate or collect debits or credits to your account through ACH or wire transfers. We are not obligated to inform you at the time funds are received through an ACH or wire transfer; however, the transfer will be listed on your periodic statement. We may provisionally credit your account for an ACH transfer before we obtain final payment. We may reverse the provisional credit, or you will reimburse us for the amount credited to your account, if we do not obtain final payment. When you order a wire transfer, you may specify either the recipient or any financial institution by name, an account number, or identifying number. MSUFCU, and other financial institutions, may accept the account number or identifying number as the true identification of the recipient, even if the name and financial institution do not agree with the information you provide us. Your signature may be required to complete a wire transfer from your account. Wire transfers are governed by Federal Reserve Regulation J if the transfer is cleared through the Federal Reserve. ACH transactions are governed by the National Automated Clearinghouse Association and applicable local ACH rules.

d. Transactions by Mail. Except as otherwise provided in this Agreement, MSUFCU may permit you to make deposits, transfers, and withdrawals by mail. Transfers and withdrawals by mail will require a signed request by you. Such transactions will be posted to your account as of the day the transaction is processed at MSUFCU.

**13. Account Rates and Fees.** We pay dividends and charge fees against your account as stated in our Current Dividend Rate Sheet and Fee Schedule. We may revise the Current Dividend Rate Sheet and Fee Schedule at any time, and we will inform you of those changes as provided by law. You hereby agree that MSUFCU may impose fees and charges for the deposit account services provided to you and you agree to pay all such fees. You hereby acknowledge receipt of the current Rate and Fee Schedules, which have been provided to you separately.

**14. Share Certificates.** Any Share Certificate we offer is bound by the terms of this Membership and Account Agreement, the Truth-in-Savings Disclosure, and the Rate and Fee Schedules for each account, the details of which are incorporated herein by reference.

**15. Transaction Limitations.**

a. Withdrawal Limitations. We allow withdrawals only if your account has adequate available funds to cover the entire amount of the withdrawal, or if you have set up an Overdraft Courtesy Pay Plan. As stated in our Fee Schedule, drafts, other transfers, or payment orders drawn against insufficient funds may be subject to fees. If there are adequate funds to cover some, but not all, of your withdrawals, we may clear those withdrawals for which there are enough funds in any order at our discretion. All of your accounts are subject to MSUFCU's right to require advance notice of any withdrawal as provided in the Bylaws.

b. Regulation D Transfer Limitations. For Spartan Saver, No Dividend Savings, Holiday/Vacation, Insured Money Management, and Certificate Accounts, if applicable, you may not make more than six (6) withdrawals or transfers per month or any combination of such withdrawals or transfers to another MSUFCU account of yours or to a third party by means of a preauthorized automatic, computer, or mobile app transfer; check, telephone order or instruction; or similar order to a third party.

A preapproved transfer includes any agreement with us to pay a third party from your account upon written request, including requests obtained through ACH. You are allowed unrestricted transfers between any of your accounts, payments to any MSUFCU loan account, and withdrawals from your account, as long as the transfers are made in person, by mail, or at an ATM. We reserve the right to reject or return any transfer that surpasses these limitations and may charge fees, as stated in the Fee Schedule, and place a hold on or terminate your account.

**16. Member's Responsibility for Checking Accounts.**

"Checking" refers to Classic Checking, Totally Green Checking, Money Market Checking, Rebuild Checking, and No Dividend Checking accounts.

1. You must keep your checking records up to date so that you are aware of what funds you have in your checking account at all times. You must not write checks that exceed the amount in your checking account unless the amount is available via the optional overdraft protection.
2. By following a very simple procedure, the checking account should be reconciled each month. A reconciliation form is provided on the back of each statement for your convenience. If necessary, the Credit Union will assist you ONCE in balancing your account. Questions on specific items should be directed to the Specialty and Support Services Department.
3. There will be a fee charged for assistance to reconcile your account after the first occurrence.

**17. Overdrafts.**

a. Overdraft Liability. If on any day, you do not have adequate funds in your checking account to cover checks, fees, or other items drawn on your account, including, but not limited to ATM withdrawals, Visa Debit Card transactions, preauthorized debits, or Point-of-Sale (POS) transactions (due to non-sufficient funds, uncollected funds, or postdating), we will process those amounts according to our overdraft procedures or an overdraft line-of-credit account that you have set up. We may ascertain that an account lacks sufficient funds to cover an item any time we attempt to process the item. Only one review of the account balance is required during that time. We are not required to inform you if your checking account lacks sufficient funds to cover an item. Regardless of whether we pay the item or reject it, you agree to pay any fee we may assess to your account as stated in the Fee Schedule. Except as noted in a written agreement, we, by paying one or any overdraft, do not consent to honor overdrafts in the future and may cease paying overdrafts at any time without notice. If we cover a check or charge a fee that would overdraw your account, you promise to repay the overdrawn amount to us immediately. We have the right to seek collection of earlier dishonored items not covered at any time, including granting a payer bank additional time past any deadline.

b. Automatic Transfer Overdraft Protection. Advances from your line of credit, Visa, and home equity plans up to your approved limit, and/or transfers from your savings account(s), will be made in increments of \$100.00 and deposited to your checking account. If there are not sufficient funds available in your checking account and your designated overdraft account(s), your check(s) may be returned marked "Non-Sufficient Funds" or covered under our Overdraft Courtesy Pay Plan as set forth below.

An automatic transfer to your checking account can be established in the event you do not have sufficient funds to cover outstanding checks, ACH transactions, or Visa Debit Card transactions. A fee is charged for each automatic transfer from your savings account to your checking account. For each notice of transfer from a loan account, a fee is charged to your checking account. If you elect to not receive paper notification at the time the overdraft occurs from an account, the transfer will be listed on your monthly statement and no fee will be charged. You may elect to receive electronic notices at no charge.

c. Courtesy Pay. Courtesy Pay is a discretionary service under which we may pay checks and ACH transactions drawn on insufficient funds up to an established limit, and for which you do not have funds available in a designated overdraft account. You may elect to have MSUFCU authorize and pay overdrafts on your everyday debit card transactions by contacting us and requesting us to do so. In the event this service is set on your account and we cover such an overdraft, you agree to pay us a fee for this courtesy and to bring your account to a positive status immediately. Fees for Courtesy Pay are stated in the Fee Schedule. This service may be terminated at any time without prior notice. You may opt out of overdraft protection and Courtesy Pay by notifying MSUFCU at the address or phone number listed (in section 40).

**18. Postdated and Stale Dated Checks.** We may honor any draft without consideration of the date. We will honor your written request not to pay a post dated check until the date on the check, but only if such written request is received prior to the check being presented to MSUFCU. We are not required to honor any check drawn on your account which is presented more than six (6) months beyond the date of the check.

**19. Chargebacks.** You are responsible for all checks you cash or deposit into your account. If we cash a check for you or accept it for deposit to your account, and it is returned to us unpaid, we will charge any of your accounts for the amount of the unpaid check. We may, at our option, resubmit the returned check without notification to you.

**20. Stop Payment Orders.**

a. Stop Payment Requests. You may ask us to stop payment on any check drawn on your account. To be effective, you must provide the account number, check number, and the exact amount of the check. The stop payment will be instituted only if MSUFCU receives the request in time to implement the order. You acknowledge that accurate information is required for MSUFCU's computer system to distinguish the check. We are not liable for failing to stop payment on a check if you provide inaccurate or incomplete information to us. If we recredit your account after honoring a check over a legitimate and timely stop payment request, you promise to sign a statement detailing the disagreement with the payee, to assign to us all of your rights against the payee or other holders of the check and to aid us in any legal proceedings.

b. Duration of Order. A stop payment request is valid for six (6) months and may be renewed upon request for an additional six (6) months. We are not obligated to inform you when a stop payment request expires.

c. Liability. Fees for stop payment requests are stated in the Fee Schedule. Requests for stop payments on cashier's checks, MSUFCU checks, or any check or payment guaranteed by us are not permitted. Although a stop payment request has been honored, you may continue to be obligated to pay any holder of the item, including MSUFCU. You agree to indemnify and hold MSUFCU harmless from all costs, including attorney's fees, damages, or claims due to our stopping payment of an item, including claims of any multiple party account owner, payee, or endorser in failing to stop payment on an item as a consequence of inaccurate information provided by you.

**21. MSUFCU Liability.** We will be responsible for your losses or damages, up to the amount of a transaction, if we fail to execute a transaction properly by the use of ordinary care, unless otherwise provided by law. We will not be liable if: (1) your account lacks adequate funds for the transaction; (2) situations of which we have no control prevent us from completing the transaction; (3) your or another financial institution's negligence causes the loss; or (4) your account is subject to a legal proceeding or other claim. We are not responsible for consequential damages, except liability, for wrongly rejecting payment of items. You grant us the right, in making payments of deposited funds, to rely exclusively on the form of the account and the terms of this Account Agreement. Any conflict between oral representations made by you or MSUFCU employees and any written form will be resolved by reference to this Agreement and applicable written form. We will be deemed to have exercised ordinary care if our actions or non actions follow applicable state or federal law, Federal Reserve regulations and operating letters, clearinghouse rules, and general banking practices. Ordinary care shall also be measured by the standard of the reasonableness of policies and procedures established for the transaction involved, and mere clerical error, computer malfunction, inadvertence, or oversight without malice or an honest mistake of judgment shall not be or constitute as to any transactions, a failure to perform such obligations or a failure to exercise ordinary care, and in no case shall be deemed wrongful.

**22. Lien and Offset.** You may not withdraw funds that are pledged as required security on loans without the written approval of a loan officer, except to the extent that such funds exceed your total primary and contingent liability to MSUFCU. If you are indebted to us as a borrower, guarantor, endorser, or otherwise, we have a lien on funds in any account (except IRAs/HSAs) in which you are a primary or joint owner, despite the source of those funds, unless restricted by law. We may access those funds in order to pay off the remaining amount you owe us, including any costs or attorney's fees incurred by MSUFCU in enforcing its rights. If we do not enforce our lien, we do not waive our right to enforce our lien at a later date. Furthermore, you agree that MSUFCU has security interest in all funds in your account regardless of their source, and we may access your account funds to repay any debt or amount now, or in the future, owed to MSUFCU, including costs or attorney's fees incurred by MSUFCU in enforcing its rights, except for debts secured by your primary residence, unless restricted by law. All accounts are non assignable and non transferable to third parties. You agree to hold us harmless from any claim arising as a result of our exercise of our right to set off.

**23. Legal Proceedings.** If legal proceedings are brought against your account, we may pay funds as ordered by the court or withhold payments until the disagreement is settled. We may charge against your account any expenses or legal fees we incur in connection with such legal proceeding, unless restricted by applicable law. Any legal process brought against your account is subject to our lien and security interest.

**24. Account Information.** If you request, we will provide you with the name and address of each company from which we receive a credit report concerning your account. We agree not to give any account information to third parties, except for those situations described in our Privacy Notice and Disclosure. Refer to the MSUFCU Privacy Notice for detailed descriptions of our policy and procedures regarding your personal information.

**25. Notices.**

a. Name and Address Change. You are required to notify us when you have a name or address change. MSUFCU is only obligated to try to correspond with you at the most current address we have on file for your account. Changes may be accepted over the telephone or via the Internet. In some cases we may require an address or name change to be in writing and include your signature. If we attempt to locate you, we may impose a fee as set forth in the Fee Schedule.

b. Notice of Amendments. We may revise any of the terms of this Membership and Account Agreement at any time, unless restricted by applicable law. You will be informed, and may be required by law, of any revisions to account conditions, rates, and fees. We may waive any conditions in this Agreement, but by doing so, we are not prohibited from enforcing such terms in the future.

c. Effect of Notice. Any written notification you provide to us is not valid until we receive it. A written notice from us to you is valid when it is placed in the U.S. Mail, with postage paid and addressed to you at the most current address we have on file for your account. On multiple party accounts, notification sent to any account owner is recognized as notification to all owners.

**26. Account Statements.**

a. Contents. We will provide you with a periodic statement detailing all transactions and activity posted to your account within the statement period, as required by law. You may elect to receive your periodic statement electronically. We will send you an email notice informing you that your eStatement is ready to view. For multiple party accounts, we are only obligated to send one statement. For checking accounts, you acknowledge that we assume ownership of your original check as soon as the item has been paid, and we will not return the check to you. However, you may request copies of a check at any time. A fee may be assessed for check copies as stated in the Fee Schedule. Additional statements may be requested from MSUFCU, and a fee may be charged for additional statements as stated in the Fee Schedule.

b. Account Owner Inspection. It is your responsibility to inspect each statement and inform us of any discrepancies between your records and the statement. You are in the best position to detect any unauthorized signature. You have the responsibility for any fraud loss if you fail to exercise reasonable care in examining the statement or fail to report forgeries or alterations to MSUFCU within 60 days of the mailing date of the earliest statement containing those items. We are not liable for any forged or altered items such that the fraud or alteration could not be detected by a reasonable financial institution.

c. Notice to MSUFCU. Your obligation to review your statement and inform us of any discrepancies in a timely manner is not changed because we retain your check. We will assume all information contained in your statement is accurate, unless you notify us of discrepancies within the time limit set forth in the above paragraph. You are obligated to inform us when you have not received a statement within 14 days of when you usually receive it.



**27. Dormant Account.** We will consider an account to be dormant if there are no deposits or withdrawals for a period of 18 months. Exceptions are loan accounts, Certificates, and IRAs/HSAs.

When an account becomes dormant, we will charge a monthly dormant account fee as stated in the Fee Schedule, unless restricted by law. The fee will be charged until the account becomes active or there are no funds available to pay the fee. You authorize us to transfer funds from other accounts of yours to cover any service fees we may impose upon the account deemed dormant. To the extent allowed by law, we reserve the right to transfer account funds to an account payable and suspend any further account statements. We will attempt to notify you prior to your account becoming dormant. If a deposit or withdrawal has not been posted to your account for 36 consecutive months, and we have not had any other contact with you, we will consider your account abandoned. We will report and disburse the funds from an abandoned account in accordance with Michigan law. Dormant accounts receive only an annual account statement.

**28. Special Account Instructions.** You may establish accounts for a specific trust, will, or court-ordered guardianship or conservatorship. However, we are not authorized to advise you as to the legalities of establishing any such accounts and therefore cannot counsel you as to which account arrangement most appropriately meets your specific requirements. You or any surviving beneficiary or owner agree(s) to indemnify and hold MSUFCU harmless from any claim or liability asserted against MSUFCU as a result of the disposition of funds in reliance on this Agreement and any account designations of yours. We may decline to abide by your directions, insist that you indemnify us, or request that you post a bond or alternative protection, if such directions make us susceptible to claims, lawsuits, expenses, liabilities, or damages, either directly or indirectly. Any account changes you wish to make must be specified on an account change form, including adding or terminating an account or service, and must include signatures of all account owners.

**29. Checks.** If you choose to use checks from a direct mail company or source other than MSUFCU, you will be liable for charges or damages resulting from checks not reading properly on automated equipment or being imprinted with the wrong information. If you have a problem with checks you do not receive from our check printing vendor or us, it will be your responsibility to resolve such problems and not MSUFCU. Checks may be purchased from us or our vendor for a fee. Original checks are stored electronically as a permanent record. Copies of such checks are available for a fee. Images of recently posted canceled checks are available on ComputerLine. There is no charge for accessing canceled checks through ComputerLine.

**30. Federal Deposit Insurance.** Your savings in MSUFCU are insured by the National Credit Union Share Insurance Fund, which is administered by the National Credit Union Administration, an agency of the U.S. government.

**31. Termination of Account.** We may close your account at any time without informing you or may order you to close your account and open a new account if: (1) you wish to change account owners or approved signers; (2) we have been informed of a fraud or forgery perpetrated against your account; (3) there is a disagreement as to who owns the account or the funds in the account; (4) any checks are lost or stolen; (5) there is an excessive amount of unhonored items that are not included under an overdraft protection account; (6) any information has been falsified or there has been any other misuse of your account; (7) we objectively conclude the account will cause a loss to us; or (8) you do not maintain one (1) regular share account as set forth in the MSUFCU Bylaws. We are not required to honor any check, withdrawal, or other item following the closure of your account. However, you are required to reimburse us if we choose to honor an item after your account has been closed.

**32. Termination of Membership.** Your signature is required if you wish to voluntarily terminate your membership. MSUFCU may suspend services to you or expel you from membership, for any reason as permitted by law, including causing a loss to MSUFCU.

**33. Death of an Account Owner.** You irrevocably waive the right to make a testamentary disposition of any account with MSUFCU now or in the future. You agree that upon your death, your account will be payable in accordance with any existing account designations and the terms of the Agreement. Upon the death of an account owner, funds in the account shall be payable to multiple party account owners or any POD beneficiaries in accordance with this Agreement and Michigan law. We may honor checks or accept payments or transfers drawn by you until 10 days after we learn of your death. We require any person claiming an interest in the deceased member's accounts to provide us proof of their right to the account and may require that person to indemnify us from any losses incurred as a result of honoring that claim. The conditions of this Membership and Account Agreement shall be binding upon any heirs, personal representatives, and successors of any account owner after his or her death.

**34. Severability.** If a court refuses to recognize any segment of this Membership and Account Agreement as valid or enforceable, the remainder of this Agreement and other MSUFCU disclosures shall remain valid and enforceable and will be in complete effect.

**35. Enforcement.** If you fail to abide by the terms, provisions, and conditions set forth in this Membership and Account Agreement, you are responsible to us for any loss, cost, or expense we incur resulting from your lack of compliance. To recoup any such loss, cost, or expense, you authorize us to deduct such amounts from funds in your account without prior notice to you. If we begin legal proceedings to collect any amount owed to us or to enforce this Agreement, we shall be entitled to recover reasonable attorney's fees, costs, and expenses, including fees incurred in connection with any appeal, bankruptcy proceedings, and post-judgment collection action. Such fees, costs, and expenses are considered a debt owed to MSUFCU and subject to the right of offset as set forth in Section 22.

**36. Indemnity.** If, by following your instructions, we are exposed to a claim or suit by an adverse claimant, you shall hold us harmless and indemnify us from any such losses, expenses, liabilities, or damages including actual attorney's fees.

**37. Agreement.** The Agreement shall be effective as of the revision date of this Agreement, and, except as otherwise expressly provided in this Agreement, governs all of your deposit accounts with us. By signing the Membership Agreement, making deposits or withdrawals, or leaving amounts on deposit, you agree to the terms of this Agreement. This Agreement shall supercede all previous agreements for such accounts.

**38. Amendment.** We may change any of the items of this Agreement at any time without prior notice to you if the change is favorable to you. We may make changes that are adverse to you only if we provide you with notice required by law. You may close the account if you do not agree to changes we make; if you maintain your account and continue to use it after the effective date of the change, you will be deemed to have agreed to the changes.

**39. Governing Law.** This Membership and Account Agreement shall be governed and construed under MSUFCU's Bylaws, applicable federal laws and regulations, the laws of the State of Michigan, and local clearinghouse rules, as modified or amended from time to time. You consent and agree that any legal proceeding relating to this Agreement shall be brought in Ingham County, Michigan, unless prohibited by applicable law.

**40. Contact the Credit Union.**  
**Michigan State University Federal Credit Union**  
 3777 West Road  
 East Lansing, MI 48823  
 517-333-2424 • 800-678-4968  
[www.msufcu.org](http://www.msufcu.org)



Federally insured  
by NCUA



TIFFANY K. COLEMAN-WEATHERSBEE, individually, and on behalf of others similarly situated,  
Plaintiff,

v.

MICHIGAN STATE UNIVERSITY FEDERAL CREDIT UNION and DOES 1 through 100,  
Defendants.

# EXHIBIT 2



# What You Need to Know about 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, which we refer to as Courtesy Pay, that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account or line of credit, 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, ACH and other transactions made using your checking account number
- Automatic bill payments

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

- Everyday debit card transactions

We do not at this time authorize and pay overdrafts for ATM 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 MSUFCU pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of \$30 each time we pay an overdraft.
- There is no limit on the total fees we can charge you for overdrawing your account.

## What if I want MSUFCU to authorize and pay overdrafts on my everyday debit card transactions?

If you also want MSUFCU to authorize and pay overdrafts on your everyday debit card transactions, call 517-333-2424 or 800-678-4968, send us a secure email at [www.msufcu.org](http://www.msufcu.org), or complete the form below and fax to 866-374-2123 or mail to PO Box 1208, East Lansing, MI 48826-1208.

\_\_\_\_\_ I do not want MSUFCU to authorize and pay overdrafts on my everyday debit card transactions.

\_\_\_\_\_ I want MSUFCU to authorize and pay overdrafts on my everyday debit card transactions, and I acknowledge I have the right to opt-out of this service at anytime.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Account Number: \_\_\_\_\_