

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

SHIREE BAILEY, on behalf of herself and  
all others similarly situated,

Plaintiff,

vs.

EMPOWER FEDERAL CREDIT UNION,

Defendant.

Civil Action No. 3:21-CV-0843 (DNH/ML)

**JURY TRIAL DEMAND**

**CLASS ACTION COMPLAINT**

Plaintiff Shiree Bailey, on behalf of herself and all others similarly situated brings this class action complaint against Empower Federal Credit Union, and alleges the following:

**INTRODUCTION**

1. This is a civil action seeking monetary damages, restitution and declaratory relief from Defendant, Empower Federal Credit Union (“Empower” or the “Credit Union”), arising from the unfair and unconscionable assessment and collection of “overdraft fees” (“OD Fees”) on accounts that were never actually overdrawn.

2. This practice breaches contractual promises made in Empower’s adhesion contracts.

3. In plain, clear, and simple language, the checking account contract documents discussing OD Fees promise that Empower will only charge OD Fees or NSF Fees on transactions where there are insufficient funds to cover them.

4. Empower also breaches its duty of good faith and fair dealing when it charges fee in the above circumstance.

5. Empower's customers have been injured by Empower's improper practices to the tune of millions of dollars taken from their accounts in violation of their agreements with Empower.

6. On behalf of herself and the Class, Plaintiff seeks damages, restitution, and injunctive relief for Defendant's violations as set forth more fully below.

### **PARTIES**

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

8. Defendant Empower is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Classes. Empower has its headquarters in Syracuse, New York.

### **JURISDICTION AND VENUE**

9. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because (1) the proposed Class is comprised of at least 100 members; (2) at least one member of the proposed class resides outside of New York; and (3) the aggregate claims of the putative class members exceed \$5 million, exclusive of interest and costs.

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

### **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

#### **I. EMPOWER CHARGES OD FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT**

##### **A. Overview of Claim**

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

12. Pursuant to its Account Documents, Empower charges fees for debit card transactions that purportedly result in an overdraft.

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

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

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

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

17. Empower maintains a running account balance in real time, tracking funds accountholders have for immediate use. This running account balance is adjusted, in real-time, to

account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Empower sequesters the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the accountholder, and such funds are specifically associated with a given debit card transaction.

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

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

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 22, 2009).

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

20. Still, despite keeping those held funds off-limits for other transactions, Empower improperly charges OD Fees on those APPSN Transactions, although the APPSN Transactions *always* have sufficient available funds to be covered.

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

A financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive. At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing fees under these circumstances was found to be unfair.

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

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

23. Besides being unfair and unjust, these practices breach contract promises made in

Empower's adhesion contracts—contracts which fail to inform accountholders about, and in fact, misrepresent, the true nature of Empower's processes and practices. These practices also exploit contractual discretion to gouge accountholders.

24. In plain, clear, and simple language, the checking account contract documents covering OD Fees promise that Empower will only charge OD Fees on transactions that have insufficient funds to “cover” that debit card transaction.

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

**B. Mechanics of a Debit Card Transaction**

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

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

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

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a “debit hold.” During the time the debit hold remains in place, which

may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 22, 2009).

29. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.

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

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

**C. Empower's Account Documents**

32. Plaintiff has an Empower checking account, which is governed by Empower's Account Documents.

33. Amongst the Account Documents which govern Plaintiff's relationship with Empower is a document entitled, *Consumer Membership & Account Agreement* ("Account Agreement"), attached hereto as Exhibit A. The Account Agreement states in pertinent part that

Empower uses an available balance to determine overdrafts, and when an accountholder uses a debit card funds are deducted to cover those purchases:

**Determining your available balance** - We use the “available balance” method to determine whether your account is overdrawn, that is, whether there is enough money in your account to pay for a transaction. Importantly, your “available” balance may not be the same as your account’s “actual” balance. This means an overdraft or an NSF transaction could occur regardless of your account’s actual balance. Your account’s actual balance (sometimes called the ledger balance) only includes transactions that have settled up to that point in time, that is, transactions (deposits and payments) that have posted to your account. The actual balance does not include outstanding transactions (such as checks that have not yet cleared and electronic transactions that have been authorized but which are still pending). The balance on your periodic statement is the ledger balance for your account as of the statement date.

As the name implies, your available balance is calculated based on the money “available” in your account to make payments. In other words, the available balance takes transactions that have been authorized, but not yet settled, and subtracts them from the actual balance. In addition, when calculating your available balance, any “holds” placed on deposits that have not yet cleared are also subtracted from the actual balance. For more information on how holds placed on funds in your account can impact your available balance, read the subsection titled “A temporary debit authorization hold affects your account balance” and “Your Ability To Withdraw Funds” disclosure also provided. Overdrafts - You understand that we may, at our discretion, honor withdrawal requests that overdraw your account. However, the fact that we may honor withdrawal requests that overdraw the account balance does not obligate us to do so later. So you can NOT rely on us to pay overdrafts on your account regardless of how frequently or under what circumstances we have paid overdrafts on your account in the past.

[...]

**A temporary debit authorization hold affects your account balance** - On debit card purchases, merchants may request a temporary hold on your account for a specified sum of money when the merchant does not know the exact amount of the purchase at the time the card is authorized. The amount of the temporary hold may be more than the actual amount of your purchase. Some common transactions where this occurs involve purchases of gasoline, hotel rooms, or meals at restaurants. When this happens, our processing system cannot determine that the amount of the hold exceeds the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it could be three calendar days, or even longer in some cases, before the adjustment is made. Until the adjustment is made, the amount of funds in your account available for other transactions will be reduced by the amount of the temporary hold. If another transaction is presented for payment



in an amount greater than the funds left after the deduction of the temporary hold amount, you will be charged an NSF or overdraft fee according to our NSF or overdraft fee policy. You will be charged the fee even if you would have had sufficient funds in your account if the amount of the hold had been equal to the amount of your purchase.

Exhibit A (emphasis added).

34. The additional Overdraft Disclosure states Empower needs the customer's permission to receive "courtesy" payment of overdrafts:

**To sign up for Debit Card Courtesy Pay, you will need to contact us.**

We need your permission if you want to receive Courtesy Pay to protect your account. Without your permission, any overdrawn purchases made with your debit card, or ATM withdrawals exceeding your available balance, will be DECLINED.\*

The federal government requires all financial institutions to request permission from their members/customers when offering overdraft services on ATM and everyday debit card transactions. Empower's Debit Card Courtesy Pay can only be offered with your permission.

**Who's affected?**

All of our Members who use our Debit Cards for purchases or for ATM withdrawals.

**How can I receive overdraft services?**

Call us, visit us at your local branch, or contact us through the "Messages" selection in the dropdown menu when you hover over your name within online banking.

\* Account must be open for 30 days prior to activation of this service.

**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:

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

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

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

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

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

- ATM transactions
- Everyday debit card transactions

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

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

**What fees will I be charged if Empower Federal Credit Union pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of up to \$25 *each time* we pay an overdraft.
- There is no limit on the total fees we can charge you for overdrawing your account.

**How long do I have to pay back my overdraft fees?**

The amount of any overdraft, plus any fees, shall be due and payable within thirty (30) days of the account becoming overdrawn. You are obligated to reimburse Empower by depositing sufficient funds to cover the item or transaction paid and any associated fees. Reimbursement shall be made through direct deposit (including directly deposited Social Security Benefit payments), transfer of funds, or regular deposit.

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

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

37. APPSN transactions are always initiated at the time the customer swipes the debit card when there are sufficient available funds in the account.

38. In fact, Empower actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to settle those same transactions. Instead, it uses a secret posting process described below.

39. All the above representations and contractual promises are untrue. In fact, Empower

charges OD Fees even when sufficient funds exist to cover transactions that are authorized into a positive balance. No express language in any document states that Empower may impose OD Fees on any APPSN Transactions.

40. The Overdraft Disclosure misconstrues Empower's true debit card processing and overdraft practices.

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

42. Empower assesses OD Fees on APPSN Transactions that do have sufficient funds available to cover them throughout their lifecycle.

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

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

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

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

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

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

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

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

51. In sum, there is a huge gap between Empower's practices as described in the Overdraft Disclosure and Empower's practices in reality.

**D. Empower Abuses Contractual Discretion**

52. Empower's treatment of debit card transactions to charge OD Fees is more than a breach of the express terms of the Account Documents. In addition, Empower exploits contractual discretion to the detriment of accountholders when it uses these policies.

53. Moreover, Empower uses its contractual discretion to cause APPSN Transactions to incur OD Fees by knowingly authorizing later transactions that it allows to consume available funds previously sequestered for APPSN Transactions.

54. Empower uses these contractual discretion points unfairly to extract OD Fees on transactions that no reasonable accountholder would believe could cause OD Fees.

**E. Plaintiff's Debit Card Transactions**

55. As an example, on October 21, 2019, and on November 14, 2019, Plaintiff was assessed OD Fees for debit card transactions that settled on that day, despite the fact that positive funds were deducted immediately, prior to that day, for the transactions on which Plaintiff was assessed OD Fees.

**CLASS ACTION ALLEGATIONS**

56. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23. The proposed classes are defined as:

57. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated. The Class is defined as:

All accountholders who, during the applicable statute of limitations, were charged OD Fees on APPSN Transactions on a Empower checking account.

Plaintiff also brings her claims on behalf of a subclass of New York accountholders in the event the Court declines to certify a nationwide class.

58. Excluded from the Class are Defendant, Defendant's subsidiaries and affiliates, their officers, directors and member of their immediate families and any entity in which Defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

59. Plaintiff reserves the right to modify or amend the definition of the proposed Class

and/or to add a subclass(es), if necessary, before this Court determines whether certification is appropriate.

60. The questions here are ones of common or general interest such that there is a well-defined community of interest among the members of the Class. These questions predominate over questions that may affect only individual class members because Empower has acted on grounds generally applicable to the class. Such common legal or factual questions include, but are not limited to:

- a) Whether Empower improperly charged OD Fees on APPSN Transactions;
- b) Whether the conduct enumerated above violates the contract;
- c) Whether the conduct enumerated above violates the covenant of good faith and fair dealing;
- d) Whether the conduct enumerated above is a deceptive trade practice in violation of New York law;
- e) The appropriate measure of damages.

61. The parties are numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Class consist of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to Empower's records. Empower has the administrative capability through its computer systems and other records to identify all members of the Class, and such specific information is not otherwise available to Plaintiff.

62. It is impracticable to bring members of the Class individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory

judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

63. Plaintiff's claims are typical of the claims of the other members of the Class in that they arise out of the same wrongful business practices by Empower, as described herein.

64. Plaintiff is a more than adequate representative of the Class in that Plaintiff is a Empower checking accountholder and has suffered damages as a result of Empower's contract violations. In addition:

- a) Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of accountholders against financial institutions;
- b) There is no conflict of interest between Plaintiff and the unnamed members of the Class;
- c) Plaintiff anticipates no difficulty in the management of this litigation as a class action; and
- d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

65. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

66. Empower has acted or refused to act on grounds generally applicable to the class, thereby making appropriate corresponding declaratory relief with respect to the Class as a whole.

67. All conditions precedent to bringing this action have been satisfied and/or waived.

**BREACH OF CONTRACT INCLUDING THE  
COVENANT OF GOOD FAITH AND FAIR DEALING**  
(Individually and on Behalf of the Class)

68. Plaintiff repeats and incorporates all of the preceding allegations as if fully set forth

herein.

69. Plaintiff, and all members of the proposed Class contracted with Empower for checking account services, including debit card services.

70. Empower breached promises made to Plaintiff and all members of the proposed class when as described herein, Empower charged OD Fees as a result of transactions that did not overdraw a checking account, on APPSN Transactions.

71. In addition, there exists an implied covenant of good faith and fair dealing in all contracts that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

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

73. The implied covenant of good faith and fair dealing applies to the performance and enforcement of contracts, limits the parties' conduct when their contract defers decision on a particular term, omits terms, or provides ambiguous terms.

74. Empower has breached the covenant of good faith and fair dealing and abused its



discretion in its contract as described herein. Specifically, Empower should not have used its discretion to charge OD Fees on APPSN Transactions. The Account Documents do not have a contract term permitting OD Fees on such transactions, nor multiple NSF Fees on the same transaction, and the documents are otherwise ambiguous as to any right for Empower to charge OD Fees on APPSN Transactions.

75. Plaintiff and all members of the proposed Class have performed all, or substantially all, of the obligations imposed on them under the contract.

76. Plaintiff and all members of the proposed Class have sustained damages as a result of Empower's breaches of the contract.

**New York General Business Law, N.Y. Gen. Bus. Law § 349 et seq.**  
**(On Behalf of the Class)**

77. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

78. Empower's practice of charging fees on APPSN transactions violates New York General Business Law § 349 ("NYGBL § 349").

79. NYGBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the state of New York.

80. As a credit union with its headquarters and multiple branch locations in New York, Empower conducted business, trade or commerce in New York State.

81. In the conduct of its business, trade, and commerce, and in furnishing services in New York, Empower's actions were directed at consumers.

82. In the conduct of its business, trade, and commerce, and in furnishing services in New York, Empower engaged in deceptive, unfair, and unlawful acts or practices, in violation of N.Y. Gen. Bus. Law § 349(a), including but not limited to the following:

a. Empower misrepresented material facts, pertaining to the sale and/or furnishing of banking services to the New York Class by representing and advertising that it would only charge overdraft fees when an overdraft actually occurred; and

b. Empower omitted, suppressed, and concealed the material fact that it would charge fees on APPSN transactions.

83. Empower systematically engaged in these deceptive, misleading, and unlawful acts and practices, to the detriment of Plaintiff and members of the New York Class.

84. Empower willfully engaged in such acts and practices and knew that it violated NYGBL § 349 or showed reckless disregard for whether they violated NYGBL § 349.

85. As a direct and proximate result of Empower's deceptive trade practices, members of the New York Class suffered injury and/or damages, including assessment of OD Fees on APPSN transactions.

86. Had Plaintiff known she could be charged OD Fees on APPSN transactions, she would have made different payment decisions so as to avoid incurring such fees or opted out of OD protection.

87. As a result of Empower's violations of NY GBL § 349, Plaintiff and members of the putative Classes have paid and will continue to pay excessive fees to Empower. Accordingly, they have suffered and will continue to suffer actual damages.

88. Accordingly, Plaintiff and New York Class members are entitled to relief under N.Y. Gen. Bus. Law § 349(h), including, but not limited to, actual damages, treble damages, statutory damages, injunctive relief, and/or attorney's fees and costs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

- A. Certification for this matter to proceed as a class action on behalf of the Class;
- B. Declaring Empower's OD Fee policies and practices to be in breach of its contract with accountholders;
- C. Restitution of all OD Fees and improperly assessed paid to Empower by Plaintiff and the members of the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
- D. Actual damages in an amount according to proof;
- E. Pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- F. For costs and attorneys' fees under the common fund doctrine, and all other applicable law; and
- G. Such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable.

Dated: July 26, 2021

Respectfully submitted,

By: /s/ Jeffrey D. Kalief

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# **EXHIBIT A**

# Consumer Membership & Account Agreement

Privacy  
Membership and Account Agreement  
Electronic Transfers  
Funds Availability  
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## PRIVACY NOTICE

Rev. 06/2020

<b>FACTS</b>		<b>WHAT DOES EMPOWER FEDERAL CREDIT UNION DO WITH YOUR PERSONAL INFORMATION?</b>	
<b>Why?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.		
<b>What?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>● Social Security number</li> <li>● Income</li> <li>● Account balances</li> <li>● Payment history</li> <li>● Credit history</li> <li>● Credit scores</li> </ul>		
<b>How?</b>	All financial companies need to share members' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their members' personal information; the reasons Empower Federal Credit Union chooses to share; and whether you can limit this sharing.		
Reasons we can share your personal information		Does Empower Federal Credit Union share?	Can you limit this sharing?
<b>For our everyday business purposes -</b> such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		Yes	No
<b>For our marketing purposes -</b> to offer our products and services to you		Yes	Yes
<b>For joint marketing with other financial companies</b>		Yes	Yes
<b>For our affiliates' everyday business purposes -</b> information about your transactions and experiences		Yes	Yes
<b>For our affiliates' everyday business purposes -</b> information about your creditworthiness		No	We don't share
<b>For our affiliates to market to you</b>		Yes	Yes
<b>For nonaffiliates to market to you</b>		Yes	Yes
<b>To limit our sharing</b>	<ul style="list-style-type: none"> <li>● Call Toll-free 800.462.5000 - choose option 2 to speak with a call center representative</li> </ul> <p><b>Please note:</b> If you are a <i>new</i> member, we can begin sharing your information 30 days from the date we sent this notice. When you are <i>no longer</i> a member, we continue to share your information as described in this notice. However, you can contact us at any time to limit our sharing.</p>		
<b>Questions?</b>	Call toll-free 800.462.5000 or go to <a href="http://www.empowerfcu.com">www.empowerfcu.com</a>		

What We Do	
<b>How does Empower Federal Credit Union protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
<b>How does Empower Federal Credit Union collect my personal information?</b>	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>● Open an account</li> <li>● Deposit money</li> <li>● Pay your bills</li> <li>● Apply for a loan</li> <li>● Use your credit or debit card</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
<b>Why can't I limit all sharing?</b>	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>● Sharing for affiliates' everyday business purposes - information about your creditworthiness</li> <li>● Affiliates from using your information to market to you</li> <li>● Sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing.</p>
<b>What happens when I limit sharing for an account I hold jointly with someone else?</b>	Your choices will apply to everyone on your account.
Definitions	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and non-financial companies.</p> <ul style="list-style-type: none"> <li>● <i>Our affiliates include:</i> <ul style="list-style-type: none"> <li>● <i>Financial companies such as: Empower Insurance Services LLC and Empower Tax Services LLC.</i></li> </ul> </li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and non-financial companies.</p> <ul style="list-style-type: none"> <li>● <i>Nonaffiliates we share with can include securities broker-dealers, insurance brokers and mutual funds brokers.</i></li> </ul>
<b>Joint Marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>● <i>Our joint marketing partners include CUNA Mutual Insurance Co., Inc.</i></li> </ul>



**MEMBERSHIP AND ACCOUNT AGREEMENT**

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT** - To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

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

**AGREEMENT** - This Membership and Account Agreement, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) and membership with us. Please read this carefully and retain it for future reference. If you sign the Member Account Agreement or open or continue to use the account, you agree to these rules and any related credit union policies. If you have any questions, please call us.

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

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

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. Nothing in this document is intended to vary our duty to act in good faith and with ordinary care when required by law.

As used in this document the words "we," "our," and "us" means Empower Federal Credit Union and the words "you" and "your" mean the member, account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. However, this agreement does not intend, and the terms "you" and "your" should not be interpreted, to expand an individual's responsibility for an organization's liability. If this account is owned by a corporation, partnership or other organization, individual liability is determined by the laws generally applicable to that type of organization. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

**BYLAWS** - Our bylaws, which we may amend from time to time, establish basic rules about our credit union policies and operations which affect your account(s) and membership. You may obtain a copy of the bylaws on request. Our right to require you to give us notice of your intention to withdraw funds from your account(s) is described in the bylaws. Unless we have agreed otherwise, you are not entitled to receive any original item after it is paid, although you may request that we send you an item(s) or a copy of an item(s). As set forth in the bylaws, your membership share must not be reduced below the value of one share ("Par value") (presently set at \$1.00) or your membership may be terminated.

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

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and we can deduct any amounts deposited into the account and apply those amounts to the shortage. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

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

**DEPOSITS** - Funds may be deposited in any manner approved by us. You agree not to deposit checks, drafts, or other items before they are properly payable. We are not obligated to pay any check or draft drawn on your account that is presented more than six months past its date. We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Unless prohibited by law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing indorsement, claim of alteration, encoding error, counterfeit cashier's check or other problem which in our judgment justifies reversal of credit. You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check or draft for deposit, we may require any third-party indorsers to verify or guarantee their indorsements, or indorse in our presence.

**WITHDRAWALS -**

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

**Postdated checks** - A postdated check is one which bears a date later than the date on which the check is written. You agree not to issue any check or draft that is payable on a future date. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check, you agree that we shall have no liability to you for such payment.

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

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

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

**Cash withdrawals** - We recommend you take care when making large cash withdrawals because carrying large amounts of cash may pose a danger to your personal safety. As an alternative to making a large cash withdrawal, you may want to consider a cashier's check or similar instrument. You assume full responsibility of any loss in the event the cash you withdraw is lost, stolen, or destroyed. You agree to hold us harmless from any loss you incur as a result of your decision to withdraw funds in the form of cash.

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

**UNDERSTANDING AND AVOIDING OVERDRAFT AND NONSUFFICIENT FUNDS (NSF) FEES -**

**Generally** - The information in this section is being provided to help you understand what happens if your account is overdrawn. Understanding the concepts of overdrafts and nonsufficient funds (NSF) is important and can help you avoid being assessed fees or charges. This section also provides contractual terms relating to overdrafts and NSF transactions.

An overdrawn account will typically result in you being charged an overdraft fee or an NSF fee. Generally, an overdraft occurs when there is not enough money in your account to pay for a transaction, but we pay (or cover) the transaction anyway. An NSF transaction is slightly different. In an NSF transaction, we do not cover the transaction. Instead, the transaction is rejected and the item or requested payment is returned. In either situation, we can charge you a fee.

**Determining your available balance** - We use the "available balance" method to determine whether your account is overdrawn, that is, whether there is enough money in your account to pay for a transaction. Importantly, your "available" balance may not be the same as your account's "actual" balance. This means an overdraft or an NSF transaction could occur regardless of your account's actual balance.

Your account's actual balance (sometimes called the ledger balance) only includes transactions that have settled up to that point in time, that is, transactions (deposits and payments) that have posted to your account. The actual balance does not include outstanding transactions (such as checks that have not yet cleared and electronic transactions that have been authorized but which are still pending). The balance on your periodic statement is the ledger balance for your account as of the statement date.

As the name implies, your available balance is calculated based on the money "available" in your account to make payments. In other words, the available balance takes transactions that have been authorized, but not yet settled, and subtracts them from the actual balance. In addition, when calculating your available balance, any "holds" placed on deposits that have not yet cleared are also subtracted from the actual balance. For more information on how holds placed on funds in your account can impact your available balance, read the subsection titled "A temporary debit authorization hold affects your account balance" and "Your Ability To Withdraw Funds" disclosure also provided.

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

**Nonsufficient funds (NSF) fees** - If an item drafted by you (such as a check) or a transaction you set up (such as a preauthorized transfer) is presented for payment in an amount that is more than the amount of money available in your account, and we decide not to pay the item or transaction, you agree that we can charge you an NSF fee for returning the payment. Be aware that such an item or payment may be presented multiple times and that we do not monitor or control the number of times a transaction is presented for payment. You agree that we may charge you an NSF fee each time a payment is presented if the amount of money available in your account is not sufficient to cover the payment, regardless of the number of times the payment is presented. This may result in multiple NSF fees for the same item.

**Payment types** - Some, but not necessarily all, of the ways you can access the funds in your account include debit card transactions, automated clearing house (ACH) transactions, and check transactions. All these payment types can use different processing systems and some may take more or less time to post. This information is important for a number of reasons. For example, keeping track of the checks you write and the timing of the preauthorized payments you set up will help you to know what other transactions might still post against your account.

**Balance information** - Keeping track of your balance is important. You may review your balance in a number of ways including reviewing your periodic statement, reviewing your balance online, accessing your account information by phone, or coming into one of our branches.

**Funds availability** - Knowing when funds you deposit into your account will be made available for withdrawal is another important concept that can help you avoid being assessed fees or charges. Please see our funds availability disclosure ("Your Ability to Withdraw Funds") for information on when different types of deposits will be made available for withdrawal. For those accounts to which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. An item may be returned after the funds from the deposit of that item are made available for withdrawal. In that case, we will reverse the credit of the item. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the times we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

**A temporary debit authorization hold affects your account balance** - On debit card purchases, merchants may request a temporary hold on your account for a specified sum of money when the merchant does not know the exact amount of the purchase at the time the card is authorized. The amount of the temporary hold may be more than the actual amount of your purchase. Some common transactions where this occurs involve purchases of gasoline, hotel rooms, or meals at restaurants. When this happens, our processing system cannot determine that the amount of the hold exceeds the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it could be three calendar days, or even longer in some cases, before the adjustment is made. Until the adjustment is made, the amount of funds in your account available for other transactions will be reduced by the amount of the temporary hold. If another transaction is presented for payment in an amount greater than the funds left after the deduction of the temporary hold amount, you will be charged an NSF or overdraft fee according to our NSF or overdraft fee policy. You will be charged the fee even if you would have had sufficient funds in your account if the amount of the hold had been equal to the amount of your purchase.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - Ownership of the account and beneficiary designation, if any, are specified on the Member Account Agreement and the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds.

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

**Joint Account** - A joint account is owned by two or more member(s). This means that we may release the entire account to any owner during the lifetime of all owners. We may honor withdrawal requests (including checks or other orders) from any owner during the lifetime of all owners. We may be required to release money in the account to satisfy a judgment against or other valid debt incurred by any owner. If an item deposited returns unpaid, a joint account is overdrawn, or if we do not receive final payment on a transaction, the owners, jointly and severally are liable to us for the amount of the returned item, overdraft, or unpaid amount and any charges regardless of who initiated or benefited from the transaction. If any account owner is indebted to us, we may enforce our rights against any account of the indebted owner including all funds in the joint account regardless of who contributed the funds. We reserve the right to require written consent of all owners for any changes to or termination of a joint account. If we receive written notice of a dispute between owners or receive inconsistent instructions from them, we may suspend or terminate the account and require a court order or written consent from all owners before we allow any further transactions or actions regarding the account.

**Right of Survivorship** - Unless explicitly indicated otherwise on the Member Account Agreement, a joint account includes rights of survivorship. If a Member Account Agreement is silent as to what type of joint account the account is it shall be a joint account with survivorship. If one account owner dies, all sums in the account will pass to the surviving owner. We may honor withdrawal requests (including checks or other orders) from any surviving owner after the death of any owner and may treat the account as the sole property of the surviving owner(s). A surviving owner's interest is subject to Empower Federal Credit Union's statutory lien for the deceased owner's obligations and to any security interest or pledge granted by a deceased owner, even if a surviving owner did not consent to it.

**Tenants in Common** - If a joint account is without survivorship rights each tenant in common has complete and separate access to the funds and withdrawal rights, and each authorizes the other(s) to endorse for deposit any item payable to the tenant in common. Each tenant in common reserves the right to change the ownership of the account to the extent of that owner's withdrawal rights. The balance of the account is owned in equal shares between the tenants in common. Until we receive notice of the death of any tenant in common, any tenant in common will have complete withdrawal rights to the entire account balance. In the event of death of a tenant in common we may pay the decedent's share, subject to our right of setoff and security interest in the account, to the estate of decedent. The survivors share in the account balance will be at the disposal of the surviving tenant in common. If more than one tenant in common survives the death of another tenant in common, such survivors remain as tenants in commons between them.

**P.O.D. Account** - A payable on death (POD) account is an account with an instruction to us that the funds in it are payable to the owner during his, her, or their lifetime(s) and when the last account owner dies, is payable to all surviving POD beneficiaries. The right to payment is subject to our contractually pledged right in and/or statutory lien on the account for any indebtedness owned by the account owner(s) to us at the time of the account owner's death, even if the beneficiary to whom the account's funds are payable on death did not consent to it. If two or more of you create such an account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares unless otherwise designated in the Member Account Agreement, without right of survivorship. The person(s) creating this account type reserve the right to: (1) change beneficiaries, (2) change

account types, and (3) withdraw all or part of the account funds at any time. We are not obligated to notify any beneficiary/payee of the existence of any account nor the vesting of the beneficiary/payee's interest in any account except as otherwise provided by law.

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

A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it. When you place your stop-payment order we will tell you what information we need to stop payment. This information must be exact since stop-payment orders are handled by computers. If your information is not exact your order will not be effective and we will not be responsible for failure to stop payment. We will honor a stop-payment request by the account owner who signed the particular item, and, by any account owner, even though such other person did not sign the item.

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

**TELEPHONE TRANSFERS** - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing.

**AMENDMENTS** - We may change our bylaws and any term of this agreement from time to time. Rules governing changes in rates are provided separately in the Truth-in-Savings disclosure or in another document. For other changes we will give you reasonable notice as required by applicable law in writing or by any other method permitted by law.

**MEMBERSHIP AND ACCOUNT TERMINATION** - You may terminate your membership by giving us written notice or by withdrawing your minimum required membership share(s) if any and closing all your accounts. We may terminate your membership and you may be expelled for any reason as allowed by applicable law, including the Federal Credit Union Act. We may only terminate your membership share account per our Bylaws for a failure by you to maintain par value (\$1.00) on deposit following required (six months) notice given. We may terminate your other account(s) at any time without notice to you or may require you to close your account and apply for a new account if (1) there is a change in or question of owners or authorized signers; (2) there has been a forgery or fraud reported or committed involving your account; (3) there is a dispute as to the ownership of the account or of the funds in the account; (4) any checks or drafts are lost or stolen; (5) there are excessive returned unpaid items not covered by an overdraft protection plan; (6) there has been any misrepresentation or any other abuse of any of your accounts; (7) you have caused a loss to us or we reasonably deem it necessary to prevent a loss to us; or (8) in our sole discretion it is necessary to comply with applicable law, regulation, or court order. You may terminate an individual account by giving written notice. We reserve the right to require the consent of all owners to terminate a joint account. We are not responsible for payment of any check, draft, withdrawal, transaction, or other item after your account is terminated; however, if we pay an item after termination you agree to reimburse us.

Should you be an account owner of a membership share par account and that account is later closed (by you or per our Bylaws or applicable law), to restore your membership status and the rights and privileges of a member you must establish a new membership share account and deposit the then current par value amount as set forth in our Bylaws (presently set at \$1.00). If you do not establish the new membership savings account in your name you may not be able to access your account(s), any open accounts may be terminated and you will not be able to access any available credit on a credit card, credit line and/or other loan. Any restoration to membership may be subject to our approval based on continued membership eligibility and subject to whether said member was previously determined to be abusive under the Abusive Member Policy or expelled by law.

**DENIAL OF MEMBER SERVICES** - You may be denied services by us for, among other things, causing us a loss subject to our Denial of Member Services Policy or engaging in abusive conduct as set forth in our Abusive Member Policy.

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

**STATEMENTS - Your duty to report unauthorized signatures, alterations and forgeries** - You must examine your statement of account with "reasonable care and promptness" not to exceed 14 days. If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to bear the entire loss. Your loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer. We lose these protections if you establish that we failed to exercise ordinary care in paying an item with an unauthorized signature or alteration within 60 days.

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

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

**Your duty to report other errors or problems** - In addition to your duty to review your statements for unauthorized signatures or transfers, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error or problem - such as an encoding error or an unexpected deposit amount. Also, if you receive or we make available either your items or images of your items, you must examine them for any unauthorized or missing indorsements or any other problems. You agree that the time you have to examine your statement and items and report to us will depend on the circumstances. However, this time period shall not exceed 60 days. Failure to examine your statement and items and report any errors to us within 60 days of when we first send or make the statement available

precludes you from asserting a claim against us for any errors on items identified in that statement and as between you and us the loss will be entirely yours.

**Duty to notify if statement not received** - You agree to immediately notify us if you do not receive your statement by the date you normally expect to receive it. Not receiving your statement in a timely manner is a sign that there may be an issue with your account, such as possible fraud or identity theft.

**ACCOUNT TRANSFER** - Except as required by law, this account may not be transferred or assigned without our prior written consent.

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

**RIGHT TO REPAYMENT OF INDEBTEDNESS** - You each agree that we may (when permitted by law) charge against and deduct from all accounts you have now and in the future any due and payable debt any of you owe us now or in the future. If this account is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt you owe us now or in the future. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated.

In addition to these contract rights, we may also have a "statutory lien." A "lien" on property is a creditor's right to obtain ownership of the property in the event a debtor defaults on a debt in the case of an account, its funds. A "statutory lien" is one created by federal or state statute. If Federal or state law provides us with a statutory lien, then we are authorized to apply, without further notice, your shares and dividends to any debt you owe us, in accord with the statutory lien. Our statutory lien rights allow us to apply the funds in your account(s) to the extent you owe us when you are in default, except as limited by law. If we do not apply the funds in your account(s) to satisfy your obligation, we may place an administrative freeze on your account(s) in order to protect our statutory lien rights and may apply the funds in your accounts to the amount you owe us at a later time. By not enforcing our right to apply funds in your account to your obligations that are in default, we do not waive our right to enforce these rights at a later time.

Neither our contract rights nor rights under a statutory lien apply to this account if prohibited by law. We will not be liable for the dishonor of any check or draft when the dishonor occurs because we charge and deduct an amount you owe us from your account. You agree to hold us harmless from any claim arising as a result of our exercise of our right to repayment. We may report information about your loan, share, or deposit accounts to credit bureaus. Late payments, missed payments, or other defaults on your accounts may be reflected in your credit report. Upon request, we will give you the name and address of each agency from which we obtain a credit report regarding your account.

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

**PLEDGES** - Each owner of this account may pledge all or any part of the funds in it for any purpose to which we agree. Any pledge of this account must first be satisfied before the rights of any surviving account owner or account beneficiary become effective. For example, if an account has two owners and one of the owners pledges the account (i.e., uses it to secure a debt) and then dies, (1) the surviving owner's rights in this account do not take effect until the debt has been satisfied, and (2) the debt may be satisfied with the funds in this account.

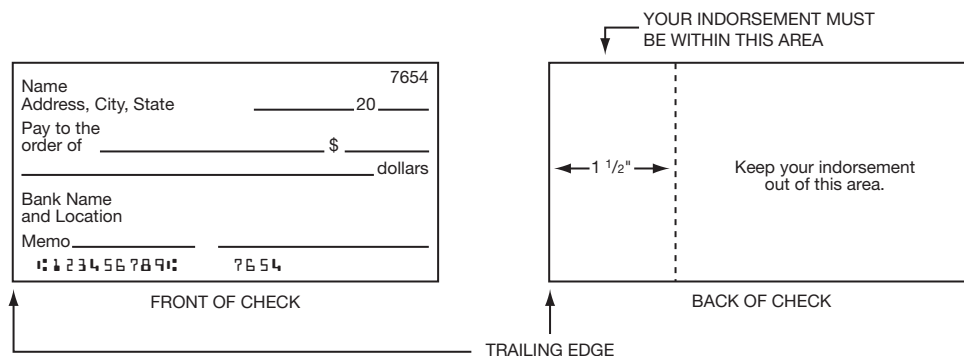
**CHECK PROCESSING** - We process items mechanically by relying solely on the information encoded in magnetic ink along the bottom of the items. This means that we do not individually examine all of your items to determine if the item is properly completed, signed and indorsed or to determine if it contains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

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

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

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

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



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

These indorsement guidelines apply to both personal and business checks.

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

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

**LEGAL ACTIONS AFFECTING YOUR ACCOUNT** - If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section), we will comply with that legal action. Or, in our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action. Any legal action against your account(s) is subject to our statutory lien and security interest.

#### **ACCOUNT SECURITY -**

**Duty to protect account information and methods of access** - It is your responsibility to protect the account number(s) and access device(s) (e.g., an ATM card, point-of-sale card and/or PIN) for your account(s). Do not discuss, compare, or share information about your account number(s) or access device(s) with anyone unless you are willing to give them full use of your money. Checks and electronic withdrawals are processed by automated methods, and anyone who obtains your account number or access device could use it to withdraw money from your account, with or without your permission.

**Your information** - We agree not to disclose account information to third parties except when; (1) it is necessary to complete a transaction; (2) the third party seeks to verify the existence or condition of your account in accordance with applicable law; (3) such disclosure complies with the law or a government agency or court order; (4) you give us written permission; or (5) as otherwise described in the Privacy Notice.

**Suspicious activity** - When we cannot verify your identity or we suspect fraud, or become aware of other activity we determine suspicious, we may freeze your account or otherwise respond to the threat as reasonable, including but not limited to closing the account. In such a case it is reasonable for us to give you notice of our actions to protect your account after such actions are taken.

**Account numbers** - Thieves can encode your account number on a check which looks and functions like an authorized check and can be used to withdraw money from your account. Your account number can also be used to issue a "remotely created check." Like a typical check, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a draft or check that can be used to withdraw money from your account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). If you have truly authorized the remotely created check (to purchase a service or merchandise, for example), it is properly payable. But it can be risky to authorize a remotely created check. A swindler could issue a remotely created check in an amount greater than you authorized, or issue additional remotely created checks that you have not authorized. We will not know if the withdrawal is unauthorized or in an amount greater than the amount you have authorized. Payment can be made from your account even though you did not contact us directly and order the payment.

**Access devices** - If you furnish your access device and grant actual authority to make transfers to someone who then exceeds that authority, you will be liable for the transfers unless we have been notified that transfers by that person are no longer authorized. Please review the additional information you have received or will receive regarding transfers by access device.

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

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

**MONITORING AND RECORDING TELEPHONE CALLS AND CONSENT TO RECEIVE COMMUNICATIONS** - Subject to federal and state law, we may monitor or record phone calls for security reasons, to maintain a record and to ensure that you receive courteous and efficient service. You consent in advance to any such recording.

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

- Your consent is limited to your account, and as authorized by applicable law and regulations.
- Your consent is voluntary and not conditioned on the purchase of any product or service from us.

With the above understandings, you authorize us to contact you regarding your account throughout its existence using any telephone numbers or email addresses that you have previously provided to us by virtue of an existing business relationship or that you may subsequently provide to us.

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

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

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

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

**EARLY WITHDRAWAL PENALTIES (and involuntary withdrawals)** - We may impose early withdrawal penalties on a withdrawal from a time or term share account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by the enforcement of our right to repayment of indebtedness against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty in the event of a partial early withdrawal. See your account(s) Truth in Savings Disclosure for additional information.

**ADDRESS OR NAME CHANGES** - We will attempt to communicate with you only by use of the most recent address you have provided to us per your Member Account Agreement or subsequent change of address documents. You are responsible for notifying us of any change in your address or your name. Unless we agree otherwise, change of address or name must be made in writing by at least one of the account holders. Informing us of your address or name change on a check reorder form is not sufficient.

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

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

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

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

**NCUA INSURANCE** - Funds in your account(s) with us may be insured by the National Credit Union Administration (NCUA) and backed by the full faith and credit of the United States of America. The amount of insurance coverage you have depends on the number of accounts

you have with us that are of different "ownership." An individual account is one unique form of "ownership"; a joint account, a pay-on-death account, and a self directed qualified retirement account (e.g., an IRA) are examples of some of the others. Share insurance for a person's self directed qualified retirement account is up to \$250,000. (An IRA is a self directed qualified retirement account as is any account where the owner decides where and how to invest the balance.) Funds are insured to \$250,000 per depositor for the total of funds combined in all of your other insured accounts with us. If you want a more detailed explanation or additional information, you may ask us or contact the NCUA.

**INACTIVE ACCOUNTS** - Your account will be considered inactive, and may be subject to applicable fees, if all of the following occur for 12 consecutive months: (1) deposits are not made to your account; (2) withdrawals are not made from your account; and (3) the credit union does not receive any correspondence from you which indicates that you know that your account with the credit union is still in existence. Dividend crediting is not considered a deposit for this purpose. In accordance with the N.Y. State Abandoned Property Law, dormant funds will be turned over to the State of New York. You may submit a claim for return of the funds to: New York State Office of the State Comptroller, Office of Unclaimed Funds, 110 State Street, Albany, New York 12236.

**ACCOUNTS FOR MINORS** - We reserve the right to limit the services that are available to minors. For any account established by or for a minor, the minor account owner must have a joint account owner who is a parent or legal guardian of the minor, as approved by us, who shall be jointly and severally liable to us. For a joint account, all funds in the account shall be owned as a joint account with rights of survivorship. We may make payments of funds directly to the minor without regard to his or her minority. We have no duty to inquire of the use or purpose of any transaction by the minor or joint account owner. The minor account owner's tax identification number will be used for the Backup Withholding Certification. We will not automatically remove joint owners when the minor reaches age eighteen (18). However, when the minor reaches age eighteen (18) the minor may open new accounts without regard to any restriction, honor, ownership and access arrangements of existing accounts.

**UTMA ACCOUNTS** - Under the Uniform Transfers to Minors Act, the funds in the account are owned by the child who has unconditional use of the account when he or she reaches the age of majority. Before that time, the account may be accessed only by the custodian (or successor custodian), and the funds must be used for the benefit of the child. We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the custodian (or successor custodian) are for the child's benefit. We are not responsible to monitor age or eligibility for an UTMA account, even though our records may include the minor's date of birth. It is the custodian's responsibility to properly distribute the funds in the account upon the minor's death or attainment of the age of majority. For this type of account, the child's SSN/TIN is used for the Backup Withholding Certification.

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

**BACKUP WITHHOLDING/TIN CERTIFICATION** - Federal tax law requires us to report interest payments we make to you of \$10 or more in a year, and to include your taxpayer identification number (TIN) on the report (the taxpayer identification number is your social security number if you are an individual). Interest includes dividends, interest and bonus payments for purposes of this rule. Therefore, we require you to provide us with your TIN and to certify that it is correct. In some circumstances, federal law requires us to withhold and pay to the IRS a percentage of the interest that is earned on funds in your accounts. This is known as backup withholding. We will not have to withhold dividend payments when you open your account if you certify your TIN and certify that you are not subject to backup withholding due to underreporting of dividends. (There are special rules if you do not have a TIN but have applied for one, if you are a foreign person, or if you are exempt from the reporting requirements.) We may subsequently be required to begin backup withholding if the IRS informs us that you supplied an incorrect TIN or that you underreported your dividend income.

**LOST, DESTROYED, OR STOLEN CERTIFIED, CASHIER'S OR TELLER'S CHECKS** - Under some circumstances you may be able to assert a claim for the amount of a lost, destroyed, or stolen certified, cashier's or teller's check. To assert the claim: (a) you must be the remitter (or drawer of a certified check) or payee of the check, (b) we must receive notice from you describing the check with reasonable certainty and asking for payment of the amount of the check, (c) we must receive the notice in time for us to have a reasonable opportunity to act on it, and (d) you must give us a declaration (in a form we require) of your loss with respect to the check. You can ask us for a declaration form. Even if all of these conditions are met, your claim may not be immediately enforceable. We may pay the check until the ninetieth day after the date of the check (or date of acceptance of a certified check). Therefore, your claim is not enforceable until the ninetieth day after the date of the check or date of acceptance, and the conditions listed above have been met. If we have not already paid the check, on the day your claim is enforceable we become obligated to pay you the amount of the check. We will pay you in cash or issue another cashier's check.

At our option, we may pay you the amount of the check before your claim becomes enforceable. However, we will require you to agree to indemnify us for any losses we might suffer. This means that if the check is presented after we pay your claim, and we pay the check, you are responsible to cover our losses. We may require you to provide a surety bond to assure that you can pay us if we suffer a loss.

**CHANGING ACCOUNT PRODUCTS** - We may change your account to another product offered by us at any time by giving you notice that your account will be changed to another product on a specified date. If your account is a time account, the change will not occur before the next maturity date of your account. If you do not close your account before the date specified in the notice, we may change your account to that other product on the date specified in the notice. We shall not change your account to another product in any way that impairs your membership. We reserve the right to change which account is designated as your par account if you have more than one account.

**TRANSACTIONS BY MAIL** - You may deposit checks or drafts by mail. You should indorse the item being sent through the mail with the words "For Deposit Only" and should include your correct account number underneath to ensure the item is credited to the correct account. If you do not use your deposit slip or provide us with instructions indicating how or where the item should be credited, we may apply it to any account or any loan balance you have with us or we may return the item to you. Receipts for such transactions will be mailed to you only if a self-addressed stamped envelope is provided. Following your deposit, examine your statement carefully or call us to ensure that we received the item. Do not send cash through the mail for deposit.



**CHECK STORAGE AND COPIES** - You agree that you will not receive your canceled checks. We will store your canceled checks or copies of them for a reasonable retention period. You may request copies from us in the manner we require and may charge a fee for their reproduction.

**REMOTELY CREATED CHECKS** - Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line.

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

**UNLAWFUL INTERNET GAMBLING AND OTHER ILLEGAL ACTIVITIES NOTICE** - Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling. You agree that you are not engaged in unlawful or illegal activity in any way connected to your account(s). You agree that you will not use your account(s) or any other service provided to you by us for unlawful activities.

**MEMBERSHIP ELIGIBILITY** - To join Empower Federal Credit Union, you must meet the membership requirements including, as applicable, purchasing and maintaining a minimum share balance (hereinafter membership share). You authorize us to transfer the funds necessary to maintain par value in your membership share. You authorize us to check your account, credit and employment history, and obtain reports from third parties, including credit reporting agencies, to verify your eligibility for the accounts and services you request and for other accounts, products, or services we may offer you or for which you may qualify.

A joint account owner on any account offered by this credit union cannot vote, borrow money, or hold office, unless the joint account owner is a member.

**HEALTH SAVINGS ACCOUNTS (HSA)** - For your convenience, we permit you to take distributions from your HSA by check. This feature can raise a variety of tax concerns – for example getting additional cash back on an HSA checking transaction. As a result, if you have more than one account with us, it is a good practice to make sure you are using the appropriate checkbook for the transaction. Also, it is your responsibility to ensure your distributions and other actions related to the HSA comply with the law, including federal tax law. As always, we recommend consulting a legal or tax professional if you have any questions about managing your HSA. The terms of this agreement are intended to work in conjunction with the HSA Agreement provided to you earlier. In the event of a conflict, the terms of the HSA Agreement control. You understand that your HSA is intended to be used for payment of qualified medical expenses. It is your responsibility to satisfy any tax liability resulting from use of your HSA for any purpose other than payment or reimbursement of qualified medical expenses. We do not monitor the purpose of any transaction to or from your HSA. Nor are we responsible for ensuring your eligibility for making contributions or ensuring withdrawals are used for payment or reimbursement of qualified medical expenses. Refer to your HSA Agreement for more information relating to the use of your HSA.

**INTERNATIONAL ACH TRANSACTIONS** - Financial institutions are required by law to scrutinize or verify any international ACH transaction (IAT) that they receive against the Specially Designated Nationals (SDN) list of the Office of Foreign Assets Control (OFAC). This action may, from time to time, cause us to temporarily suspend processing of an IAT and potentially affect the settlement and/or availability of such payments.

**FUNDS TRANSFERS** - The terms used in this section have the meaning given to them in Article 4A of the Uniform Commercial Code - Funds Transfers (UCC 4A). This section will generally not apply to you if you are a consumer. However, even if you are a consumer, this section will apply to that part of any funds transfer that is conducted by Fedwire. This section is subject to UCC 4A as adopted in the state in which you have your deposit with us. This section is also subject to all clearing house association rules, rules of the Board of Governors of the Federal Reserve System and their operating circulars. If any part of this agreement is determined to be unenforceable, the rest of the agreement remains effective. This section controls funds transfers unless supplemented or amended in a separate written agreement signed by us. This section does not apply to a funds transfer if any part of the transfer is governed by the Electronic Fund Transfer Act of 1978 (EFTA), except this agreement does apply to a funds transfer that is a remittance transfer as defined in EFTA unless the remittance transfer is an electronic fund transfer as defined in EFTA.

**Funds transfer** - A funds transfer is the transaction or series of transactions that begin with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. A funds transfer is completed by the acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's order. You may give us a payment order orally, electronically, or in writing, but your order cannot state any condition to payment to the beneficiary other than the time of payment. Credit entries may be made by ACH.

**Authorized account** - An authorized account is a deposit or share account you have with us that you have designated as a source of payment of payment orders you issue to us. If you have not designated an authorized account, any account you have with us is an authorized account to the extent that payment of the payment order is not inconsistent with the use of the account.

**Acceptance of your payment order** - We are not obligated to accept any payment order that you give us, although we normally will accept your payment order if you have a withdrawable credit in an authorized account sufficient to cover the order. If we do not execute your payment order, but give you notice of our rejection of your payment order after the execution date or give you no notice, we are not liable to pay you as restitution any dividends on a withdrawable credit in a non-dividend-bearing account.

**Cutoff time** - If we do not receive your payment order or communication canceling or amending a payment order before our cutoff time on a funds transfer day for that type of order or communication, the order or communication will be deemed to be received at the opening of our next funds transfer business day.

**Payment of your order** - If we accept a payment order you give us, we may receive payment by automatically deducting from any authorized account the amount of the payment order plus the amount of any expenses and charges for our services in execution of your payment order. We are entitled to payment on the payment or execution date. Unless your payment order specifies otherwise, the payment or execution date is the funds transfer date we receive the payment order. The funds transfer is completed upon acceptance by the beneficiary's bank. Your obligation to pay your payment order is excused if the funds transfer is not completed, but you are still responsible to pay us any expenses and charges for our services. However, if you told us to route the funds transfer through an intermediate bank, and we are unable to obtain a refund because the intermediate bank that you designated has suspended payments, then you are still obligated to pay us for the payment order. You will not be entitled to dividends on any refund you receive because the beneficiary's bank does not accept the payment order.

**Security procedure** - As described more fully in a separate writing, the authenticity of a payment order or communication canceling or amending a payment order issued in your name as sender may be verified by a security procedure. You affirm that you have no circumstances which are relevant to the determination of a commercially reasonable security procedure unless those circumstances are expressly contained in a separate writing signed by us. You may choose from one or more security procedures that we have developed, or you may develop your own security procedure if it is acceptable to us. If you refuse a commercially reasonable security procedure that we have offered you, you agree that you will be bound by any payment order issued in your name, whether or not authorized, that we accept in good faith and in compliance with the security procedure you have chosen.

**Duty to report unauthorized or erroneous payment** - You must exercise ordinary care to determine that all payment orders or amendments to payment orders that we accept that are issued in your name are authorized, enforceable, in the correct amount, to the correct beneficiary, and not otherwise erroneous. If you discover (or with reasonable care should have discovered) an unauthorized, unenforceable, or erroneously executed payment order or amendment, you must exercise ordinary care to notify us of the relevant facts. The time you have to notify us will depend on the circumstances, but that time will not in any circumstance exceed 14 days from when you are notified of our acceptance or execution of the payment order or amendment or that your account was debited with respect to the order or amendment. If you do not provide us with timely notice you will not be entitled to dividends on any refundable amount. If we can prove that you failed to perform either of these duties with respect to an erroneous payment and that we incurred a loss as a result of the failure, you are liable to us for the amount of the loss not exceeding the amount of your order.

**Identifying number** - If your payment order identifies an intermediate bank, beneficiary bank, or beneficiary by name and number, we and every receiving or beneficiary bank may rely upon the identifying number rather than the name to make payment, even if the number identifies an intermediate bank or person different than the bank or beneficiary identified by name. Neither we nor any receiving or beneficiary bank have any responsibility to determine whether the name and identifying number refer to the same financial institution or person.

**Notice of credit** - If we receive a payment order to credit an account you have with us, we are not required to provide you with any notice of the payment order or the credit.

**Provisional credit** - You agree to be bound by the automated clearing house association operating rules that provide that payments made to you or originated by you by funds transfer through the automated clearing house system are provisional until final settlement is made through a Federal Reserve Bank or otherwise payment is made as provided in Article 4A-403(a) of the Uniform Commercial Code.

**Refund of credit** - You agree that if we do not receive payment of an amount credited to your account, we are entitled to a refund from you in the amount credited and the party originating such payment will not be considered to have paid the amount so credited.

**Cancellation or amendment of payment order** - You may cancel or amend a payment order you give us only if we receive the communication of cancellation or amendment before our cutoff time and in time to have a reasonable opportunity to act on it before we accept the payment order. The communication of cancellation or amendment must be presented in conformity with the same security procedure that has been agreed to for payment orders.

**Intermediaries** - We are not liable for the actions of any intermediary, regardless of whether or not we selected the intermediary. We are not responsible for acts of God, outside agencies, or nonsalaried agents.

**Limit on liability** - You waive any claim you may have against us for consequential or special damages, including loss of profit arising out of a payment order or funds transfer, unless this waiver is prohibited by law. We are not responsible for attorney fees you might incur due to erroneous execution of payment order.

**Erroneous execution** - If we receive an order to pay you, and we erroneously pay you more than the amount of the payment order, we are entitled to recover from you the amount in excess of the amount of the payment order, regardless of whether you may have some claim to the excess amount against the originator of the order.

**Objection to payment** - If we give you a notice that reasonably identifies a payment order issued in your name as sender that we have accepted and received payment for, you cannot claim that we are not entitled to retain the payment unless you notify us of your objection to the payment within one year of our notice to you.

**ENFORCEMENT** - You shall be in default of this agreement if you fail to follow any of its terms. You are liable to us for any losses, costs or expenses we incur resulting from your default. You authorize us to deduct any such losses, costs or expenses from your account without prior notice to you. If we bring a legal action to collect any amount due under or to enforce this agreement, we shall be entitled, subject to applicable law, to payment of reasonable attorney's fees and costs.

**CREDIT UNION LIABILITY** - We will not be liable for anything we do in following your instructions. In addition, we will not be liable for not following your instructions if we reasonably believe that your instructions would expose us to potential loss or civil or criminal liability, or conflict with customary banking practices or this agreement. If we do not properly complete a transaction according to this agreement, we will be liable for your losses or damages not to exceed the amount of the transaction, except as otherwise provided by law. However we shall not be liable if: (1) your account contains insufficient funds for the transaction; (2) circumstances beyond our control prevent the transaction; (3) your loss is caused by your or another financial institution's negligence; (4) your account funds are subject to legal action or other claim; or (5) you fail to adhere to your obligations under this agreement. We exercise ordinary care if our actions or nonactions are

consistent with applicable state law, Federal Reserve regulations and operating letters, clearinghouse rules, this agreement and general financial institution practices followed in the area we serve. 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 agreement.

**LIMITATIONS OF LIABILITY** - WE WILL NOT BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES REGARDLESS OF THE FORM OF ACTION AND EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF WE FAIL TO STOP PAYMENT ON AN ITEM, OR PAY AN ITEM BEARING AN UNAUTHORIZED SIGNATURE, FORGED SIGNATURE, OR FORCED ENDORSEMENT OR ALTERATION, OUR LIABILITY, IF ANY, WILL BE LIMITED TO THE FACE AMOUNT OF THE ITEM. EXCEPT TO THE EXTENT OF SUCH LIABILITY AS CANNOT BE EXCLUDED BY LAW, THE FOREGOING LIMITATIONS AND DISCLAIMERS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS.

**OTHER TERMS -**

**Waiver of Jury Trial** - All parties to this agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party regarding the terms of this agreement.

**Third Party Beneficiaries** - The provisions of this agreement are for the sole benefit of the parties. The agreement is not intended to and shall not be construed to give any third party any interest, rights or benefits with respect to or in connection with the provisions contained herein.

**Entire Agreement** - This agreement, along with any other documents we give you pertaining to your account(s), constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all other prior agreements and opinions expressed by us or our employees on the subject matter of this agreement.

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## ELECTRONIC FUND TRANSFERS YOUR RIGHTS AND RESPONSIBILITIES

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

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

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

**E-Phone Transfers - types of transfers and dollar limitations** - You may access your account by telephone 24 hours per day 7 days a week at 1.800.462.5000 using your personal identification number, a touch tone phone, and account numbers, to:

- transfer funds from checking to checking
  - you may transfer no more than \$10,000.00 per day
- transfer funds from checking to share savings
  - you may transfer no more than \$10,000.00 per day
- transfer funds from checking to money market
  - you may transfer no more than \$10,000.00 per day
- transfer funds from share savings to checking
  - you may transfer no more than \$10,000.00 per day
- transfer funds from share savings to savings
  - you may transfer no more than \$10,000.00 per day
- transfer funds from share savings to money market
  - you may transfer no more than \$10,000.00 per day
- transfer funds from share draft/checking to Club account
  - you may transfer no more than \$10,000.00 per day

- make payments from checking to loan accounts with us
  - you may transfer no more than \$10,000.00 per day
- make payments from share savings to loan accounts with us
  - you may transfer no more than \$10,000.00 per day
- get information about:
  - the account balance of checking accounts
  - the account balance of share savings accounts
  - the account balance of money market accounts
  - the account balance of club accounts

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

- get cash withdrawals from checking account(s) with a debit card
  - you may withdraw no more than \$500.00 per day
  - there is a charge of \$2.00 per transaction after you exceed more than 10 combined PIN POS or ATM transactions at an ATM we do not own or operate during any statement cycle
- get cash withdrawals from share savings account(s) with a debit card
  - you may withdraw no more than \$500.00 per day
  - there is a charge of \$2.00 per transaction after you exceed more than 10 combined PIN POS or ATM transactions at an ATM we do not own or operate during any statement cycle
- transfer funds from share savings to checking account(s) with a debit card
- transfer funds from checking to share savings account(s) with a debit card
- get information about:
  - the account balance of your checking account(s)
    - with a debit card
  - the account balance of your share savings accounts
    - with a debit card

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

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

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

- you may not exceed \$5,000.00 in transactions per day
- there is a charge of \$2.00 per transaction after you exceed more than 10 combined PIN POS or ATM transactions at an ATM we do not own or operate during any statement cycle

**Currency Conversion.** If you effect a transaction with your Mastercard®-branded Debit Card in a currency other than US Dollars, Mastercard will convert the charge into a US Dollar amount. The Mastercard currency conversion procedure includes use of either a government-mandated exchange rate, or a wholesale exchange rate selected by Mastercard. The exchange rate Mastercard uses will be a rate in effect on the day the transaction is processed. This rate may differ from the rate in effect on the date of purchase or the date the transaction was posted to your account.

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

**Mastercard Automatic Billing Updater Notice of Right to Opt Out.** Your Debit Card will be automatically enrolled in the free Mastercard® Automatic Billing Updater (ABU) service. ABU helps participating merchants who receive recurring payments from your card have access to current card account information on file. For instance, participating merchants will have access to information about card expiration, or if you report that your card has been lost or stolen. You are entitled to opt out of this service. You may opt out at any time.

If you want to opt out, phone us at 1.800.462.5000, notify us through our website at [www.empowerfcu.com](http://www.empowerfcu.com) or mail us notice of your intention to opt out at Empower Federal Credit Union, Attn: Card Services, 1 Member Way, Syracuse, NY 13212. You must include your name, account name and account number. If you opt out, you may opt back in if you decide you want the Mastercard Automatic Billing Updater service in the future. You may opt in the same way(s) that you can opt out.

**Online Banking Transfers - types of transfers and dollar limitations** - You may access your account(s) by computer through the internet by logging onto our website at [www.empowerfcu.com](http://www.empowerfcu.com) and using your user identification and password, to:

- transfer funds from checking to checking
- transfer funds from checking to share savings
- transfer funds from checking to money market
- transfer funds from checking to club account
- transfer funds from share savings to checking
- transfer funds from share savings to share savings

- transfer funds from share savings to money market
- transfer funds from share savings to club account
- transfer funds from money market to checking
- transfer funds from money market to share savings
- transfer funds from money market to money market
- transfer funds from money market to club account
- transfer funds from club account to checking
- transfer funds from club account to share savings
- transfer funds from club account to money market
- transfer funds from club account to club account
- transfer funds from line of credit to checking
- transfer funds from line of credit to share savings
- make payments from checking to loan account(s) with us
- make payments from checking to third parties
  - you may transfer no more than \$2,000.00 per day
- make payments from share savings to loan account(s) with us
- make payments from share savings to third parties
  - you may transfer no more than \$2,000.00 per day
- get information about:
  - the account balance of checking account(s)
  - the account balance of savings account(s)
  - account balance of money market accounts
  - account balance of Club accounts
  - account balance of loans

**Mobile Banking Transfers - types of transfers and dollar limitations** - You may access your account(s) through the browser on your cell or mobile phone at [www.empowerfcu.com](http://www.empowerfcu.com) or by downloading our mobile banking app and using your user identification and password, to:

- transfer funds from checking to checking
- transfer funds from checking to share savings
- transfer funds from checking to money market
- transfer funds from checking to club account
- transfer funds from share savings to checking
- transfer funds from share savings to share savings
- transfer funds from share savings to money market
- transfer funds from share savings to club account
- transfer funds from money market to checking
- transfer funds from money market to share savings
- transfer funds from money market to money market
- transfer funds from money market to club account
- transfer funds from club account to checking
- transfer funds from club account to share savings
- transfer funds from club account to money market
- transfer funds from club account to club account
- transfer funds from line of credit to checking
- transfer funds from line of credit to share savings
- make payments from checking to loan account(s) with us
- make payments from checking to third parties
  - you may transfer no more than \$2,000.00 per day
- make payments from share savings to loan account(s) with us
- make payments from share savings to third parties
  - you may transfer no more than \$2,000.00 per day
- get information about:
  - the account balance of checking account(s)
  - the account balance of share savings account(s)
  - account balance of money market accounts
  - account balance of Club accounts
  - account balance of loans

You may be charged access fees by your cell phone provider based on your individual plan. Web access is needed to use this service. Check with your cell phone provider for details on specific fees and charges.

**Health Savings Accounts (HSA).** We permit some electronic fund transfers to and/or from your HSA. The electronic fund transfers we permit are offered for the convenience of managing your HSA. However, electronically moving funds to or from your HSA – for example, depositing more than the allowable amount, or getting additional cash back on an HSA debit card transaction – can raise a variety of tax concerns. As a result, before electronically accessing any account you may have with us, it is a good practice to make sure you are using the correct access device (such as a card) or accessing the appropriate account for the transaction. Also, it is your responsibility to ensure the contributions, distributions, and other actions related to your HSA, comply with the law, including federal tax law. As always, we recommend consulting a legal or tax professional if you have any questions about managing your HSA. The terms of this disclosure are intended to work in conjunction with the HSA Agreement provided to you earlier. In the event of a conflict, the terms of the HSA Agreement control. You understand that your HSA is intended to be used for payment of qualified medical expenses. It is your responsibility to satisfy any tax liability resulting from use of your HSA for any purpose other than payment or reimbursement of qualified medical expenses. We do not monitor the purpose of any transaction to or from your HSA. Nor are we responsible for ensuring your eligibility for making contributions or ensuring withdrawals are used for payment or reimbursement of qualified medical expenses. Refer to your HSA Agreement for more information relating to the use of your HSA.

#### FEES

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

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

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

#### DOCUMENTATION

- **Terminal transfers.** You can get a receipt at the time you make a transfer to or from your account using an automated teller machine or point-of-sale terminal. However, you may not get a receipt if the amount of the transfer is \$15 or less.
- **Preauthorized credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 1.800.462.5000 to find out whether or not the deposit has been made.
- **Periodic statements.**

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

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

#### PREAUTHORIZED PAYMENTS

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

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

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

- **Notice of varying amounts.** If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)
- **Liability for failure to stop payment of preauthorized transfer.** If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

#### FINANCIAL INSTITUTION'S LIABILITY

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

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

#### CONFIDENTIALITY

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

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

**UNAUTHORIZED TRANSFERS****(a) Consumer liability.**

• *Generally.* Tell us AT ONCE if you believe your card and/or code has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check or draft. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card and/or code, you can lose no more than \$50 if someone used your card and/or code without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code without your permission if you had told us, you could lose as much as \$500.

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

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

• *Additional Limits on Liability for Mastercard®-branded Debit Card.* You will not be liable for any unauthorized transactions using your Mastercard®-branded Debit Card if: (i) you can demonstrate that you have exercised reasonable care in safeguarding your card from the risk of loss or theft, and (ii) upon becoming aware of a loss or theft, you promptly report the loss or theft to us. Mastercard is a registered trademark, and the circles design is a trademark of Mastercard International Incorporated.

**(b) Contact in event of unauthorized transfer.** If you believe your card and/or code has been lost or stolen, call or write us at EMPOWER FEDERAL CREDIT UNION, 1 MEMBER WAY, SYRACUSE, NY 13212, Phone: 1.800.462.5000. You should also call the number or write to the address listed in this disclosure if you believe a transfer has been made using the information from your check or draft without your permission.

**ERROR RESOLUTION NOTICE**

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

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

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

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

We will tell you the results within 3 business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

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

EMPOWER FEDERAL CREDIT UNION  
1 MEMBER WAY  
SYRACUSE, NY 13212

Business Days: Monday through Friday

Excluding Federal Holidays

Phone: 1.800.462.5000

MORE DETAILED INFORMATION IS AVAILABLE  
ON REQUEST

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

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

1. Prepare for your transactions at home (for instance, by filling out a deposit slip) to minimize your time at the ATM or night deposit facility.
2. Mark each transaction in your account record, but not while at the ATM or night deposit facility. Always save your ATM receipts. Don't leave them at the ATM or night deposit facility because they may contain important account information.
3. Compare your records with the account statements or account histories that you receive.
4. Don't lend your ATM card to anyone.

5. Remember, do not leave your card at the ATM. Do not leave any documents at a night deposit facility.
6. If you lose your ATM card or if it is stolen, promptly notify us. You should consult the other disclosures you have received about electronic fund transfers for additional information about what to do if your card is lost or stolen.
7. Protect the secrecy of your Personal Identification Number (PIN). Protect your ATM card as though it were cash. Don't tell anyone your PIN. Don't give anyone information regarding your ATM card or PIN over the telephone. Never enter your PIN in any ATM that does not look genuine, has been modified, has a suspicious device attached, or is operating in a suspicious manner. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.
8. Prevent others from seeing you enter your PIN by using your body to shield their view.
9. Don't accept assistance from anyone you don't know when using an ATM or night deposit facility.
10. When you make a transaction, be alert to your surroundings. Look out for suspicious activity near the ATM or night deposit facility, particularly if it is after sunset. At night, be sure that the facility (including the parking area and walkways) is well lighted. Consider having someone accompany you when you use the facility, especially after sunset. Defer your transaction if circumstances cause you to be apprehensive for your safety. You might consider using another ATM or night deposit facility.
11. If you notice anything suspicious or if any other problem arises after you have begun an ATM transaction, you may want to cancel the transaction, pocket your card and leave. You might consider using another ATM or coming back later.
12. Please be sure to close any entry door completely upon entering and exiting the ATM or night depository facility. Do not permit any unknown persons to enter the facility after regular banking hours.
13. Don't display your cash; place withdrawn cash securely upon your person before exiting the ATM. Count the cash later when you are in the safety of your own car, home, or other secure surrounding.
14. At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.
15. We want the ATM and night deposit facility to be safe and convenient for you. The activity of the automated teller machine facility may be recorded by a surveillance camera or cameras. Please tell us if you know of any problem with a facility. For instance, let us know if a light is not working or there is any damage to a facility. Please contact the police if emergency assistance is needed. Direct complaints concerning ATM facility security to us at the phone number listed in this disclosure or the New York Department of Financial Services Consumer Services Hotline at 1-800-342-3736.

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## YOUR ABILITY TO WITHDRAW FUNDS

This policy statement applies to all accounts.

Our policy is to make funds from your check deposits available to you on the second business day after the day we receive your deposit, with the first \$225 available on the day of your deposit. Electronic direct deposits will be available on the day we receive the deposit. Cash, wire transfers, and some specified check deposits will also be available before the second business day, as detailed below. Once the funds are available, you can withdraw them in cash and we will use the funds to pay checks that you have written.

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

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before 3:30 P.M. (cutoff times may be at a later time in certain locations) on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 3:30 P.M. or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

If you make a deposit at an ATM before 3:30 P.M. EST on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit at an ATM after 3:30 P.M. EST or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

### Same-Day Availability

Funds from the following deposits are available the same business day we receive your deposit:

- Electronic direct deposits
- U.S. Treasury checks or drafts that are payable to you
- Wire transfers
- Checks or drafts drawn on Empower Federal Credit Union.

### Same-Day Availability for Certain Deposits Made in Person

Funds from the following deposits are available the same business day we receive your deposit if you make the deposit in person to one of our employees:

- Cash
- State and local government checks or drafts that are payable to you
- Cashier's, certified, and teller's checks or drafts that are payable to you
- Federal Reserve Bank checks or drafts. Federal Home Loan Bank checks or drafts, and postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.



**Other Check Deposits Subject to Second-Day Availability**

The first \$225 from a deposit of other checks will be available on the day of your deposit. The remaining funds will be available on the second business day after the day of your deposit.

For example, if you deposit a check of \$700 on a Monday, \$225 of the deposit is available on Monday. The remaining \$475 is available on Wednesday.

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already available in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

**LONGER DELAYS MAY APPLY**

Funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,525 on any one day.

You redeposit a check that has been returned unpaid.

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

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

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit. You should ask if you need to be sure about when a particular deposit will be available for withdrawal.

**SPECIAL RULES FOR NEW ACCOUNTS**

For accounts open 30 days or less, no funds from deposits of checks will be available until the second business day after the day of your deposit.

**FOREIGN CHECKS OR DRAFTS**

Checks or drafts drawn on financial institutions located outside the U.S.A. (foreign checks or drafts) cannot be processed in the same manner as checks or drafts drawn on U.S.A. financial institutions. Foreign checks or drafts are exempt from the policies outlined in this disclosure. Generally, the availability of funds for deposits of foreign checks or drafts will be delayed for the time it takes us to collect the funds from the financial institution upon which it is drawn.

**SUBSTITUTE CHECKS AND YOUR RIGHTS**

As our member we think it's important for you to know about substitute checks. The following Substitute Check Disclosure provides information about substitute checks and your rights. So you will recognize substitute checks when you receive them, we have included a copy of the front side of a substitute check along with an explanation of the substitute check's components.

**What is a substitute check?**

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

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

**What are my rights regarding substitute checks?**

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

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

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

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

**How do I make a claim for a refund?**

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

1.800.462.5000 or visit online at [www.empowerfcu.com](http://www.empowerfcu.com)

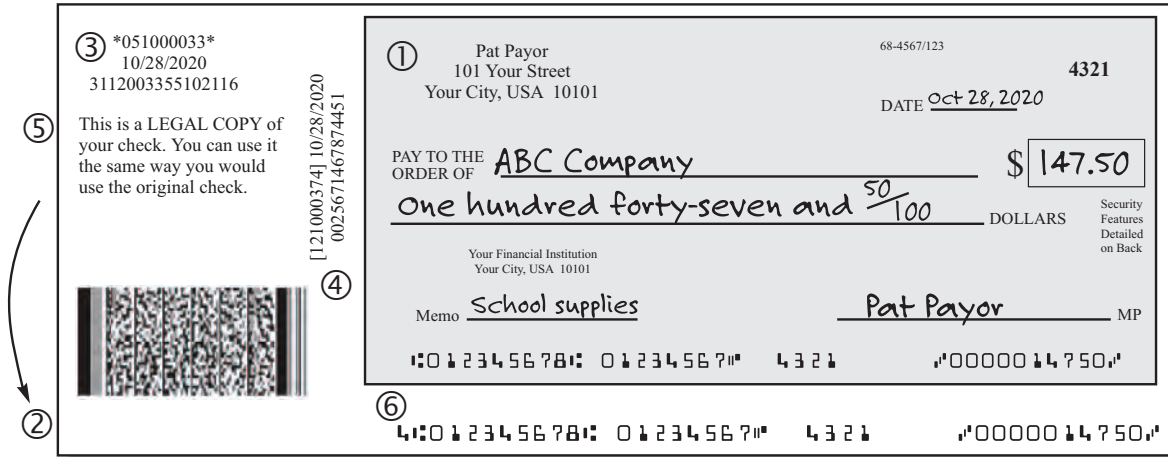
You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if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

Your claim must include —

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

**SUBSTITUTE CHECK IMAGE**

Below is an image of a sample substitute check. The numbers listed below the image correspond with the numbers on or near the substitute check image and the corresponding text explains the various components of a substitute check.



These numbers correspond with the numbers on the Substitute Check Image:

- 1 An image of the original check appears in the upper right-hand corner of the substitute check.
- 2 A substitute check is the same size as a standard business check.
- 3 The information in asterisks relates to the “reconverting bank”—the financial institution that created the substitute check.
- 4 The information in brackets (appears sideways facing check image) relates to the “truncating bank”—the financial institution that took the original check out of the check processing system.
- 5 The Legal Legend states: *This is a LEGAL COPY of your check. You can use it the same way you would use the original check.*
- 6 The MICR lines at the bottom of the image of the original and at the bottom of the substitute check are the same except for the “4” at the beginning of the MICR line on the substitute check, which indicates that it is a substitute check being moved forward for collection purposes. It is also possible for the MICR line on the substitute check to begin with a “5” if the item is being returned. The rest of the MICR line is the same as the original check to ensure that it is processed as though it were the original.

**EMPOWER COURTESY PAY DISCLOSURE**

Empower Federal Credit Union (Empower) is not obligated to pay any item presented for payment if your account does not contain sufficient funds or if there is no established line of credit with sufficient funds available. However, if you meet the criteria listed below, Empower may pay your reasonable overdrafts as a non-contractual courtesy. You will be eligible for Courtesy Pay if all of the following are true:

- (1) you are in good standing (defined as someone who has not caused Empower a loss);
- (2) your share draft account has been open for at least thirty (30) days;
- (3) there is no legal or administrative order or levy on your account;
- (4) the share draft account is not for a business or organization;
- (5) you do not have a delinquent loan with Empower;
- (6) you are not a debtor in a bankruptcy proceeding;
- (7) there is no apparent improper past or present activity on the account, such as excessive Courtesy Pay activity;
- (8) you are eighteen (18) years of age or older;
- (9) and, in the case of debit card transactions, you have also opted into Courtesy Pay.

If you are eligible and have need for this courtesy Empower may, in its sole discretion, pay overdrafts up to the established Courtesy Pay limit. Accounts are subject to a Courtesy Pay limit of five hundred dollars (\$500). Any item which if paid would result in an amount over the five hundred dollars limit shall not be covered by Courtesy Pay and may be subject to Non-Sufficient Funds fees. Empower may refuse to pay an overdraft at any time, even though it has previously paid overdrafts for you. Empower has no obligation to notify you before we pay or return any item. If overdrafts are paid by Empower on an account with more than one owner on the signature card, each owner and agent, if applicable, shall be jointly and severally liable for such overdrafts plus any fees. You may opt out of Courtesy Pay at any time, but you are responsible for any overdrawn balances at the time of opting out.

Courtesy Pay may be available for each item paid under the limit created by checks and other transactions made using your checking account number, such as a teller withdrawal, an automatic payment (ACH) transaction, or automatic bill payment and recurring debit card payment. We may also authorize and pay ATM transfers or withdrawals and everyday debit card purchases using your limit. Your available balance may be affected by Courtesy Pay.

All overdrafts shall be subject to fees as set forth in the Empower Fee Schedule and the overdraft terms described in the Membership and Account Agreement. Whether Empower pays or returns a check or electronic item, your account will be assessed a fee. No one presentment of a check or electronic item shall result in the assessment of both a Courtesy Pay fee and Non-Sufficient Funds fee. However, any check or electronic item presented for payment more than once may result in the assessment of more than one fee. If Empower pays an ATM withdrawal or everyday debit card transaction, your account will also be assessed a fee, but if however it declines such a transaction, it will not charge your account a fee.

The amount of any overdraft, plus any fees, shall be due and payable within thirty (30) days of the account becoming overdrawn. You are obligated to reimburse Empower by depositing sufficient funds to cover the item or transaction paid and any associated fees. Reimbursement shall be made through direct deposit (including directly deposited Social Security Benefit payments), transfer of funds, or regular deposit. If you do not want Social Security Benefit payments directly deposited into your share draft account to be used to reimburse Empower you must opt out of Courtesy Pay services. Please advise Empower of your desire to opt out by calling 315-477-2200 or 800-462-5000 option 2. If the account is not brought to a zero or positive balance within forty-five (45) days, the account will be charged off, closed, reported to ChexSystems and may be referred for collection.

It is the policy of Empower to comply with applicable laws and regulations and to conduct business in accordance with applicable safety and soundness standards. Courtesy Pay does not constitute an actual or implied agreement between you and Empower. Nor does it constitute an actual or implied obligation of or by Empower. Courtesy Pay may be withdrawn or withheld any time, without prior notice, reason, or cause. Courtesy Pay should not be viewed as an encouragement to overdraw your account. To avoid fees, we encourage you to keep track of your account balance.

JS 44 (Rev. 10/20)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> SHIREE BAILEY, on behalf of herself and all others similarly situated</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Broome</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Jeffrey D. Kaliel, KalielGold PLLC, 1100 15th Street NW, 4th Floor, Washington DC 20005 (202) 350-4783</p>	<p><b>DEFENDANTS</b> EMPOWER FEDERAL CREDIT UNION</p> <p>County of Residence of First Listed Defendant <u>Onondaga</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:55%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: Nature of Suit Code Descriptions.

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>LABOR</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
 NY Ge. Business Law § 349 Rule 23 of the F.R.Civ. P.

Brief description of cause:  
 Breach of Contract and Covenant of Good Faith & Fair Dealing, Violation of NYGBL by assessing unlawful fees on customers' accounts

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 500,000.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: July 26, 2021    SIGNATURE OF ATTORNEY OF RECORD: /s/ Jeffrey D. Kaliel

**FOR OFFICE USE ONLY**

RECEIPT # ANYNDC-5596420    AMOUNT \$402.00    APPLYING IFP \_\_\_\_\_    JUDGE DNH    MAG. JUDGE \_\_\_\_\_    ML

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
**United States plaintiff.** (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
**United States defendant.** (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
**Federal question.** (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
**Diversity of citizenship.** (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
**Original Proceedings.** (1) Cases which originate in the United States district courts.  
**Removed from State Court.** (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
**Remanded from Appellate Court.** (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
**Reinstated or Reopened.** (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
**Transferred from Another District.** (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
**Multidistrict Litigation – Transfer.** (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
**Multidistrict Litigation – Direct File.** (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
**Demand.** In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Empower Federal Credit Union Hit with Class Action Over Allegedly Unauthorized Overdraft Fees](#)

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