

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

JESSICA ODELL-GILL, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

CFCU COMMUNITY CREDIT UNION,

Defendant.

Civil Action No. 3:21-CV-1102 (FJS/ML)

JURY TRIAL DEMAND

CLASS ACTION COMPLAINT

Plaintiff Jessica Odell-Gill, on behalf of herself and all others similarly situated brings this class action complaint against CFCU Community Credit Union, and alleges the following:

INTRODUCTION

1. This is a civil action seeking monetary damages, restitution and declaratory relief from Defendant, CFCU Community Credit Union (“CFCU” or the “Credit Union”), arising from its improper overdraft fee practices.

2. First, CFCU charges “overdraft fees” (“OD Fees”) on accounts that were never actually overdrawn, in breach of its contractual promises.

3. Second, CFCU challenges the assessment and collection of unnecessary and futile Overdraft Transfer Fees (“ODT Fees”). CFCU charges accountholders OD Fees for transactions which purportedly overdraw an account. CFCU purports to charge ODT Fees to transfer funds from an accountholder’s savings account to his checking account when doing so is necessary to avoid an OD Fee on the checking account. However, CFCU makes such transfers, and assesses such ODT Fees, even when doing so does not avoid an OD Fee on a checking account, causing

accountholders to pay both and ODT Fee and an OD Fees on a single transaction.

4. These practices breach contractual promises made in CFCU's adhesion contracts.

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

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 Dryden, New York.

8. Defendant CFCU is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Classes. CFCU has its headquarters in Ithaca, 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 CFCU 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. CFCU CHARGES OD FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT

A. Overview of Claim

11. CFCU 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, CFCU charges fees for debit card transactions that purportedly result in an overdraft.

13. Plaintiff brings this cause of action challenging CFCU'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, CFCU 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 CFCU has already sequestered these funds for payment.

15. However, CFCU 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, CFCU 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. CFCU 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, CFCU 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, CFCU 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 CFCU's OD Fee revenue. APPSN Transactions only exist because intervening checking account transactions supposedly reduce an account balance. But CFCU 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 CFCU 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

CFCU's adhesion contracts—contracts which fail to inform accountholders about, and in fact, misrepresent, the true nature of CFCU'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 CFCU will only charge OD Fees on transactions that have insufficient funds to “cover” that debit card transaction.

25. In short, CFCU 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 CFCU. When a merchant physically or virtually “swipes” a customer's debit card, the credit card terminal connects, via an intermediary, to CFCU, 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, CFCU 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. CFCU (like all credit unions and banks) decides whether to "pay" debit card transactions at authorization. After that, CFCU 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 CFCU 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. CFCU's Account Documents

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

33. Amongst the Account Documents which govern Plaintiff's relationship with CFCU is a document entitled, Overdraft Services Consent agreement, which is page two to CFCU's Discretionary Courtesy Pay Policy and attached hereto as Exhibit A. The Overdraft Disclosure

states:

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

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

Ex. A, at 2 (emphasis added).

34. The Overdraft Disclosure goes on to link authorization with payment:

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

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

- Share drafts/checks, and other transactions made using your checking account
- Automatic bill payments
- ACH transactions

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

- ATM transactions
- One-time 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.

Ex. A at 2 (emphasis added).

35. The Membership and Account Agreement (“Account Agreement”) further links the moment of when the credit union “exercises its discretion” to pay an item with when an overdraft occurs:

If we offer standard overdraft services, **this service allows us to authorize payment for the following types of transactions** regardless of whether your share or deposit account has sufficient funds: (1) share drafts/checks and other transactions made using your checking account, except as otherwise described below; (2) automatic bill payments; and (3) ACH transactions. For ATM and one-time debit card transactions, you must affirmatively consent to such coverage. Without your consent, the Credit Union may not ***authorize and pay an ATM or one-time debit***

card transaction that will result in insufficient funds in your account. If you have established a service linking your share or deposit account with other individual or joint accounts, you authorize us to transfer funds from another account of yours to cover an insufficient item, including transfers from a share or deposit account, an overdraft line-of-credit account, or other account you so designate. Services and fees for these transactions are shown in the document the Credit Union uses to capture your affirmative consent and the Schedule of Fees and Charges.

Except as otherwise agreed in writing, **if we exercise our right to use our discretion to pay such items that result in an insufficiency of funds in your account**, we do not agree to pay them in the future and may discontinue coverage at any time without notice. If we pay these items or impose a fee that results in insufficient funds in your account, you agree to pay the insufficient amount, including the fee assessed by us, in accordance with our standard overdraft services or any other service you may have authorized with us, or if you do not have such protections with us, in accordance with any overdraft payment policy we have, as applicable.

Account Agreement, Ex. B at 3.

36. The Account Agreement further promises to immediately decrease an accountholder's available balance by the amount of a hold:

Signature-Based Debit Card Purchase Transactions. These are purchase transactions using your debit card that are processed through a signature-based network. Rather than entering a PIN, you typically sign for the purchase; however, merchants may not require your signature for certain transactions. Merchants may seek authorization for these types of transactions. **The authorization request places a hold on funds in your account when the authorization is completed. The "authorization hold" will reduce your available balance by the amount authorized but will not affect your actual balance.** The transaction is subsequently processed by the merchant and submitted to us for payment. This can happen hours or sometimes days after the transaction, depending on the merchant and its payment processor. These payment requests are received in real time throughout the day and are posted to your account when they are received.

Ex. B at 4.

37. 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 CFCU assesses OD Fees on them anyway.

38. 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.

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

40. In fact, CFCU 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.

41. All the above representations and contractual promises are untrue. In fact, CFCU 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 CFCU may impose OD Fees on any APPSN Transactions.

42. The Overdraft Disclosure misconstrues CFCU's true debit card processing and overdraft practices.

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

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

45. CFCU'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 CFCU's actual practice and the contract causes accountholders like the Plaintiff to incur more OD Fees than they should.

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

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

48. In reality, CFCU'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.

49. At the time of settlement, however, an available balance *does not change at all* for these transactions previously authorized into good funds. As such, CFCU 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.

50. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, CFCU does something new and unexpected, during the middle of the night, during its nightly batch posting process. Specifically, CFCU 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.

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

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

53. In sum, there is a huge gap between CFCU's practices as described in the Overdraft

Disclosure and CFCU's practices in reality.

D. CFCU Abuses Contractual Discretion

54. CFCU'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, CFCU exploits contractual discretion to the detriment of accountholders when it uses these policies.

55. Moreover, CFCU 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.

56. CFCU 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

57. As an example, on December 23, 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.

F. CFCU CHARGES ASSESSES ODT FEES ON FUTILE TRANSFERS

58. CFCU offers an overdraft protection and prevention service in which it transfers funds from other accounts held by accountholders to cover what would otherwise be overdraft transactions on a checking account. It charges a per-transfer fee of \$10 for this service.

59. The express purpose of the transfer service is to prevent overdraft transactions and reduce the incidence of \$38 OD Fees.

60. However, CFCU automatically performs these overdraft protection transfers, and charges a \$10 fee for doing so, even where the transfer will be wholly futile—i.e., where the transfer will not actually allow the accountholder to avoid an OD Fee on his checking account.

61. For example, on December 23, 2019, CFCU made an automatic overdraft protection transfer from Plaintiff's savings account to his checking account and charged her a fee of \$10 for doing so. But that transfer did nothing to accomplish its supposed purpose, to prevent an OD Fee, since the transfer was insufficient to fully cover the purported overdraft transaction. As such, Plaintiff still incurred an OD Fee of \$38, in addition to the \$10 overdraft protection fee on a transaction that settled to his account that day.

62. CFCU's account documents deceive consumers regarding the fact that it may charge two separate fees—up to \$48 total—for a single overdraft.

63. The Account Agreement, Ex. B, states:

If you have established a service linking your share or deposit account with other individual or joint accounts, you authorize us to transfer funds from another account of yours to cover an insufficient item, including transfers from a share or deposit account, an overdraft line-of-credit account, or other account you so designate.

Ex. B.

64. The entire purpose of the overdraft transfer is to “cover an insufficient item.” Yet the futile ODT Fees described above simply increase the total overdraft fees paid to \$48 per transaction, not the \$38 per transaction listed in the Fee Schedule. *See* Ex. C.

65. Moreover, it was bad faith and totally outside Plaintiff's reasonable expectations for CFCU to use its discretion to transfer funds from another account—and assess a fee for doing so—when that transfer had no preventative purpose.

CLASS ACTION ALLEGATIONS

66. 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:

67. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated. The Classes are defined as:

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

All accountholders who, during the applicable statute of limitations, were charged an overdraft protection transfer fee for a transfer that did not prevent an overdraft (the “Overdraft Transfer Fee Class”).

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

68. 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.

69. 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.

70. 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 CFCU has acted on grounds generally applicable to the class. Such common legal or factual questions include, but are not limited to:

- a) Whether CFCU improperly charged OD Fees on APPSN Transactions;
- b) Whether CFCU improperly charged ODT Fees on futile transfers;
- c) Whether the conduct enumerated above violates the contract;

- d) Whether the conduct enumerated above violates the covenant of good faith and fair dealing;
- e) Whether the conduct enumerated above is a deceptive trade practice in violation of New York law;
- f) The appropriate measure of damages.

71. 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 CFCU's records. CFCU 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.

72. 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.

73. 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 CFCU, as described herein.

74. Plaintiff is a more than adequate representative of the Class in that Plaintiff is a CFCU checking accountholder and has suffered damages as a result of CFCU'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.

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

76. CFCU 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.

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

COUNT ONE
BREACH OF CONTRACT INCLUDING THE
COVENANT OF GOOD FAITH AND FAIR DEALING
(Individually and on Behalf of the Classes)

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

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

80. CFCU breached promises made to Plaintiff and all members of the proposed class when as described herein, CFCU charged OD Fees on APPSN Transactions and charged fees for futile OD transfers.

81. 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.

82. 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.

83. 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.

84. CFCU has breached the covenant of good faith and fair dealing and abused its discretion in its contract as described herein. Specifically, CFCU should not have used its discretion to charge OD Fees on APPSN Transactions or on futile OD transfers.

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

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

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

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

88. CFCU's practice of charging fees on APPSN transactions and futile OD transfers violates New York General Business Law § 349 ("NYGBL § 349").

89. 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.

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

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

92. In the conduct of its business, trade, and commerce, and in furnishing services in New York, CFCU 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. CFCU 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 on transfers when an overdraft was actually prevented; and

b. CFCU omitted, suppressed, and concealed the material fact that it would charge fees on APPSN transactions and on futile OD transfers.

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

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

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

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

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

98. 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 CFCU'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 CFCU 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: October 7, 2021

Respectfully submitted,

By: /s/ Jeffrey D. Kaliel

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EXHIBIT A



CFCU Community Credit Union
Discretionary Courtesy Pay Policy

It is the policy of CFCU Community Credit Union to comply with all applicable laws and regulations and to conduct business in accordance with applicable safety and soundness standards.

The Deposit Account Agreement and Disclosure provided to you at the time you opened your account with us controls the duties, obligations and rights of the Depositor, the Authorized Signatories and CFCU Community Credit Union with regard to your sharedraft account. The Deposit Account Agreement (and all amendments thereto) and its terms shall control any possible conflict, if any, between any provision of this Discretionary Courtesy Pay Policy and the Deposit Account Agreement and Disclosure. A copy of the Deposit Account Agreement and Disclosure is available to you on request from your CFCU Community Credit Union officer.

Courtesy Pay is not a line of credit. However, if you overdraw your account, we will have the discretion to pay the overdraft, subject to the limit of your Courtesy Pay and the amount of the overdraft fee. CFCU Community Credit Union is not obligated to pay any item presented for payment if your account does not contain sufficient available funds. Any discretionary payment by CFCU Community Credit Union of an overdraft sharedraft (or items, such as ATM withdrawals) does not obligate CFCU Community Credit Union to pay any other overdraft sharedraft (or item), or to provide prior notice of its decision to refuse to pay such sharedraft (or item).

Pursuant to CFCU Community Credit Union's commitment to always provide you with the best level of service, now and in the future, if you maintain your account in good standing, which includes at least:

- A) Bringing your account balance to a positive balance within every thirty (30) day period;
- B) Not being in default on any loan or other obligation to CFCU Community Credit Union; and
- C) Not being subject to any legal or administrative order or levy.

CFCU Community Credit Union will have the discretion to pay overdrafts within the Courtesy Pay limits, but payment by CFCU Community Credit Union is a discretionary courtesy and not a right of the account holder or an obligation of CFCU Community Credit Union. This privilege will generally be limited to a maximum of **\$250.00** for the first 60 days after an account is opened and **\$1000.00** thereafter. Of course, any and all fees and charges, including without limitation the non-sufficient funds fees (as set forth in our fee schedules and deposit account agreement and disclosure), will be included as part of this maximum amount.

The total of the discretionary Courtesy Pay (negative) balance, including any and all fees and charges, including all non-sufficient funds/overdraft fees is due and payable upon demand, and Depositor and each Authorized Signatory will continue to be liable, jointly and severally, for all such amounts, as described in the Deposit Account Agreement and Disclosure with a maximum repayment period of 30 days. All accounts that remain in a negative status will be charged off by the 45th day or sooner if deemed to be uncollectible.

Again, while CFCU Community Credit Union will have the discretion to pay overdrafts on accounts in good standing (as described above), any such payment is a discretionary courtesy, and not a right of the account holder or an obligation of CFCU Community Credit Union and CFCU Community Credit Union in its sole and absolute discretion, can cease paying overdrafts at any time without prior notice of reason or cause.

- ☐ Check here if you do not want this service added to your checking account(s) at this time; even if you qualify for the discretionary service. You may change your election at any time by contacting the credit union.

Member's Initials _____



OVERDRAFT SERVICES CONSENT ATM and One-Time Debit Card Transactions

WHAT YOU NEED TO KNOW ABOUT OVERDRAFTS AND OVERDRAFT FEES

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

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

This notice explains our standard overdraft practices.

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

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

- Share drafts/checks, and other transactions made using your checking account
- Automatic bill payments
- ACH transactions

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

- ATM transactions
- One-time 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 the Credit Union pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of \$ 38.00 each time we pay an ATM or debit card transaction overdraft.
- There is no limit on the total fees we can charge you for overdrawing your account.

What if I want the Credit Union to authorize and pay overdrafts on my ATM and one-time debit card transactions?

If you want us to authorize and pay overdrafts on ATM and one-time debit card transactions, complete the section below and mail it to: CFCU Community Credit Union

1030 Craft Road Ithaca, NY 14850 CREDIT UNION NAME
CREDIT UNION ADDRESS or call (607) 257 - 8500 TELEPHONE NUMBER
www.mycfcu.com

If there are multiple owners on the ATM and/or debit card account, either account owner can act on behalf of all owners on this account. Only one (1) account owner signature is needed to add or remove the overdraft coverage.

ADD COVERAGE

- ☐ I want the Credit Union to authorize and pay overdrafts on my ATM and one-time debit card transactions. I understand I will be charged fees as listed above.
- ☐ I have the right to revoke this coverage at any time by contacting the Credit Union in writing or by phone.

REMOVE COVERAGE

- ☐ I do not want the Credit Union to authorize and pay overdrafts on my ATM and one-time debit card transactions.

X

MEMBER/OWNER SIGNATURE

DATE

Printed Name: _____ Account Number: _____

CREDIT UNION CONSENT CONFIRMATION

Signature of Credit Union Employee:

X

Effective Date:

☐ Coverage added

☐ Coverage removed

LOANLINER.

EXHIBIT B

MEMBERSHIP AND ACCOUNT AGREEMENT

This Agreement covers your rights and responsibilities concerning your accounts and the rights and responsibilities of the Credit Union providing this Agreement (Credit Union). In this Agreement, the words "you," "your," and "yours" mean anyone who signs an Account Card, Account Change Card, or any other account opening document (Account Card), or for whom membership and/or service requests are approved through the Credit Union's online application and authentication process. The words "we," "us," and "our" mean the Credit Union. The word "account" means any one (1) or more share or other accounts you have with the Credit Union.

Your account type(s) and ownership features are designated by you on your Account Card or through the Credit Union's online application and authentication process. By signing an Account Card or authenticating your request, each of you, jointly and severally, agree to the terms and conditions in this Agreement, and any Account Card, Funds Availability Policy Disclosure, Truth-in-Savings Disclosure, Electronic Fund Transfers Agreement and Disclosure, Privacy Disclosure, or Account Receipt accompanying this Agreement, the Credit Union's bylaws and policies, and any amendments to these documents from time to time that collectively govern your membership and accounts.

1. MEMBERSHIP ELIGIBILITY — To join the Credit Union, you must meet the membership requirements, including purchase and maintenance of the minimum required share(s) ("membership share") as set forth in the Credit Union's bylaws. 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.

2. INDIVIDUAL ACCOUNTS — An individual account is an account owned by one (1) member (individual, corporation, partnership, trust, or other organization) qualified for credit union membership. If the account owner dies, the interest passes, subject to applicable law, to the account owner's estate or Payable on Death (POD) beneficiary/payee or trust beneficiary, subject to other provisions of this Agreement governing our protection for honoring transfer and withdrawal requests of an owner or owner's agent prior to notice of an owner's death, and to any security interest or pledge granted by the account owner, and subject to our statutory lien rights.

3. JOINT ACCOUNTS — A joint account is an account owned by two (2) or more persons.

a. Rights of Survivorship. Unless otherwise stated on the Account Card or documented through the Credit Union's online application and authentication process, a joint account includes rights of survivorship. This means that when one (1) owner dies, all sums in the account will pass to the surviving owner(s). For a joint account without rights of survivorship, the deceased owner's interest passes to his or her estate. A surviving owner's interest is subject to the 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.

b. Control of Joint Accounts. Any owner is authorized and deemed to act for any other owner(s) and may instruct us regarding transactions and other account matters. Each owner guarantees the signature or authenticated request of any other owner(s). Any owner may withdraw or transfer funds, pledge to us all or any part of the shares, or stop payment on items without the consent of the other owner(s). We have no duty to notify any owner(s) about any transaction. We reserve the right to require written consent of all owners for any change to or termination of an account. If we receive written notice of a dispute between owners or inconsistent instructions from them, we may suspend or terminate the account and require a court order or written consent from all owners in order to act.

c. Joint Account Owner Liability. If an item deposited in a joint account is returned 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.

4. POD/TRUST ACCOUNT DESIGNATIONS — A Payable on Death (POD) account or trust account designation is an instruction to the Credit Union that an individual or joint account so designated is payable to the owner(s) during his, her, or their lifetimes and, when the last account owner dies, is payable to all surviving POD or trust beneficiaries/payees. Upon the death of the last account owner, if there is more than one (1) surviving beneficiary/payee, the account is owned jointly by such beneficiaries/payees without rights of survivorship. Any POD or trust beneficiary/payee designation shall not apply to Individual Retirement Accounts (IRAs). 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. This paragraph does not apply to an account held on behalf of or in the name of a trust.

5. ACCOUNTS FOR MINORS — We may require any account established by a minor to be a joint account with an owner who has reached the age of majority under state law and who shall be jointly and severally liable to us for any returned item, overdraft, or unpaid charges or amounts on such account. We may pay funds directly to the minor without regard to his or her minority. Unless a guardian or parent is an account owner, the guardian or parent shall not have any account access rights. We have no duty to inquire about the use or purpose of any transaction. We will not change the account status when the minor reaches the age of majority unless the change is authorized in writing by all account owners.

6. UNIFORM TRANSFERS/GIFTS TO MINORS ACCOUNT — A Uniform Transfers/Gifts to Minors Account (UTMA/UGMA) is an individual account created by a custodian who deposits funds as an irrevocable gift to a minor. The minor to whom the gift is made is the beneficiary of the custodial property in the account. The custodian has possession and control of the account for the exclusive right and benefit of the minor and, barring a court order otherwise, is the only party authorized to make deposits, withdrawals, or close the account. We have no duty to inquire about the use or purpose of any transaction. If the custodian dies, we may suspend the account until we receive instructions from any person authorized by law to withdraw funds or a court order authorizing withdrawals.

7. AGENCY DESIGNATION ON AN ACCOUNT — An agency designation on an account is an instruction to us that the owner authorizes another person to make transactions as agent for the account owner regarding the accounts designated. An agent has no ownership interest in the account(s) or credit union voting rights. We have no duty to inquire about the use or purpose of any transaction made by the agent.

8. DEPOSIT OF FUNDS REQUIREMENTS — Funds may be deposited to any account, in any manner approved by the Credit Union in accordance with the requirements set forth in the Truth-in-Savings Disclosure. Deposits made by mail, at night depositories, or at unstaffed facilities are not our responsibility until we receive them. We reserve the right to refuse or to return any deposit.

a. Endorsements. We may accept transfers, checks, drafts, and other items for deposit into any of your accounts if they are made payable to, or to the order of, one (1) or more account owners even if they are not endorsed by all payees. You authorize us to supply missing endorsements of any owners if we choose. If a check, draft, or item that is payable to two (2) or more persons is ambiguous as to whether it is payable to either or both, we will process the check, draft, or item as though it is payable to all such persons. If an insurance, government, or other check or draft requires an endorsement, we may require endorsement as set forth on the item. Endorsements must be made on the back of the check or draft within 1½ inches of the top edge, although we may accept endorsements outside this space. However, any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you or any prior endorser will be your responsibility.

b. Collection of Items. We act only as your agent and we are not responsible for handling items for deposit or collection beyond the exercise of ordinary care. We are not liable for the negligence of any correspondent or for loss in transit, and each correspondent will only be liable for its own negligence. We may send any item for collection. Items drawn on an institution located outside the United States are handled on a collection basis only. You waive any notice of nonpayment, dishonor, or protest regarding items we purchase or receive for credit or collection to your account. We reserve the right to pursue collection of previously dishonored items at any time, including giving a payor financial institution extra time beyond any midnight deadline limits.

c. Restrictive Legends. Some checks and drafts contain restrictive legends or similar limitations on the front of the item. Examples of restrictive legends include "two signatures required," "void after 60 days," and "not valid over \$500.00." We are not liable for payment of any check or draft contrary to a restrictive legend or other limitation contained in or on the item unless we have specifically agreed in writing to the restriction or limitation.

d. Final Payment. All items or Automated Clearing House (ACH) transfers credited to your account are provisional until we receive final payment. If final payment is not received, we may charge your account for the amount of such items or ACH transfers and impose a return item charge on your account. Any collection fees we incur may be charged to your account. We reserve the right to refuse or return any item or funds transfer.

e. Direct Deposits. We may offer preauthorized deposits (e.g., payroll checks, Social Security or retirement checks, or other government checks) or preauthorized transfers from other accounts. You must authorize direct deposits or preauthorized transfers by filling out a separate form. You must notify us at least 30 days in advance to cancel or change a direct deposit or transfer option. If your account is overdrawn, you authorize us to deduct the amount your account is overdrawn from any deposit, including deposits of government payments or benefits. If we are required to reimburse the U.S. Government for any benefit payment directly deposited into your account, we may deduct the amount returned from any of your accounts, unless prohibited by law.

f. Crediting of Deposits. Deposits made after the deposit cutoff time and deposits made on holidays or days other than our business days will be credited to your account on the next business day.

9. ACCOUNT ACCESS —

a. Authorized Signature. Your signature on the Account Card, or authentication and approval of your account, authorizes your account access. We will not be liable for refusing to honor any item or instruction if we believe the signature is not genuine. If you have authorized the use of a facsimile signature, we may honor any check or draft that appears to bear your facsimile signature, even if it was made by an unauthorized person. You authorize us to honor transactions initiated by a third person to whom you have given your account information, even if you do not authorize a particular transaction.

b. Access Options. You may withdraw or transfer funds from your account(s) in any manner we permit (e.g., at an automated teller machine, in person, by mail, Internet access, automatic transfer, or telephone, as applicable). We may return as unpaid any check or draft drawn on a form we do not provide, and you are responsible for any loss we incur handling such a check or draft. We have the right to review and approve any form of power of attorney and may restrict account withdrawals or transfers. We may refuse to honor a power of attorney if our refusal is conducted in accordance with applicable state law.

c. Credit Union Examination. We may disregard any information on any check or draft other than the signature of the drawer, the amount, and any magnetic encoding. You agree that we do not fail to exercise ordinary care in paying an item solely because our procedures do not provide for sight examination of items.

10. FUND TRANSFERS — Except as amended by this Agreement, electronic fund transfers we permit that are subject to Article 4A of the Uniform Commercial Code will be subject to such provisions of the Uniform Commercial Code as enacted by the state where the main office of the Credit Union is located. We may execute certain requests for an electronic fund transfer by Fedwire. Fedwire transactions are subject to Federal Reserve Board Regulation J. You may order an electronic fund transfer to or from your account. We will debit your account for the amount of the electronic fund transfer and will charge your account for any fees related to the transfer. Unless we agree otherwise in writing, we reserve the right to refuse to execute any order to transfer funds to or from your account. We are not obligated to execute any order to transfer funds out of your account if the amount of the requested transfer plus applicable fees exceeds the available funds in your account. We are not liable for errors, delays, interruptions, or transmission failures caused by third parties or circumstances beyond our control, including mechanical, electronic, or equipment failure. We will not provide you with next day notice of ACH transfers, wire transfers, and other electronic payments credited to your account. You will receive notice of such credits on your account statements. You may contact us to determine whether a payment has been received. If we fail to properly execute a payment order, and such action results in a delay in payment to you, we will pay you dividends or interest for the period of delay as required by applicable law. The dividends or interest paid to you will be based on the lowest nominal dividend or interest rate we were paying on any account during that period. Payment orders we accept will be executed within a reasonable time of receipt but may not necessarily be executed on the date they are received. Cutoff times may apply to the receipt, execution and processing of fund transfers, payment orders, cancellations, and amendments. If a request for a fund transfer, payment order, cancellation, or amendment is received after a cutoff time, it may be treated as having been received on the next fund transfer business day. Information about any cutoff times is available upon request. From time to time, we may need to suspend processing of a transaction for greater scrutiny or verification in accordance with applicable law, and this action may affect settlement or availability of the transaction. When you initiate a wire transfer, you may identify the recipient and any financial institution by name and by account or identifying number. The Credit Union and any other financial institutions facilitating the transfer may rely strictly on the account or identifying number, even if the number identifies a different person or financial institution. Any account owner may amend or cancel a payment order, even if that person did not initiate the order. We may refuse any request to amend or cancel a payment order that we believe will expose the Credit Union to liability or loss. Any request that we accept to amend or cancel a payment order will be processed within a reasonable time after it is received. You agree to hold us harmless from and indemnify us for all losses and expenses resulting from any actual or attempted amendment or cancellation of a payment order. We may require you to follow a security procedure to execute a payment order or certain electronic fund transfer transactions. We will notify you of any such security procedures. Unless we permit you to establish a different security procedure, you agree that the security procedures contained in the Credit Union's policies, of which we have notified you, are commercially reasonable verification of payment orders and other electronic fund

transfers. If we permit you to establish a different security procedure, you agree that procedure is a commercially reasonable method of verifying electronic funds transfers. If we conduct a remittance transfer(s) on your behalf acting as a remittance transfer provider, such transactions will be governed by 12 C.F.R. part 1005, subpart B-Requirements for remittance transfers. A "remittance transfer" is an electronic transfer of funds of more than \$15.00 which is requested by a sender and sent to a designated recipient in a foreign country by a remittance transfer provider. Terms applicable to such transactions may vary from those disclosed herein and will be disclosed to you at the time such services are requested and rendered in accordance with applicable law.

11. ACCOUNT RATES AND FEES — We pay account earnings and assess fees against your account as set forth in the Truth-in-Savings Disclosure and Schedule of Fees and Charges. We may change the Truth-in-Savings Disclosure or Schedule of Fees and Charges at any time and will notify you as required by law.

12. TRANSACTION LIMITATIONS —

a. Withdrawal Restrictions. We will pay checks or drafts, permit withdrawals, and make transfers from an available balance in your account. The availability of funds in your account may be delayed as described in our Funds Availability Policy Disclosure. We may also pay checks or drafts, permit withdrawals, and make transfers from your account from an insufficient available balance if you have established an overdraft protection plan or, if you do not have such a plan with us, in accordance with our overdraft payment policy.

We may refuse to allow a withdrawal in some situations and will advise you accordingly if: (1) there is a dispute between account owners (unless a court has ordered the Credit Union to allow the withdrawal); (2) a legal garnishment or attachment is served; (3) the account secures any obligation to us; (4) required documentation has not been presented; or (5) you fail to repay a credit union loan on time. We may require you to give written notice of seven (7) to 60 days before any intended withdrawals.

b. Transfer Limitations. We may limit the dollar amount or the number of transfers from your account. Please consult your Truth-in-Savings Disclosure or your Electronic Fund Transfers Agreement and Disclosure.

13. CERTIFICATE ACCOUNTS — Any time deposit, term share, share certificate, or certificate of deposit account allowed by state law (certificate account), whichever we offer, is subject to the terms of this Agreement, the Truth-in-Savings Disclosure, and the Account Receipt for each account, the terms of which are incorporated herein by reference.

14. OVERDRAFTS —

a. Payment of Overdrafts. If, on any day, the available balance in your share or deposit account are not sufficient to pay the full amount of a check, draft, transaction, or other item, plus any applicable fee, that is posted to your account, we may return the item or pay it, as described below. The Credit Union's determination of an insufficient available account balance may be made at any time between presentation and the Credit Union's midnight deadline with only one review of the account required. We do not have to notify you if your account does not have sufficient available funds in order to pay an item. Your account may be subject to a fee for each item regardless of whether we pay or return the item. We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item and resubmission(s) of the returned item.

If we offer standard overdraft services, this service allows us to authorize payment for the following types of transactions regardless of whether your share or deposit account has sufficient funds: (1) share drafts/checks and other transactions made using your checking account, except as otherwise described below; (2) automatic bill payments; and (3) ACH transactions. For ATM and one-time debit card transactions, you must affirmatively consent to such coverage. Without your consent, the Credit Union may not authorize and pay an ATM or one-time debit card transaction that will result in insufficient funds in your account. If you have established a service linking your share or deposit account with other individual or joint accounts, you authorize us to transfer funds from another account of yours to cover an insufficient item, including transfers from a share or deposit account, an overdraft line-of-credit account, or other account you so designate. Services and fees for these transactions are shown in the document the Credit Union uses to capture your affirmative consent and the Schedule of Fees and Charges.

Except as otherwise agreed in writing, if we exercise our right to use our discretion to pay such items that result in an insufficiency of funds in your account, we do not agree to pay them in the future and may discontinue coverage at any time without notice. If we pay these items or impose a fee that results in insufficient funds in your account, you agree to pay the insufficient amount, including the fee assessed by us, in accordance with our standard overdraft services or any other service you may have authorized with us, or if you do not have such protections with us, in accordance with any overdraft payment policy we have, as applicable.

b. How Transactions are Posted to Your Account. Basically, there are two types of transactions that affect your account: credits (deposits of money into your account) and debits (payments out of your account). It is important to understand how each is applied to your account so that you know how much money you have and how much is available to you at any given time. This section explains generally how and when we post transactions to your account.

Credits. Deposits are generally added to your account when we receive them. However, in some cases when you deposit a check, the full amount of the deposit may not be available to you at the time of deposit. Please refer to the Funds Availability Policy Disclosure provided at the time you opened your account and the Mobile Deposit User Agreement agreed to at the time of mobile deposit enrollment for details regarding the timing and availability of funds from deposits.

Debits. There are several types of debit transactions. Common debit transactions are generally described below. Keep in mind that there are many ways transactions are presented for payment by merchants, and we are not necessarily in control of when transactions are received.

- **Checks.** When you write a check, it is processed through the Federal Reserve system. We receive data files of cashed checks from the Federal Reserve each business day. The checks drawn on your account are compiled from these data files and paid each business day. We process the payments in the order contained in the data file.
- **ACH Payments.** We receive data files each business day from the Federal Reserve with Automated Clearing House (ACH) transactions. These include, for example, automatic bill payments you have authorized. ACH transactions for your account are posted throughout the business day in order of receipt.
- **PIN-Based Debit Card Purchase Transactions.** These are purchase transactions using your debit card for which a merchant may require you to enter your personal identification number (PIN) at the time of sale. They are processed through a PIN debit network. These transactions are similar to ATM withdrawal transactions because the money is usually deducted from your account immediately at the time of the transaction. However, depending on the merchant, a PIN-based transaction may not be immediately presented for payment.

- **Signature-Based Debit Card Purchase Transactions.** These are purchase transactions using your debit card that are processed through a signature-based network. Rather than entering a PIN, you typically sign for the purchase; however, merchants may not require your signature for certain transactions. Merchants may seek authorization for these types of transactions. The authorization request places a hold on funds in your account when the authorization is completed. The "authorization hold" will reduce your available balance by the amount authorized but will not affect your actual balance. The transaction is subsequently processed by the merchant and submitted to us for payment. This can happen hours or sometimes days after the transaction, depending on the merchant and its payment processor. These payment requests are received in real time throughout the day and are posted to your account when they are received.

The amount of an authorization hold may differ from the actual payment because the final transaction amount may not yet be known to the merchant when you present your card for payment. For example, if you use your debit card at a restaurant, a hold will be placed in an amount equal to the bill presented to you; but when the transaction posts, it will include any tip that you may have added to the bill. This may also be the case where you present your debit card for payment at gas stations, hotels and certain other retail establishments. We cannot control how much a merchant asks us to authorize, or when a merchant submits a transaction for payment.

This is a general description of certain types of transactions. These practices may change, and we reserve the right to pay items in any order we choose as permitted by law.

c. Understanding Your Account Balance. Your checking account has two kinds of balances: the actual balance and the available balance. Your actual balance reflects the full amount of all deposits to your account as well as payment transactions that have been posted to your account. It does not reflect checks you have written and are still outstanding or transactions that have been authorized but are still pending. Your available balance is the amount of money in your account that is available for you to use. Your available balance is your actual balance less: (1) holds placed on deposits; (2) holds on debit card or other transactions that have been authorized but are not yet posted; and (3) any other holds, such as holds related to pledges of account funds and minimum balance requirements or to comply with court orders. We use your available balance to determine whether there are sufficient funds in your account to pay items, including checks and drafts, as well as ACH, debit card and other electronic transactions. Pending transactions and holds placed on your account may reduce your available balance and may cause your account to become overdrawn regardless of your actual balance. In such cases, subsequent posting of the pending transactions may further overdraw your account and be subject to additional fees. You should assume that any item which would overdraw your account based on your available balance may create an overdraft. You may check your available balance online at www.mycfcu.com, at an ATM, by visiting a credit union branch, by calling us at (607) 257-8500 or (800) 428-8340 or via Telephone Banking (800) 782-9143.

15. POSTDATED AND STALEDATED CHECKS OR DRAFTS — You agree not to issue any check or draft that is payable on a future date (postdated). If you do issue a check or draft that is postdated and we pay it before that date, you agree that we shall have no liability to you for such payment. 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 (6) months past its date.

16. STOP PAYMENT ORDERS —

a. Stop Payment Order Request. Any owner may request a stop payment order on any check or draft drawn on the owner's account. To be binding, the order must accurately describe the check or draft, including the exact account number, the check or draft number, and the exact amount of the check or draft, and can be made in writing or orally. This exact information is necessary for the Credit Union's computer to identify the check or draft. If we receive incorrect or incomplete information, we will not be responsible for failing to stop payment on the check or draft. In addition, we must receive sufficient advance notice of the stop payment order to allow us a reasonable opportunity to act on it. If we recredit your account after paying a check or draft over a valid and timely stop payment order, you agree to sign a statement describing the dispute with the payee, to assign to us all of your rights against that payee or other holders of the check or draft, and to assist is in any legal action.

b. Duration of Order. Stop payment orders for checks or drafts are effective for six (6) months and may be renewed for additional six (6) month periods by requesting in writing or orally that the stop payment order be renewed within a period during which the stop payment order is effective. We are not required to notify you when a stop payment order expires.

c. Liability. Fees for stop payment orders are set forth in the Truth in Savings Disclosure or Schedule of Fees and Charges. Payment on any certified check, cashier's check, teller's check, or any other check, draft, or payment guaranteed by us may be stopped only according to the provisions of Section 4-403 of the Uniform Commercial Code as enacted by the state of New York. Although payment of an item may be stopped, you may remain liable to any item holder, including us. You agree to indemnify and hold the Credit Union harmless from all costs, including attorney's fees, damages, or claims related to our refusing payment of an item, including claims of any joint account owner, payee, or endorsee in failing to stop payment of an item as a result of incorrect information provided by you.

17. CREDIT UNION LIABILITY — 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. We will 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; or (4) your account funds are subject to legal process or other claim. We will not be liable for consequential damages, except liability for wrongful dishonor. We exercise ordinary care if our actions or nonactions are consistent with applicable state law, Federal Reserve regulations and operating letters, clearinghouse rules, 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. Any conflict regarding what you and our employees say or write will be resolved by reference to this Agreement.

18. CHECKS OR DRAFTS PRESENTED FOR PAYMENT IN PERSON — We may refuse to accept any check or draft drawn on your account that is presented for payment in person. Such refusal shall not constitute a wrongful dishonor of the check or draft, and we shall have no liability for refusing payment. If we agree to cash a check or draft that is presented for payment in person, we may require the presenter to pay a fee. Any applicable check or draft cashing fees are stated in the Schedule of Fees and Charges.

19. REMOTELY CREATED CHECKS OR DRAFTS — For purposes of this paragraph, "account" means a transaction account, credit account, or any other account on which checks or drafts may be drawn. A remotely created check or draft is a check or draft created by someone other than the person on whose account the check or draft is drawn. A remotely created check or draft is generally created by a third party payee as authorized by the owner of the account on which the check or draft is drawn. Authorization is usually made over the telephone or through on-line communication. The owner of the account does not sign a remotely created check or draft. In place of the owner's signature, the remotely created check or draft usually bears a statement that the owner authorized the check or draft or bears the owner's printed or typed name. If you authorize a third party to draw a remotely created check or draft against your account, you may not later revoke or change your authorization. It is your responsibility to resolve any authorization issues directly with the third party. We are not required to credit your account and may charge against your account any remotely created check or draft for which the third party has proof of your authorization.

20. PLEDGE/STATUTORY LIEN — Unless prohibited by law, you pledge and grant as security for all obligations you may have now or in the future, except obligations secured by your principal residence, all shares and dividends and all deposits and interest, if any, in all accounts you have with us now and in the future. If you pledge a specific dollar amount in your account(s) for a loan, we will freeze the funds in your account(s) to the extent of the outstanding balance of the loan or, if greater, the amount of the pledge if the loan is a revolving loan. Otherwise, funds in your pledged account(s) may be withdrawn unless you are in default. Federal or state law (depending upon whether we have a federal or state charter) gives us a lien on all shares and dividends and all deposits and interest, if any, in accounts you have with us now and in the future. Except as limited by federal or state law, the statutory lien gives us the right to apply the balance of all your accounts to any obligation on which you are in default. After you are in default, we may exercise our statutory lien rights without further notice to you.

Your pledge and our statutory lien rights will allow us to apply the funds in your account(s) to what you owe when you are in default, except as limited by federal or state 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 account(s) to the amount you owe us at a later time. The statutory lien and your pledge do not apply to any Individual Retirement Account or any other account that would lose special tax treatment under federal or state law if given as security. 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.

21. LEGAL PROCESS — If any legal action is brought against your account, we may pay out funds according to the terms of the action or refuse any payout until the dispute is resolved, as permitted by law. Any expenses or attorney fees we incur responding to legal process may be charged against your account without notice, unless prohibited by law. Any legal process against your account is subject to our lien and security interest.

22. ACCOUNT INFORMATION — Upon request, we will give you the name and address of each agency from which we obtain a credit report regarding your account. 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; or (4) you give us written permission.

23. NOTICES —

a. Name or Address Changes. You are responsible for notifying us of any name or address change. The Credit Union is only required to attempt to communicate with you at the most recent address you have provided to us. We may require all name and address changes to be provided in writing. If we attempt to locate you, we may impose a service fee as set forth in the Truth-in-Savings Disclosure or Schedule of Fees and Charges.

b. Notice of Amendments. Except as prohibited by applicable law, we may change the terms of this Agreement at any time. We will notify you of any change in terms, rates, or fees as required by law. We reserve the right to waive any terms of this Agreement. Any such waiver shall not affect our right to future enforcement.

c. Effect of Notice. Any written notice you give us is effective when we receive it. Any written notice we give to you is effective when it is deposited in the U.S. mail, postage prepaid, and addressed to you at your statement mailing address. Notice to any account owner is considered notice to all account owners.

d. Electronic Notices. If you have agreed to receive notices electronically, we may send you notices electronically and discontinue mailing paper notices to you until you notify us that you wish to reinstate receiving paper notices.

24. TAXPAYER IDENTIFICATION NUMBER AND BACKUP WITHHOLDING — Your failure to furnish a correct Taxpayer Identification Number (TIN) or meet other requirements may result in backup withholding. If your account is subject to backup withholding, we must withhold and pay to the Internal Revenue Service (IRS) a percentage of dividends, interest, and certain other payments. If you fail to provide your TIN, we may suspend opening your account.

25. STATEMENTS —

a. Contents. If we provide a periodic statement for your account, you will receive a periodic statement of transactions and activity on your account during the statement period as required by applicable law. If a periodic statement is provided, you agree that only one (1) statement is necessary for joint accounts. For share draft or checking accounts, you understand and agree that your original check or draft, when paid, becomes property of the Credit Union and may not be returned to you, but copies of the check or draft may be retained by us or by payable-through financial institutions and may be made available upon your request. You understand and agree that statements are made available to you on the date they are sent to you. You also understand and agree that checks, drafts, or copies thereof are made available to you on the date the statement is sent to you, even if the checks or drafts do not accompany the statement.

b. Examination. You are responsible for promptly examining each statement upon receiving it and reporting any irregularities to us. If you fail to report any irregularities such as forged, altered, unauthorized, unsigned, or otherwise fraudulent items drawn on your account, erroneous payments or transactions, or other discrepancies reflected on your statement within 33 days of the date we sent the statement to you, we will not be responsible for your loss. We also will not be liable for any items that are forged or altered in a manner not detectable by a reasonable person, including the unauthorized use of a facsimile signature machine.

c. Notice to Credit Union. You agree that the Credit Union's retention of checks or drafts does not alter or waive your responsibility to examine your statements or the time limit for notifying us of any errors. The statement will be considered correct for all purposes, and we will not be liable for any payment made or charge to your account unless you notify us in writing within the above time limit for notifying us of any errors. If you fail to receive a periodic statement, you agree to notify us within 14 days of the time you regularly receive a statement.

26. INACTIVE ACCOUNTS — If your account falls below any applicable minimum balance and you have not made any transactions over a period specified in the Truth-in-Savings Disclosure or Schedule of Fees and Charges, we may classify your account as inactive or dormant. Unless prohibited by applicable law, we may charge a service fee, as set forth in the Truth-in-Savings Disclosure or Schedule of Fees and Charges, for processing your inactive account. If we impose a fee, we will notify you, as required by law, at your last known address. You authorize us to transfer funds from another account of yours to cover any service fees, if applicable. To the extent allowed by law, we reserve the right to transfer the account funds to an account payable and to suspend any further account statements. If a deposit or withdrawal has not been made on the account and we have had no other sufficient contact with you within the period specified by state law, the account will be presumed to be abandoned. Funds in abandoned accounts will be reported and remitted in accordance with state law. Once funds have been turned over to the state, we have no further liability to you for such funds, and if you choose to reclaim such funds, you must apply to the appropriate state agency.

27. SPECIAL ACCOUNT INSTRUCTIONS — You may request that we facilitate certain trust, will, or court-ordered account arrangements. However, because we do not give legal advice, we cannot counsel you as to which account arrangement most appropriately meets the specific

requirements of your trust, will, or court order. If you ask us to follow any instructions that we believe might expose us to claims, lawsuits, expenses, liabilities, or damages, whether directly or indirectly, we may refuse to follow your instructions or may require you to indemnify us or post a bond or provide us with other protection. We may require that account changes requested by you, or any account owner, such as adding or closing an account or service, be evidenced by a signed Account Change Card or other document which evidences a change to an account and accepted by us.

28. TERMINATION OF ACCOUNT — We may terminate your account 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 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; or (7) we reasonably deem it necessary to prevent a loss to us. 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.

29. TERMINATION OF MEMBERSHIP — 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. You may be denied services for causing a loss to the Credit Union, or you may be expelled for any reason as allowed by applicable law.

30. DEATH OF ACCOUNT OWNER — We may continue to honor all transfer orders, withdrawals, deposits, and other transactions on an account until we know of a member's death. Once we know of a member's death, we may pay checks or drafts or honor other payments or transfer orders authorized by the deceased member for a period of ten (10) days after that date unless we receive instructions from any person claiming an interest in the account to stop payment on the checks, drafts, or other items. We may require anyone claiming a deceased owner's account funds to indemnify us for any losses resulting from our honoring that claim. This Agreement will be binding upon any heirs or legal representatives of any account owner.

31. UNLAWFUL INTERNET GAMBLING AND OTHER ILLEGAL ACTIVITIES — You agree that you are not engaged in unlawful Internet gambling or any other illegal activity. You agree that you will not use any of your accounts, access devices or services for unlawful Internet gambling or other illegal activities. We may terminate your account relationship if you engage in unlawful Internet gambling or other illegal activities.

32. SEVERABILITY — If a court holds any portion of this Agreement to be invalid or unenforceable, the remainder of this Agreement shall not be invalid or unenforceable and will continue in full force and effect. All headings are intended for reference only and are not to be construed as part of the Agreement.

33. ENFORCEMENT — You are liable to us for any losses, costs, or expenses we incur resulting from your failure to follow this Agreement. 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, including fees on any appeal, bankruptcy proceedings, and any postjudgment collection actions.

34. GOVERNING LAW — This Agreement is governed by the Credit Union's bylaws, federal laws and regulations, the laws, including applicable principles of contract law, and regulations of the state in which the Credit Union's main office is located, and local clearinghouse rules, as amended from time to time. As permitted by applicable law, you agree that any legal action regarding this Agreement shall be brought in the county in which the Credit Union is located.

35. NEGATIVE INFORMATION NOTICE - 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.

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.)

I. (a) PLAINTIFFS

JESSICA ODELL-GILL, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Tompkins
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

KalielGold PLLC, 1100 15th Street NW, 4th Floor,
Washington DC 20005 (202) 350-4783

DEFENDANTS

CFC COMMUNITY CREDIT UNION

County of Residence of First Listed Defendant Tompkins
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | 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.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<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	PERSONAL INJURY <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	PERSONAL INJURY <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 LABOR <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"/> 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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <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 SOCIAL SECURITY <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)) FEDERAL TAX SUITS <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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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			

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):
28 U.S.C. §§ 1332(d)(2) and (6); 28 U.S.C. § 1391

Brief description of cause:

Breach of contract; Breach of Covenant of Good Faith and Fair Dealing, Violation of N.Y. Gen. Bus. Law 349

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

October 5, 2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jeffrey D. Kaliel

FOR OFFICE USE ONLY

ANYNDC-5674644

RECEIPT #

AMOUNT

\$402.00

APPLYING IFP

JUDGE FJS

MAG. JUDGE ML

3:21-cv-1102

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: [CFCU Community Credit Union Hit with Class Action Over Alleged Overdraft Fees](#)
