

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR  
SEMINOLE COUNTY FLORIDA

SHEENA SPENCER, on behalf of  
herself and all others similarly situated,

Plaintiffs,

v.

ADDITION FINANCIAL FEDERAL  
CREDIT UNION,

Defendant.

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CLASS REPRESENTATION

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff, Sheena Spencer ("Plaintiff"), individually and on behalf of all others similarly situated, sues Addition Financial Credit Union ("Defendant" or "Addition"), and states:

**NATURE OF THE ACTION**

1. Plaintiff brings this action on behalf of herself and a class of all similarly situated consumers against Defendant, Addition Financial Federal Credit Union ("Addition"), arising from its routine practice of assessing overdraft fees ("OD Fees") on debit card transactions that did not actually overdraw a checking account.

2. Addition misleadingly and deceptively misrepresents this practice, including in its own account contracts. Addition also omits material facts pertaining to this practice, including in its account contracts.

3. This is a civil action seeking monetary damages, restitution, and declaratory and injunctive relief.

4. As described herein, Addition's practices violate Florida statutory law, as well as Addition's own form contracts.

5. Addition's improper scheme to extract funds from accountholders has victimized Ms. Spencer and thousands of others Florida citizens. Unless enjoined, Addition will continue to engage in these schemes and cause substantial injury to Florida citizens.

#### **PARTIES, JURISDICTION, AND VENUE**

6. Plaintiff, Sheena Spencer, is a *sui juris* resident of Seminole County, Florida.

7. Defendant Addition Financial Federal Credit Union is a credit union with its principal place of business in Lake Mary, Seminole County, Florida.

8. The damages in this case exceed \$15,000.00, exclusive of interest, costs, and attorneys' fees.

9. The Court has personal jurisdiction over Defendant. All facts giving rise to this action occurred in the State of Florida. Defendant has been afforded due process because, at all times relevant to this matter, individually or through its agents, subsidiaries, officers and/or representatives, operated, conducted, Defendant engaged in and carried on a business venture in this State, and/or maintained an office or agency in this State, and/or sold products, committed a statutory violation within this State related to the allegations made herein, and caused injuries to Plaintiff and Class Members, which arose out of the acts and omissions that occurred in the State of Florida, at which time Defendant was engaged in business activities in the State of Florida, resulting in injuries to Plaintiff and Class Members.

10. Venue for this action is proper in this Court because Defendant is authorized to transact business in Florida, and the wrongdoing alleged herein occurred in this County, as well as in other locations where Defendant conducts business in the State of Florida.

11. All conditions precedent to the maintenance of this action have been satisfied.

**GENERAL FACTUAL ALLEGATIONS**

**ADDITION CHARGES OD FEES ON TRANSACTIONS THAT DO NOT  
ACTUALLY OVERDRAW THE ACCOUNT**

**A. Overview of Claim**

12. Ms. Spencer brings this cause of action challenging Addition's practice of charging OD Fees on what are referred to in this Complaint as "Authorize Positive, Purportedly Settle Negative Transactions," or "APPSN Transactions."

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

14. However, Addition still assesses crippling \$35 OD Fees on many of these transactions and misrepresents its practices in its account documents.

15. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Addition 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.

16. Addition maintains a running account balance in real time, tracking funds consumers 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, Addition 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.

17. 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.

18. Still, despite keeping those held funds off-limits for other transactions, Addition improperly charges OD Fees on those APPSN Transactions, although the APPSN Transactions are *always* covered by sufficient available funds.

19. 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."

20. There is no justification for these practices, other than to maximize Addition's OD Fee revenue. APPSN Transactions only exist because intervening checking account transactions supposedly reduce an account balance. But Addition 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 Addition was not content with these millions in OD Fees. Instead, it sought millions *more* in OD Fees on the preceding APPSN Transactions.

21. Besides being deceptive, unfair, and unconscionable, these practices breach contract promises made in Addition's adhesion contracts—contracts that fundamentally misconstrue and mislead consumers about the true nature of Addition's processes and practices. These practices also exploit contractual discretion to gouge consumers.

22. In plain, clear, and simple language, the checking account contract documents covering OD Fees promise that Addition will only charge OD Fees on transactions that have insufficient funds to cover those transactions. Nevertheless, in breach of the contract, Addition charges OD Fees on transactions where consumers' funds were sufficient to (and did) cover the transaction.

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

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

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

25. At this step, if the transaction is approved, Addition immediately decrements the funds in the consumer’s account and sequesters funds in the amount of the transaction but does not yet transfer the funds to the merchant.

26. 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. 25, 2009).

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

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

**C. Addition's Account Contract**

29. Ms. Spencer has an Addition checking account, which is governed by Addition's standardized "Terms and Conditions" document ("Deposit Agreement").

30. The Deposit Agreement and other relevant contract documents covering OD Fees provide that Addition will not charge OD Fees on transactions that have sufficient funds to cover the transactions at the time they are initiated.

31. Addition's Deposit Agreement promises that overdraft determinations are made when Addition decides whether to "honor" the withdrawal request, and that "available balance" is used to determine overdrafts:

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

Exhibit A ("Deposit Agreement") at 2. This necessarily occurs at the moment of authorization.

32. Further, Addition promises that immediate holds are placed on available funds for debit card transactions, at the moment of authorization:

**A Temporary Debit Authorization Hold Affects Your Account Balance - On debit card purchases, merchants may request a temporary hold on your account for**

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

*Id.*

33. Indeed, Addition's Deposit Agreement provides an example of how OD Fees can result when a debit card transaction settles in an amount different than the authorization amount. But the example clearly indicates that the temporary hold matters and will persist until a transaction is paid:

Here is an example of how this can occur – assume for this example the following: (1) you have opted-in to our overdraft services for the payment of overdrafts on ATM and everyday debit card transactions, (2) we pay the overdraft, and (3) our overdraft fee is \$35 per overdraft. You have \$120 in your account. You swipe your card at the card reader on a gasoline pump. Since it is unclear what the final bill will be, the gas station's processing system immediately requests a hold on your account in a specified amount, for example, \$80. Our processing system authorizes a temporary hold on your account in the amount of \$80, and the gas station's processing system authorizes you to begin pumping gas. You fill your tank and the amount of gasoline you purchased is only \$50. Our processing system shows that you have \$40 in your account available for other transactions ( $\$120 - \$80 = \$40$ ) even though you would have \$70 in your account available for other transactions if the amount of the temporary hold was equal to the amount of your purchase ( $\$120 - \$50 = \$70$ ). Later, another transaction you have authorized is presented for payment from your account in the amount of \$60 (this could be a check you have written, another debit card transaction, an ACH debit or any other kind of payment request). This other transaction is presented before the amount of the temporary hold is adjusted to the amount of your purchase (remember, it may take up to three days for the adjustment to be made). Because the amount of this other transaction is greater than the amount our processing system shows is available in your account, our payment of this transaction will result in an overdraft transaction. Because the



transaction overdraws your account by \$20, your account will be assessed the overdraft fee of \$35 according to our overdraft fee policy. You will be charged this \$35 fee according to our policy even though you would have had enough money in your account to cover the \$60 transaction if your account had only been debited the amount of your purchase rather than the amount of the temporary hold or if the temporary hold had already been adjusted to the actual amount of your purchase.

*Id.*

34. 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 Addition assesses OD Fees on them anyway.

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

36. In fact, Addition 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 the secret posting process described below.

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

38. The account documents misconstrue Addition’s true debit card processing and overdraft practices.

39. First, and most fundamentally, Addition charges OD Fees on debit card transactions for which there are sufficient funds available to use to cover the transactions.

40. Addition assesses OD Fees on APPSN Transactions that *do* have sufficient funds available to cover them throughout their lifecycle.

41. Addition'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 Addition's actual practice and the contract causes consumers like Ms. Spencer to incur more OD Fees than they should.

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

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

44. Addition's actual practice is to assay the same debit card transaction twice to determine if the transaction overdraws an account—either at the time a transaction is authorized or later at the time of settlement.

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

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

47. This secret step allows it to charge OD Fees on transactions that never should have been subject to them—transactions that were authorized into sufficient funds, and for which Addition specifically set aside money to pay them.

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

49. In sum, there is a huge gap between Addition's practices as described in the account documents and Addition's practices in reality.

**D. Addition Abuses Contractual Discretion**

50. In addition to Addition's breach of the express contractual terms discussed above, Addition's exploits contractual discretion to the detriment of accountholders when it charges OD Fees on APPSN transactions.

51. The term "debit authorization hold" as used in the Deposit Agreement's section "A Temporary Debit Authorization Hold Affects Your Account Balance" is not specifically defined. Addition uses its discretion to define the term in a manner contrary to any reasonable, common sense understanding of that term. In Addition's implied definition, such a "hold" of funds is not used to cover a transaction for which the hold is authorized, even though Addition sequesters sufficient available funds for that transaction at the time it is made.

52. Moreover, Addition uses its contractual discretion to cause APPSN Transactions to incur OD Fees when Addition knowingly authorizes later transactions that consume funds previously sequestered for APPSN Transactions.

53. Addition uses these contractual discretion points unfairly to extract OD Fees on transactions that no reasonable consumer would believe could cause OD Fees.

**E. Reasonable Consumers Understand Debit Card Transactions are Debited Immediately**

54. The assessment of OD Fees on APPSN Transactions is fundamentally inconsistent with immediate withdrawal of funds for debit card transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited and cannot be depleted by intervening transactions.

55. Addition was and is aware that this is precisely how accountholders reasonably understand debit card transactions to work.

56. Addition knows that many consumers prefer debit cards for these very reasons. Consumer research indicates that consumers prefer debit cards as a budgeting device because they do not allow debt like credit cards do, and because the money comes directly out of a checking account.

57. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that “[t]here is no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.” *What Do I Need to Know about Using a Debit Card?*, ConsumerAction (Jan. 14, 2019), [https://www.consumer-action.org/helpdesk/articles/what\\_do\\_i\\_need\\_to\\_know\\_about\\_using\\_a\\_debit\\_card](https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card).

58. Further, Consumer Action informs consumers that “Debit cards offer the convenience of paying with plastic without the risk of overspending. When you use a debit card, you do not get a monthly bill. You also avoid the finance charges and debt that can come with a credit card if not paid off in full.” *Understanding Debit Cards*, ConsumerAction, [https://www.consumer-action.org/english/articles/understanding\\_debit\\_cards](https://www.consumer-action.org/english/articles/understanding_debit_cards) (last visited June 13, 2019).

59. That is a large part of the reason that debit cards have risen in popularity. In 2016, the number of terminals that accept debit cards in the United States had increased by approximately 1.4 million compared to 2011, and with that increasing ubiquity, consumers have viewed debit cards “as a more convenient option than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), <http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23>.

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

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

#### **F. Plaintiff Spencer’s Debit Card Transactions**

62. Among numerous other instances, on January 4, 2019, March 12, 2019, May 8, 2019, and May 23, 2019, Ms. Spencer was assessed OD Fees in the amount of \$35.00 each for debit card transactions that settled on those days. However, those transactions were initiated and authorized into a *positive* account balance on days prior to the day they settled. Further, at that time of those authorizations, positive funds were deducted immediately for the debit card transactions on which she was later assessed an OD Fees.

#### **CLASS REPRESENTATION ALLEGATIONS**

63. Plaintiff brings this action pursuant to Florida Rules of Civil Procedure 1.220(a) and (b)(3) on behalf of the following class:

All Florida citizens who, during the applicable statute of limitations, were charged OD Fees on debit card transactions that were authorized into a positive available balance.

64. Excluded from the Class are individuals who file a request for exclusion, governmental entities, Defendant, its parents, directors, officers, attorneys, and members of their immediate families, and the Court and persons within the third degree of relationship to the Court.

65. **Numerosity:** The Members of the Class are so numerous and geographically dispersed that individual joinder of all Members is impracticable within the meaning of Rule 1.220(a)(1). However, such information is in the control of Defendant. While the exact number of Class Members can be determined only by appropriate discovery, Plaintiff believes that the Class includes, at minimum, thousands of members. The disposition of claims of Class Members in a single action will provide substantial benefits to all parties and the Court.

66. **Commonality:** Plaintiff's claims raise questions of law and fact that are common to all putative Class Members within the meaning of Rule 1.220(a)(2). *See Soper v. Tire Kingdom Inc.*, 124 So. 3d 804 (Fla. 2013). The common issues presented are as follows:

A. Whether Addition charged OD Fees on transactions that were authorized into a positive available balance;

B. Whether Addition breached its own contract by charging OD Fees on transactions that were authorized into a positive available balance;

C. Whether Addition breached the covenant of good faith and fair dealing;

D. The proper method or methods by which to measure damages; and

E. The declaratory and injunctive relief to which the Class is entitled.

67. **Typicality:** As required by Rule 1.220(a)(3), Plaintiff's claims are typical of the claims of other Members of the Class, as all such claims arise from a similar act or a series of similar

acts committed by Addition. *See Soper*, 124 So. 3d at 804. Plaintiff is advancing the same claims and legal theories on behalf of herself and other members of the Class. Plaintiff is not advancing any unique claims nor is she subject to any unique defenses.

68. **Adequacy:** As required by Rule 1.220(a)(4), Plaintiff and her counsel will fairly and adequately protect and represent the interests of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in prosecuting and/or defending class actions. Plaintiff possesses no interests adverse or antagonistic to the interests of the Class.

69. **Predominance and Superiority:** This action is properly maintained as a class action pursuant to Rule 1.220(b)(3) because questions of law and fact common to Plaintiff's claims and the claims of the members of the Class predominate over questions of law and fact affecting only individual members of the Class, such that a class action is superior to other methods for the fair and efficient adjudication of this controversy. The issues relating to Plaintiff's claims are similar to the issues relating to the claims of the other members of the Class, such that a class action provides a far more efficient vehicle to resolve the claims rather than a myriad of separate and individual lawsuits. The maintenance of this action under Rule 1.220(b)(3) is also supported by the following considerations:

- a. The relatively small amount of damages that members of the Class have suffered on an individual basis would not justify the prosecution of separate lawsuits; and
- b. Counsel in this class action are not aware of any other earlier litigation against Addition to which any other members of the Class are a party and in which any question of law or fact controverted in the subject action is to be adjudicated.

**Count I – Breach of Contract, Including the Implied Covenant of Good Faith and Fair Dealing**

70. Ms. Spencer incorporates by reference the preceding paragraphs.

71. Ms. Spencer and Addition have contracted for banking services, as embodied in the Addition's Deposit Agreement and related documentation.

72. All contracts entered by Ms. Spencer and the Class are identical or substantively identical because Addition's form contracts were used uniformly.

73. Addition has breached the express terms of its own agreements as described herein.

74. Under the law of Florida, good faith is an element of every contract. All contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. 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.

75. 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.

76. Addition abused the discretion it granted to itself when it charged OD Fees on transactions that were authorized into a positive available balance.

77. In these and other ways Addition violated the covenant of good faith and fair dealing.



78. Addition engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) unfairly and unconscionably maximizing OD Fee revenue from Plaintiff and other members of the Class.

79. Ms. Spencer and members of the Class have performed all, or substantially all, of the obligations imposed on them under the banking agreements.

80. Ms. Spencer and members of the Class have sustained damages as a result of Addition's breaches of the parties' express contracts and breaches of contract through violations of the covenant of good faith and fair dealing.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Sheena Spencer, respectfully requests that this Honorable Court, for herself and all Members of the Class:

- A. Certify the Class pursuant to Rule 1.220(a) and (b)(3);
- B. Appoint the undersigned as Class Counsel;
- C. Appoint Plaintiff as Representative of the Class;
- D. Award Plaintiff and Class Members damages in such amount as the Court or jury may determine;
- E. Award declaratory and injunctive relief as permitted by law;
- F. Award reasonable attorneys' fees, filing fees, expert fees, and costs of suit to counsel based upon the benefit received by Plaintiff and Class;
- G. Award Plaintiff and Class Members attorneys' fees and all litigation costs; and
- H. Award Plaintiff and Class Members any further relief that the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial for all counts for which a trial by jury is permitted by law.

Dated: June 14, 2019

Respectfully submitted,

/s/ Jake Phillips

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# **EXHIBIT A**

## Terms and Conditions

**IMPORTANT ACCOUNT OPENING INFORMATION** - Federal law requires us to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law.

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

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

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

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

As used in this document the words "we," "our," and "us" mean "Addition Financial Credit Union" and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. However, this agreement does not intend, and the terms "you" and "your" should not be interpreted, to expand an individual's responsibility for an organization's liability. If this account is owned by a corporation, or other non-natural person legal entity, individual liability is determined by the laws generally applicable to that type of organization along with any express agreements you have with us. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular. "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

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

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

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

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

**DEPOSITS** - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Unless prohibited by law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing indorsement, claim of alteration, encoding error or other problem which in our judgment justifies reversal of credit. You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. If you deliver a deposit to us and you will not be present when the deposit is counted, you must provide us an itemized list of the deposit (deposit slip). To process the deposit, we will verify and record the deposit, and credit the deposit to the account. If there are any discrepancies between the amounts shown on the itemized list of the deposit and the amount we determine to be the actual deposit, we will notify you of the discrepancy. You will be entitled to credit only for the actual deposit as determined by us, regardless of what is stated on the itemized deposit slip. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check for deposit, we may require any third-party indorsers to verify or guarantee their indorsements, or indorse in our presence.



electronically authorized each other person with signs or face identity to make transactions to make any item payable to you or your credit for deposit to this account or any other transaction with us.

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

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

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

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

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

The right to require notice before withdrawal from an interest earning account does not apply to a demand deposit.

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

Here is an example of how this can occur – assume for this example the following: (1) you have opted-in to our overdraft services for the payment of overdrafts on ATM and everyday debit card transactions, (2) we pay the overdraft, and (3) our overdraft fee is \$35 per overdraft.

You have \$120 in your account. You swipe your card at the card reader on a gasoline pump. Since it is unclear what the final bill will be, the gas station's processing system immediately requests a hold on your account in a specified amount, for example, \$80. Our processing system authorizes a temporary hold on your account in the amount of \$80, and the gas station's processing system authorizes you to begin pumping gas. You fill your tank and the amount of gasoline you purchased is only \$50. Our processing system shows that you have \$40 in your account available for other transactions (\$120 - \$80 = \$40) even though you would have \$70 in your account available for other transactions if the amount of the temporary hold was equal to the amount of your purchase (\$120 - \$50 = \$70). Later, another transaction you have authorized is presented for payment from your account in the amount of \$60 (this could be a check you have written, another debit card transaction, an ACH debit or any other kind of payment request). This other transaction is presented before the amount of the temporary hold is adjusted to the amount of your purchase (remember, it may take up to three days for the adjustment to be made). Because the amount of this other transaction is greater than the amount our processing system shows is available in your account, our payment of this transaction will result in an overdraft transaction. Because the transaction overdraws your account by \$20, your account will be assessed the overdraft fee of \$35 according to our overdraft fee policy. You will be charged this \$35 fee according to our policy even though you would have had enough money in your account to cover the \$60 transaction if your account had only been debited the amount of your purchase rather than the amount of the temporary hold or if the temporary hold had already been adjusted to the actual amount of your purchase. Please see our separate fee schedule as the example above may not reflect our current overdraft fee.

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

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

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



Multiple-Party Account - Each an account payable on request to one or more of two or more parties; member cannot a right of survivorship is mentioned.

**Multiple-Party Account - Tenancy by the Entireties** - The account is owned by two parties who are married to each other and hold the account as tenants by the entirety.

**RIGHTS AT DEATH - Single-Party Account** - At the death of a party, ownership passes as part of the party's estate.

**Multiple-Party Account With Right of Survivorship** - At death of party, ownership passes to the surviving party or parties.

**Multiple-Party Account Without Right of Survivorship** - At death of party, deceased party's ownership passes as part of deceased party's estate.

**Single-Party Account With Pay-on-Death Designation** - At death of the party, ownership passes to the designated pay-on-death beneficiaries and is not part of the party's estate.

**Multiple-Party Account With Right of Survivorship and Pay-on-Death Designation** - At death of last surviving party, ownership passes to the designated pay-on-death beneficiaries and is not part of the last surviving party's estate.

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

We may accept an order to stop payment on any item from any one of you. Except as otherwise expressly agreed by us, you must make any stop-payment order in the manner required by law. Your stop-payment order must be made in a signed and dated writing, and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. We may, in our sole discretion, accept an oral or electronic stop-payment order if such oral stop payment order provides us with all information required by us to properly handle the stop-payment order. If we accept an oral or electronic stop-payment order, we may require you to verify such stop-payment order in writing at any time in our sole discretion. Because stop-payment orders are handled by computers, to be effective, your stop-payment order (regardless of whether written, oral or electronic) must precisely identify the number, date, and amount of the item, and the payee. If you do not give us a proper stop payment order as described above, we will not be liable to you or any other party for paying the item.

You may stop payment on any item drawn on your account whether you sign the item or not. Your stop-payment order is effective for one year. Your order will lapse after that time if you do not renew the order in writing before the end of the one year period. We are not obligated to notify you when a stop-payment order expires. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

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

Our stop payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Stop payment orders are ineffective for any guaranteed, certified, cashier's or teller's items. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item).

In the event that we are held liable for any reason related to any stop payment order, we shall not be liable to you or any third party for any special, indirect, punitive or consequential damages of any sort.

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

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

The Credit Union may restrict a member's privileges to allow only (1) a "cash in/cash out" share account; and (2) the right to vote at annual and special meetings when the member has been abusive to or has threatened Credit Union employees. The Credit Union may also deny abusive or threatening members access to the Credit Union's premises.

Any member that causes a loss to the credit union shall, at the option of senior management, have some or all of their credit union services restricted.

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

**STATEMENTS - Your duty to report unauthorized signatures, alterations and forgeries** - You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear



You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 60 days from when the statement is first sent or made available to you.

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

In an effort to respect our environment, keep rates low, and help protect identity, you understand that Addition Financial does not mail paper statements when there are no transactions or statement billing for a loan, except in quarterly months.

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

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

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

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

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

**RIGHT TO REPAYMENT OF INDEBTEDNESS** - You each agree that we may (without prior notice and when permitted by law) charge against and deduct from the account balance of any account which you are an owner any due and payable debt any of you owe us now or in the future. If this account is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt a partnership owes us now or in the future, to the extent of your liability as a partner for the partnership debt. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated the due date.

In addition to these contract rights, we may also have rights under a "statutory lien." A "lien" on property is a creditor's right to obtain ownership of the property in the event a debtor defaults on a debt. A "statutory lien" is one created by federal or state statute. If federal or state law provides us with a statutory lien, then we are authorized to apply, without prior notice, your shares and dividends to any debt you owe us, in accord with the statutory lien.

Neither our contract rights nor rights under a statutory lien apply to this account if prohibited by law. For example, neither our contract rights nor rights under a statutory lien apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal arises only in a representative capacity, or (d) setoff is prohibited by the Military Lending Act or its implementing regulations. We will not be liable for the dishonor of any check or draft when the dishonor occurs because we charge and deduct an amount you owe us from your account. You agree to hold us harmless from any claim arising as a result of our exercise of our right to repayment.

**CONVENIENCE ACCOUNT AGENT (Single-Party Accounts only)** - A convenience account, as defined by Florida law, means a deposit account other than a term share certificate, in the name of one individual, in which one or more individuals have been designated as agent with the right to make deposits to and withdraw funds from or draw checks on such account on the owner's behalf. A single individual is the owner, and the agent is merely designated to conduct transactions on the owner's behalf. The owner does not give up any rights to act on the account, and the agent may not in any manner affect the rights of the owner or beneficiaries, if any, other than by withdrawing funds from the account. The owner is responsible for any transactions of the agent. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

The owner may terminate the agency at any time, and the agency is automatically terminated by the death of the owner. However, we may continue to honor the transactions of the agent until: (a) we have received written notice or have actual knowledge of the termination of agency, and (b) we have a reasonable opportunity to act on that notice or knowledge. We may refuse to accept the designation of a convenience account agent.

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

**PAYMENT ORDER OF ITEMS** - The law permits us to pay items (such as checks or drafts) drawn on your account in any order. To assist you in handling your account with us, we are providing you with the following information regarding how we process the items that you write. When processing items drawn on your account, our policy is to pay them according to the dollar amount. We pay the smallest items first. The order in which items are paid is important if there is not enough money in your account to pay all of the items that are presented. Our payment policy minimizes the number of items that may result in an overdraft or NSF fee. If an item is presented without sufficient funds in your account to pay it,



Transaction is made to a consumer account and you have not opted in to that service.

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

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

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

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

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

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

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

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

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

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

You agree we and/or our third-party debt collectors may contact you by telephone or text message at any telephone number associated with your account. You also agree to indemnify us and our third-party debt collectors, and hold us and our third-party debt collectors harmless, from and against any and all losses, claims, damages, liabilities, costs or expenses (including any attorneys' fees) that arise out of your breach of any of the foregoing representations and agreements.

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

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

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

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

(We) may accept on (your) behalf payments to (your) account which have been transmitted through one or more Automated Clearing Houses (ACH) and which are not subject to the Electronic Fund Transfer Act and (your) rights and obligations with respect to such payments shall be construed in accordance with and governed by laws of the state of Florida as provided by the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account.

... authorize us to honor items containing facsimile signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose. You must notify us at once if you suspect that your facsimile signature is being or has been misused.

**POWER OF ATTORNEY** - You may wish to appoint an agent to conduct transactions on your behalf. (We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the agent are for your benefit.) This may be done by allowing your agent to sign in that capacity on the signature card or by separate form, such as a power of attorney. A power of attorney continues until your death or the death of the person given the power. If the power of attorney is not "durable," it is revoked when you become incompetent. We may continue to honor the transactions of the agent until: (a) we have received written notice or have actual knowledge of the termination of the authority or the death of an owner, and (b) we have had a reasonable opportunity to act on that notice or knowledge. You agree not to hold us responsible for any loss or damage you may incur as a result of our following instructions given by an agent acting under a valid power of attorney.

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

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

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

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

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



The diagram illustrates the layout of a check and the designated area for indorsements. The top section, labeled "FRONT OF CHECK", contains fields for "Pay to the order of", the amount in dollars, "Bank Name and Location", and a "Memo" line. Below these fields is a MICR line with the numbers "12345678910" and "7654". The bottom section, labeled "BACK OF CHECK", is divided by a vertical dashed line. The left side of this section is labeled "YOUR INDORSEMENT MUST BE WITHIN THIS AREA" with an arrow pointing to a horizontal line. The right side is labeled "Keep your indorsement out of this area." with a double-headed arrow indicating a width of "1 1/2\"". A bracket on the left side of the back of the check is labeled "TRAILING EDGE".

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

These indorsement guidelines apply to both personal and business checks.

**UNCLAIMED PROPERTY** - The law establishes procedures under which unclaimed property must be surrendered to the state. (We may have our own rules regarding dormant accounts, and if we charge a fee for dormant accounts it will be disclosed to you elsewhere.) Generally, the funds in your account are considered unclaimed if you have not had any activity or communication with us regarding your account over a period of years. Ask us if you want further information about the period of time or type of activity that will prevent your account from being unclaimed. If your funds are surrendered to the state, you may be able to reclaim them, but your claim must be presented to the state. Once your funds are surrendered, we no longer have any liability or responsibility with respect to the funds.

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

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

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

**CREDIT VERIFICATION** - You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency. You agree that we may conduct such verification at any time during your relationship with us and at any time thereafter as we deem necessary to collect any amounts owed to us by you.

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



and the conditions noted above have been met, we have not already paid the check, on the day your claim is enforceable, we agree to pay you the amount of the check. We will pay you in cash or issue another certified check.

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

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

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

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

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

Your account number can also be used to electronically remove money from your account, and payment can be made from your account even though you did not contact us directly and order the payment.

You must also take precaution in safeguarding your blank checks. Notify us at once if you believe your checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself or share the loss with us (we may have to share some of the loss if we failed to use ordinary care and if we substantially contributed to the loss).

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

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

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

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

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

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


**UTMA ACCOUNTS** - Under the Uniform Transfers to Minors Act, the funds in the account are owned by the child who has unconditional use of the account when he or she reaches the age of majority. Before that time, the account may be accessed only by the custodian (or successor custodian), and the funds must be used for the benefit of the child. We, however, have no duty or agreement whatsoever to monitor or insure that


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