

STATE OF INDIANA)	BARTHOLOMEW SUPERIOR/
COUNTY OF BARTHOLOMEW)	CIRCUIT COURT
)	
)	CAUSE NO. 03D01-1804-PL-001903

GAGE PLUMMER , on behalf of himself)	
and all others similarly situated,)	
)	Class Action Complaint
Plaintiff,)	
)	Jury Trial Demanded
v.)	
)	
CENTRA CREDIT UNION ,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiff, Gage Plummer, on behalf himself and all others similarly situated, by counsel, alleges:

INTRODUCTION

1. This is a civil action seeking damages from Defendant Centra Credit Union (“Centra”) based on Centra’s practice of assessing and collecting overdraft fees (“Overdraft Fees”) on accounts that were never actually overdrawn, in breach of Centra’s contract with customers.

2. In plain, clear, and simple language, Centra’s checking account contract promises customers that Centra will *only* charge Overdraft Fees when there are insufficient funds to “cover” a given transaction.

3. However, as it did to Plaintiff, Centra charges Overdraft Fees even when a transaction does not overdraw an account. Plaintiff was charged Overdraft Fees even though, according to the monthly account statements prepared by Centra, *Plaintiff’s account was never negative for the supposed overdraft event.* By

definition, there were always funds to cover those transactions, yet Centra charged Overdraft Fees on them anyway.

4. In short, Centra is not authorized by contract to charge Overdraft Fees on transactions that have not overdrawn an account, but it has done and continues to do so. Centra's assessment of Overdraft Fees in this manner breaches its contract with customers, breaches the duty of good faith and fair dealing imposed on Centra, and also violates the Indiana Deceptive Consumer Sales Act.

5. Plaintiff and other Centra customers have been injured by Centra's overdraft practices and have had improper Overdraft Fees assessed against and collected from their accounts by Centra.

PARTIES

6. Plaintiff Gage Plummer is a natural person and citizen of Bartholomew County, Indiana. He is a Centra Credit Union customer who was improperly charged Overdraft Fees when his account was not overdrawn.

7. Defendant Centra Credit Union is an Indiana state-chartered credit union with branches in Indiana, New York, and North Carolina. Centra has more than \$1.4 billion in assets and approximately 140,000 members.

JURISDICTION

8. This Court has general personal jurisdiction over Centra because Centra is at home in this state.

9. Preferred venue lies in Bartholomew County under Trial Rule 75(A)(4) because Bartholomew County is the county in Indiana where Centra has its registered agent and principal office.

FACTS

10. Plaintiff has a checking account with Centra and has chosen to opt-in to Centra's standard overdraft practices.

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

12. Pursuant to its standard account agreement, Centra charges Overdraft Fees (currently in the amount of \$29) for debit card transactions that purportedly result in an overdraft.

I. Mechanics of a debit card transaction

13. A debit card transaction occurs in two parts.

14. First, when a merchant runs a debit card, authorization for the purchase amount is instantaneously obtained by the merchant from Centra.

15. Second, sometime thereafter and possibly several days after the transaction was initiated, funds are actually transferred from the customer's account to the merchant's account, a process referred to in the banking industry as "posting" or "settling."

II. Centra account documents

16. Plaintiff's checking account with Centra was at all relevant times governed by Centra's standardized form contract for deposit accounts, the material terms of which are drafted by Centra, amended by Centra from time to time at its

convenience and complete discretion, and imposed by Centra on all of its deposit account customers.

17. On or after June 2016, Centra updated its deposit agreement.

18. A true and accurate copy of the deposit agreement is attached as Exhibit A (“Terms and Conditions of Your Account”).

19. In plain, clear, and simple language, the checking account contract documents discussing Overdraft Fees promise that Centra will only charge Overdraft Fees on transactions with insufficient funds to cover a given transaction:

PAYMENT ORDER OF ITEMS – 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.

COURTESY PAY – The credit union is not obligated to pay any item presented for payment if the account does not contain sufficient collected funds. However, . . . the credit union may, at its discretion, pay overdrafts that occur due to a check, ACH, or debit card transactions as a non-contractual courtesy. This service will be called “Courtesy Pay.” When this service occurs, the member will be charged applicable Courtesy Pay fees.

(Terms and Conditions of Your Account, p. 6 of 16.)

20. The term “collected funds” is not defined.

21. Centra’s opt-in form, by which consumers can choose to enroll in overdraft protection, deceptively and incompletely states the same policy.

22. Moreover, none of the account documents ever describe the transaction posting order used by Centra, which is designed to maximize the number of Overdraft Fees assessed to consumers.

23. Federal law requires that banks and credit unions receive affirmative consent from accountholders before charging overdraft fees for ATM and/or non-recurring debit card purchases.

24. Regulation E required Centra to provide its customers the information required to obtain their legally binding informed consent. But Centra failed to do this because its opt-in disclosures contained the same or similar misrepresentations regarding Centra's true overdraft policies as the account contract documents did.

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

III. Plaintiff's experience

26. Plaintiff has had a checking account with Centra since at least February 2017.

27. On numerous occasions, including but not limited to transactions that posted on February 12, 2018, Plaintiff was assessed Overdraft Fees in the amount of \$29 each. This is despite the fact that, according to the bank statements issued by Centra, Plaintiff's account never went negative even after the transactions that supposedly caused the Overdraft Fees were posted. Contrary to the account agreement, the Overdraft Fees were charged even though the account balance was not negative. In short, Plaintiff always had sufficient funds to cover the

transactions that supposedly caused Overdraft Fees on February 12, 2018, and on numerous other occasions:

12FEB Withdrawal	-2.50 =	76.77
FREDDYS FROZEN CUSTARD FREDDYS FROZEN CUS COLUMBUS INUS Trace #16887126		
12FEB Withdrawal	-5.71 =	71.06
FREDDYS FROZEN CUSTARD FREDDYS FROZEN CUS COLUMBUS INUS Trace #13923346		
12FEB Withdrawal	-13.90 =	57.16
MICROSOFT *XBOX 08006427676 WAUS Trace #10923538		
12FEB Deposit	0.43 =	57.59
Overdraft transfer from 60170320-S0		
12FEB Withdrawal ATM SHARE TRANSFER FEE, 0.50	-0.50 =	57.09
12FEB Withdrawal S/D OVERDRAFT FEE, 29.00	-29.00 =	28.09
12FEB A Courtesy Payment was made on suffix 5 on 12FEB2018 for the amount of 7.22.		
12FEB Withdrawal	-8.34 =	19.75
SPECIAL DOGS & MORE SPECIAL DOGS & MOR COLUMBUS INUS Trace #24977050		
12FEB Withdrawal S/D OVERDRAFT FEE, 29.00	-29.00 =	-9.25
12FEB A Courtesy Payment was made on suffix 5 on 12FEB2018 for the amount of 8.34.		

A true and accurate copy of Plaintiff's February 2018 account statement showing the Overdraft Fees for this example is attached as Exhibit B.

CLASS ALLEGATIONS

28. Plaintiff brings this action on behalf of himself and as a class action on behalf of the following proposed class (the "Class"):

All citizens of Indiana who were Centra Credit Union checking account holders on or after ten years prior to the filing of this lawsuit and who were charged Overdraft Fees on transactions that did not overdraw their checking accounts.

29. Plaintiff reserves the right to modify or amend the definition of the Class as this litigation proceeds.

30. Excluded from the Class are Centra Credit Union, its parents, subsidiaries, affiliates, officers and directors, any entity in which Centra has a controlling interest, all customers who make a timely election to be excluded,

governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

31. This action is properly maintainable as a class action under Trial Rules 23(A) and (B)(2) and (B)(3).

32. The class consists of thousands of members, such that joinder of all Class members is impracticable.

33. There are questions of law and fact that are common to the Class members that relate to Centra's practice of charging Overdraft Fees on transactions that did not overdraw accounts.

34. The claims of the Plaintiff are typical of the claims of the proposed Class because they are based on the same legal theories, and Plaintiff has no interests that are antagonistic to the interests of the Class members.

35. The Plaintiff is an adequate representative of the Class and has retained competent legal counsel experienced in class actions and complex litigation.

36. The questions of law and fact common to the Class predominate over any questions affecting only individual Class members, particularly because the focus of the litigation will be on Centra's conduct and its Overdraft Fees. The predominant questions of law and fact in this litigation include, but are not limited to, whether Centra:

- Imposed OD Fees on debit card transactions when those transactions did not overdraw accounts.

- Breached its contract with Plaintiff and Class members.
- Breached the covenant of good faith and fair dealing imposed on it.
- Violated the Indiana Deceptive Consumer Sales Act.

37. Other questions of law and fact common to the Class include the proper method or methods by which to measure damages.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would not be economically feasible for individual Class members, and certification as a class action will preserve judicial resources by allowing the common issues of the Class members to be adjudicated in a single forum, avoiding the need for duplicative hearings and discovery in individual actions that are based on an identical set of facts. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of Centra, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Centra's misconduct will proceed without remedy. In addition, without a class action, it is likely that many members of the Class will remain unaware of Centra's conduct and the claims they may possess.

39. It appears that other persons who fall within the Class definition set forth above are not pursuing similar litigation, such that individual Class members do not wish to control the prosecution of separate actions.

40. This proposed class action does not present any unique management difficulties.

COUNT I: BREACH OF CONTRACT

41. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

42. Plaintiff and Centra have contracted for bank account deposit, checking, ATM, and debit card services.

43. Centra breached promises included in the account documents as described herein when it charged Overdraft Fees on transactions that did not overdraw checking accounts.

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

45. Plaintiff and members of the Class have sustained damages as a result of Centra's breach of the contract.

COUNT II: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

46. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

47. Plaintiff and Centra have contracted for bank account deposit, checking, ATM, and debit card services.

48. Indiana imposes a duty of good faith and fair dealing on contracts between banks and/or credit unions and their customers because banks and credit unions are inherently in a superior position to their checking account holders

because from a superior vantage point they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

49. 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.

50. Centra has breached the covenant of good faith and fair dealing in the contract through its overdraft policies and practices as alleged herein.

51. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the account documents.

52. Plaintiff and members of the Classes have sustained damages as a result of Centra's breach of the covenant of good faith and fair dealing.

COUNT III: VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT

53. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

54. The purposes and policies of the Indiana Deceptive Consumer Sales Act (the "DCSA" or the "Act"), Indiana Code § 24-5-0.5-1 to -12, are to:

- (1) simplify, clarify, and modernize the law governing deceptive and unconscionable consumer sales practices;

- (2) protect consumers from suppliers who commit deceptive and unconscionable consumer sales practices; and
- (3) encourage the development of fair consumer sales practice.

Ind. Code § 24-5-0.5-1(b).

55. The General Assembly has instructed courts to construe the DCSA liberally to promote these purposes and policies. Ind. Code § 24-5-0.5-1(a).

56. Centra is a “supplier” as defined in the DCSA because it is a seller or other person who regularly engages in or solicits consumer transactions, which are defined to include sales of personal property, services, and intangibles that are primarily for a personal, familial, or household purpose, such as those at issue in this action. Ind. Code § 24-5-0.5-2(1), (3).

57. The DCSA provides that “[a] supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of [the DCSA] whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.” Ind. Code § 24-5-0.5-3(a).

58. The DCSA further provides that:

[w]ithout limiting the scope . . . the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

- (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

- (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not. . . .

Ind. Code § 24-5-0.5-3.

59. Centra committed deceptive acts, including but not limited to:

- a. Representing that its bank account deposit, checking, ATM, and debit card services had sponsorship, approval, performance, characteristics, accessories, uses, or benefits they did not have which Centra knew or should reasonably have known it does not have;
- b. Representing that its bank account deposit, checking, ATM, and debit card services were of a particular standard, quality, grade, style, or model, when they were not and when Centra knew or should reasonably have known that they did not.

60. Centra's violations were willful and were done as part of a scheme, artifice, or device with intent to defraud or mislead, and therefore are incurable deceptive acts under the DCSA.

61. The DCSA provides that "[a] person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of: (1) three (3) times the actual damages of the consumer suffering the loss; or (2) one thousands (\$1,000). Ind. Code § 24-5-0.5-4(a)

62. The DCSA provides that "[a]ny person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for

damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member” Ind. Code § 24-5-0.5-4(b).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff and the Class demand a jury trial on all claims so triable and judgment as follows:

- A. Certification for this matter to proceed as a class action under Fed. R. Civ. P. 23(b)(2) and 23(b)(3);
- B. Restitution of all OD Fees paid to Centra by Plaintiff and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
- C. Actual damages in an amount according to proof;
- D. Pre-judgment interest at the maximum rate permitted by applicable law;
- E. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys’ fees pursuant to applicable law;
- F. For attorneys’ fees under the DCSA, the common fund doctrine, and all other applicable law; and
- G. Such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

Dated: April 9, 2018

Respectfully submitted,

/s/Lynn A. Toops

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Pro Hac Vice Motions to be Filed

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