

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

Julian Hurt, on behalf of himself and all others	:	
similarly situated,	:	
	:	Civil Action No. 1:19-cv-1040
Plaintiff,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
Citizens Equity First Credit Union,	:	
	:	
Defendant.	:	
_____	:	

CLASS ACTION COMPLAINT

COMES NOW the Plaintiff, Julian Hurt, by counsel, and for his Class Action Complaint against the Defendant, he alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of himself and classes of all similarly situated consumers against Citizens Equity First Credit Union (“CEFCU”), arising from its routine practice assessing Overdraft Fees on transactions that did not actually overdraw a checking account.
2. CEFCU misleadingly and deceptively misrepresents its practice, including its own account contracts. CEFCU also omits material facts pertaining to each of the above practices, including its account contracts.
3. This is a civil action seeking monetary damages, restitution, and declaratory and injunctive relief.
4. As described herein, Defendant’s practices violate Illinois common and statutory law, as well as the Defendant’s own form contracts.

5. Defendant's improper scheme to extract funds from accountholders already struggling to make ends meet has victimized Plaintiff and thousands of others. Unless enjoined, Defendants will continue to engage in these schemes and cause substantial injury to its checking account holders.

JURISDICTION

6. This Court has original jurisdiction over this putative class action lawsuit pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d)(2) & (6), because the aggregate sum of the claims of the members of each of the putative classes exceeds \$5 million, exclusive of interest and costs, because Plaintiff brings this action on behalf of proposed classes that are each comprised of over one hundred members, and because at least one of the members of each of the proposed classes is a citizen of a different state than Defendant.

7. Venue is appropriate under 28 U.S.C. § 1391(b) because Defendant resides in this District and is the only Defendant in this action.

PARTIES

8. Plaintiff Julian Hurt ("Plaintiff Hurt") is a citizen of Illinois. Plaintiff has a personal checking account with CEFCU, which is governed by a Deposit Agreement.

9. Defendant CEFCU is one of the largest credit unions in Illinois. It has \$6 billion in assets and maintains its headquarters in Peoria, Illinois.

BACKGROUND FACTS

I. CEFCU CHARGES OVERDRAFT FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT

A. Overview of Claim

10. Plaintiff brings this cause of action challenging CEFCU's practice of charging overdraft fees on what are referred to in this complaint as "Authorize Positive, Purportedly Settle Negative Transactions," or "APPSN Transactions."

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

12. However, CEFCU still assesses crippling \$30 Overdraft Fees on many of these transactions, and misrepresents its practices in its account documents.

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

14. CEFCU 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, CEFCU 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.

15. 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. 2009).

16. 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 Overdraft Fees due to the unavailability of the funds sequestered for those debit card transactions.

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

18. 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."

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

20. Besides being deceptive, unfair, and unconscionable, these practices breach contract promises made in CEFCU's adhesion contracts—contracts which fundamentally

misconstrue and mislead consumers about the true nature of CEFCU's processes and practices. These practices also exploit contractual discretion to gouge consumers.

21. In plain, clear, and simple language, the checking account contract documents covering overdraft fees promise that CEFCU will only charge overdraft fees on transactions that have insufficient funds to cover that transaction.

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

B. Mechanics of a Debit Card Transaction

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

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

25. 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. 2009).

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

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

C. CEFCU's Account Contract

28. Plaintiff has a CEFCU checking account, which is governed by CEFCU's standardized Deposit Account Agreement (the "Deposit Agreement"). A true and accurate copy of the Deposit Agreement is attached as Exhibit A.

29. The Deposit Agreement and relevant contract documents covering overdraft fees provide that CEFCU will not charge Overdraft Fees on transactions that have sufficient funds to cover them at the time they are initiated.

30. CEFCU promises that "available" balance is the balance used to determine overdrafts; and that "available" funds are reduced for holds, including those placed immediately on debit card transactions, and those holds are "maintained" until posting:

You can use your CEFCU Debit Card at participating merchants to pay for goods or services from available funds in your Checking account...When you use your CEFCU Debit Card [for a signature-based POS transaction]...it may take from a few hours to several days or more before the transaction is posted to your account. If you use your CEFCU Debit Card [for a signature-based POS transaction], the merchant will usually contact us and request authorization of the transaction...If we approve the authorization request, we are obligated to pay the amount requested by the merchant. You agree that at the time the authorization request is approved by us, we may place a hold on the available balance in your account for the total amount requested by the merchant. You agree that the hold will be maintained until the earlier of the day the transaction is posted to your account or until the third business day after the day of authorization[.]

Ex. A, Deposit Agreement § 13.g.

31. The Deposit Agreement states that the credit union’s decision whether to “authorize and pay” a transaction is the relevant point for determining whether an Overdraft Fee applies:

....CEFCU, in its sole discretion, may authorize and pay ATM withdrawals and one-time debit card transactions that overdraft your Checking account[.]

Id.

32. Via these provisions of the Deposit Agreement, CEFCU promises that it uses available balance—the same balance that is immediately reduced when a debit card transaction is authorized—to determine whether an overdraft occurs and a fee is assessed.

33. 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 CEFCU assesses Overdraft Fees on them anyway.

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

35. In fact, CEFCU actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to “post” those same transactions. Instead, it uses a secret posting process described below.

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

37. The account documents misconstrue CEFCU's true debit card processing and overdraft practices.

38. First, and most fundamentally, CEFCU charges overdraft fees on debit card transactions for which there are sufficient funds available to cover the transactions.

39. CEFCU assesses Overdraft Fees on APPSN Transactions that do have sufficient funds available to pay them throughout their lifecycle.

40. CEFCU's practice of charging Overdraft Fees even when sufficient available funds exist to pay a transaction violates a contractual promise not to do so. This discrepancy between CEFCU's actual practice and the contract causes consumers like Plaintiff to incur more overdraft fees than they should.

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

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

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

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

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

46. This secret step allows it to charge overdraft fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which CEFCU specifically set aside money to pay them.

47. This discrepancy between CEFCU's actual practices and the contract causes consumers to incur more overdraft fees than they should.

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

D. CEFCU Abuses Contractual Discretion

49. CEFCU's treatment of debit card transactions to charge overdraft fees is not simply a breach of the express terms of the numerous account documents. In addition, CEFCU exploits contractual discretion to the detriment of accountholders when it uses these policies.

50. The terms "to pay" and "to cover" a transaction are undefined. CEFCU uses its discretion to define these terms in a manner contrary to any reasonable, common sense understanding of that term. In CEFCU's implied definition, a balance is insufficient to "pay" or "cover" a transaction even if CEFCU sequesters sufficient available funds for that transaction at the time it is made.

51. Moreover, CEFCU uses its contractual discretion to cause APPSN Transactions to incur overdraft fees by knowingly authorizing later transactions that it allows to consume

available funds previously sequestered for APPSN Transactions, and by allowing holds to expire or be consumed before posting.

52. CEFCU uses all of these contractual discretion points unfairly to extract overdraft fees on transactions that no reasonable consumer would believe could cause overdraft fees.

E. Reasonable Consumers Understand Debit Card Transactions are Debited Immediately

53. The assessment of Overdraft Fees on APPSN Transactions is fundamentally inconsistent with immediate withdrawal of funds for debit card transactions. That is because if funds are immediately debited, they cannot be depleted by intervening transactions (and it is that subsequent depletion that is the necessary condition of APPSN Transactions). If funds are immediately debited, then, they are necessarily applied to the debit card transactions for which they are debited.

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

55. CEFCU 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 don't allow debt like credit cards do; and because the money comes directly out of a checking account.

56. 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." *See*

http://www.consumeraction.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card (last visited June 8, 2016).

57. 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.”

58. That is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have (along with credit cards) 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>.

59. Not only have consumers increasingly substituted 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.

60. CEFCU was aware of a consumer perception that debit 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 Hurt’s Debit Card Transactions

61. As one example, on August 30, 2017, Plaintiff Hurt was assessed three Overdraft Fees in the amount of \$30.00 each on debit card transactions that settled that day, despite the fact

that positive funds were deducted immediately, many days prior, for at least two of the transactions on which Plaintiff was assessed an overdraft fee.

CLASS ACTION ALLEGATIONS

62. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

63. Description of the Classes: Plaintiff brings this class action on behalf of himself and two classes of persons (“the Classes”) defined as follows:

All persons who, during the applicable statute of limitations, were charged Overdraft Fees on debit card transactions that did not overdraw a CEFCU checking account at the time of authorization (the “Class”).

All persons in the State of Illinois who, during the applicable statute of limitations, were charged Overdraft Fees on debit card transactions that did not overdraw a CEFCU checking account at the time of authorization (the “Illinois Subclass”).

64. Excluded from the Classes are Defendant’s officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Classes are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

65. The time period for each of the Classes is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, going forward into the future until such time as CEFCU remedies the conduct complained of herein.

66. Numerosity: The members of the proposed Classes are so numerous that individual joinder of all members is impracticable. The exact number and identities of the members of the proposed Classes are unknown at this time and can be ascertained only through

appropriate discovery. Plaintiff estimates the number of members in each Class to be in the thousands.

67. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiff and the Classes, and those questions substantially predominate over any questions that may affect individual Class members. Common questions of law and fact include whether:

- A. Whether CEFCU charged Overdraft Fees on transactions that did not overdraw an account at the time of authorization;
- B. Whether CEFCU breached its own contract by charging Overdraft Fees on transactions that did not overdraw an account;
- C. Whether CEFCU breached the covenant of good faith and fair dealing;
- D. Whether CEFCU was unjustly enriched;
- E. Whether CEFCU developed and engaged in unlawful practices that mischaracterized or concealed its true Overdraft Fee practices;
- F. The proper method or methods by which to measure damages; and
- G. The declaratory and injunctive relief to which the Classes are entitled.

68. Typicality: Plaintiff's claims are typical of the claims of the members of the Classes. Plaintiff and all members of the Classes have been similarly affected by the actions of Defendant.

69. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Classes. Plaintiff has retained counsel with substantial experience in prosecuting complex and consumer class action litigation. Plaintiff and his counsel are

committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so.

70. Superiority of Class Action: Plaintiff and the members of the Classes suffered, and will continue to suffer, harm as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Classes is impractical. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of the Class members.

71. Risk of Inconsistent or Varying Adjudication: Class action treatment is proper, and this action should be maintained as a class action because the risks of separate actions by individual members of the Classes would create a risk of: (a) inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for CEFCU as the party opposing the Classes; and/or (b) adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members not party to the adjudication or would substantially impair or impede their ability to protect their interests.

72. Action Generally Applicable to Class as a Whole: CEFCU, as the party opposing the Classes, have acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

FIRST CLAIM FOR RELIEF
Breach of Contract, Including the Covenant of Good Faith and Fair Dealing
(On behalf of all Classes)

73. Plaintiff incorporates by reference the preceding paragraphs.

74. Plaintiff and CEFCU have contracted for banking services, as embodied in CEFCU's account documents and related documentation.

75. All contracts entered by Plaintiff and the Classes are identical or substantively identical because CEFCU's form contracts were used uniformly.

76. CEFCU has breached the express terms of its own agreements as described herein.

77. Under the law of Illinois, 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.

78. 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.

79. CEFCU abused the discretion it granted to itself when it charged Overdraft Fees on transactions that did not overdraw an account.

80. In these and other ways Defendant violated good faith and fair dealing.

81. Defendant willfully engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) unfairly and unconscionably maximizing revenue from Plaintiff and other members of the Classes.

82. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the contracts.

83. Plaintiff and members of the Classes have sustained damages as a result of Defendant's breaches of the parties' contracts and breaches of contract through violations of the covenant of good faith and fair dealing.

84. Plaintiff and members of the Classes have no adequate remedy at law.

SECOND CLAIM FOR RELIEF
Unjust Enrichment
(On behalf of all Classes)

85. Plaintiff re-alleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative. Plaintiff will not pursue unjust enrichment if his breach of contract claim survives at the time of trial.

86. Plaintiff, on behalf of himself and the Classes, asserts a common law claim for unjust enrichment.

87. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly assessed improper bank fees on Plaintiff without the consent of Plaintiff, and by the use of misrepresentations and omissions.

88. CEFCU knowingly received and retained wrongful benefits and funds from Plaintiff and members of the Classes. In so doing, Defendant acted with conscious disregard for the rights of Plaintiff and members of the Classes.

89. As a result of Defendant's wrongful conduct as alleged herein, Defendant has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Classes.

90. Defendant's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

91. Under the common law doctrine of unjust enrichment, it is inequitable for Defendant to be permitted to retain the benefits it received, and is still receiving, without justification. Defendant's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

92. The financial benefits derived by Defendant rightfully belong to Plaintiff and members of the Classes. Defendant should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the Classes all wrongful or inequitable proceeds received by it. A constructive trust should be imposed upon all wrongful or inequitable sums received by Defendant traceable to Plaintiff and the members of the Classes.

93. Plaintiff and members of the Classes have no adequate remedy at law.

THIRD CLAIM FOR RELIEF
Illinois Consumer Fraud and Deceptive Business Practices Act
(On behalf of the Illinois Subclass)

94. CEFCU has violated the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, et seq.

95. Section 2 of the ICFA, 815 ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practices described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

96. Section 10a of the ICFA, 815 ILCS 505/10A, provides in relevant part:

Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper . . .

* * *

(c) Except as provided in subsections (f), (g), and (h) of this Section, in any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney’s fees and costs to the prevailing party.

97. Plaintiff and other Class members are “consumers” or “persons,” as defined under the ICFA, 815 ILCS 505/1 et seq.

98. CEFCU’s conduct, as alleged in this complaint, occurred in the course of trade and commerce.

99. CEFCU knowingly and intentionally employed an unfair and deceptive policy and practice of charging Overdraft Fees on transactions that were approved and authorized into a sufficient available balance, and misrepresenting and failing to disclose its policy and practice of charging overdraft fees on transactions that were approved and authorized into a sufficient available balance.

100. CEFCU also engaged in unlawful conduct, made affirmative misrepresentations, or otherwise violated ICFA by, *inter alia*, abusing its discretion to interpret undefined terms in a manner harmful to consumers and beneficial to CEFCU.

101. CEFCU's statements and omissions were material and were likely to mislead Class members and, in fact, did mislead Class members.

102. CEFCU made these statements and omissions with the intent that Class members would rely on them.

103. As a direct and proximate result of CEFCU's conduct, Class members have suffered actual damages.

WHEREFORE, Plaintiff on his own behalf and on behalf of the Classes respectfully requests that the Court:

- (a) Certify this case as a class action pursuant to Rule 23;
- (b) Award Plaintiff and the Classes actual, incidental, and consequential damages in an amount to be proven at trial, including any and all compensatory damages, punitive damages, restitution, any applicable penalties and interest, authorized attorneys' fees, interest, and costs, and any further relief as the Court deems just equitable, and proper;
- (c) Declare CEFCU's practices outlined herein to be unlawful;

- (d) Enjoin CEFCU from engaging in the practices outlined herein; and
- (e) Grant Plaintiff and the Classes a trial by jury.

DATED this 7th day of February, 2019.

Respectfully submitted,

BY: s/ Vess A. Miller
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Counsel for Plaintiff and the Proposed Plaintiff Class

CIVIL COVER SHEET

Thursday, 07 February 2019 02:21:33 PM
 E-FILED
 Clerk, U.S. District Court, ILCD

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

I. (a) PLAINTIFFS

Julian Hurt, on behalf of himself and all others similarly situated,

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

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

Irwin Levin, Richard Shevitz, Vess Miller, Lynn Toops, Cohen & Malad,
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DEFENDANTS

Citizens Equity First Credit Union,

County of Residence of First Listed Defendant Peoria County, IL
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1332(d)(2) & (6)

Brief description of cause:

Breach of Contract/Unjust Enrichment/Violation of the Consumer Fraud and Deceptive Business Practices Act

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/07/2019

SIGNATURE OF ATTORNEY OF RECORD

s/Vess A. Miller

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of Illinois

Julian Hurt, on behalf of himself and all others
similarly situated,

Plaintiff(s)

v.

Citizens Equity First Credit Union

Defendant(s)

Civil Action No. 1:19-cv-1040

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Citizens Equity First Credit Union
c/o President/CEO Mark A. Spenny
5401 West Everett M Dirksen Parkway
Peoria, IL 61607

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:19-cv-1040

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: