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10 **Pro Hac Vice* application to be submitted

11 Attorneys for Plaintiff Tony Brunson
and the Putative Class
12
13

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16
17 TONY BRUNSON, individually, and on
behalf of all others similarly situated,

18 Plaintiff,

19 v.
20

21 CALIFORNIA COAST CREDIT
UNION, and DOES 1 through 5,
22 inclusive,

23 Defendants.
24
25

Case No. '21CV2067 MMAMSB

COMPLAINT FOR:

1. Violation of the Electronic Fund Transfer Act (Regulation E, 12 C.F.R. §§ 1005, *et seq.*)
2. Violation of the California Unfair Competition Law (Cal. Civ. Code §§ 17200, *et seq.*)

CLASS ACTION

DEMAND FOR JURY TRIAL

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff Tony Brunson brings this lawsuit against California Coast Credit
3 Union (“CCCU” or “Defendant”) on behalf of the California public and CCCU’s
4 California members, on the basis that CCCU has violated and continues to violate federal
5 and California state law. First, Federal Reserve Regulation E, 12 C.F.R. § 1005.1, *et seq.*,
6 (“Regulation E”), requires that before financial institutions may charge overdraft fees on
7 one-time debit card and ATM transactions, they must (1) provide a complete, accurate,
8 clear, and easily understandable disclosure of their overdraft services (opt-in disclosure
9 agreement); (2) provide that disclosure as a stand-alone document not intertwined with
10 other disclosures; (3) obtain verifiable affirmative consent of a customer’s agreement to
11 opt into the financial institution’s overdraft program; and (4) provide confirmation of the
12 customer’s consent, including a statement informing the customer of the right to revoke
13 such consent. Financial institutions are not permitted to include any additional
14 information in the opt-in disclosure agreement unless specifically authorized by
15 Regulation E, and financial institutions must ensure these procedures are followed no
16 matter the medium used to offer customers the option to opt-in, whether online, by
17 telephone, or in person at a branch. Furthermore, financial institutions must not tie other
18 benefits to an opt-in decision or use pre-checked boxes by the “opt-in” option on the opt-
19 in disclosure agreement. Financial institutions are also prevented from aggressively
20 marketing the benefits of Regulation E overdraft coverage, promoting their overdraft
21 coverage as short-term credit programs, or otherwise encouraging customers to opt into
22 their programs.

23 2. As part of its purported compliance with Regulation E, CCCU has provided
24 its members with a Regulation E opt-in disclosure agreement describing the credit
25 union’s overdraft service as “What You Need to Know About Overdrafts and Overdraft
26 Fees.” CCCU’s Regulation E opt-in disclosure agreement, however, provided members
27 with ambiguous, misleading, and/or inaccurate language to describe the circumstances in
28 which CCCU would charge a member an overdraft fee. Specifically, the opt-in disclosure

1 agreement did not disclose that CCCU uses an internal artificial account balance to
2 determine if a debit card or ATM transaction will be considered overdrawn (*i.e.*,
3 “available balance”), instead of the official and actual balance of the account. Not only
4 did it not disclose the use of the available balance to assess overdraft fees on these
5 specific transactions, it described an overdraft using language that conveyed CCCU’s use
6 of the actual balance instead of the artificial available balance to assess overdraft fees.
7 Thus, CCCU did not provide its members, including Plaintiff, with the accurate and/or
8 easily understandable opt-in disclosure agreement describing the circumstances or
9 conditions in which CCCU charges overdraft fees that Regulation E requires.

10 3. Because Regulation E does not permit financial institutions to charge
11 overdraft fees on one-time debit card and ATM transactions until they obtain affirmative
12 consent from customers through proper enrollment procedures, including an accurate
13 disclosure of overdraft practices in a stand-alone opt-in disclosure agreement, CCCU’s
14 assessment of all overdraft fees against members for one-time debit card and ATM
15 transactions pursuant to an ambiguous, misleading, and/or inaccurate disclosure
16 agreement has been and continues to be illegal. Regulation E provides a cause of action
17 against financial institutions that fail to abide by its requirements.

18 4. Although discovery will be needed to confirm the accuracy of this
19 allegation, on information and belief, CCCU may have recently updated its Regulation E
20 opt-in disclosure agreement to purportedly more accurately reflect its overdraft practices,
21 and provides this updated version of the agreement to new members joining the credit
22 union. Even so, based on information and belief, CCCU did not provide current
23 members, including Plaintiff, with an updated opt-in disclosure agreement, nor did
24 CCCU re-opt in those members to its Regulation E overdraft program using an accurate
25 and non-ambiguous version of its opt-in disclosure agreement. By not re-opting in
26 members using an accurate and non-ambiguous disclosure agreement, CCCU continues
27 to violate Regulation E each time it charges these members overdraft fees on one-time
28 debit and ATM transactions. Second, CCCU’s actions also violate California’s Unfair

1 Competition Law, Cal. Civ. Code § 17200, *et seq.* (“UCL”). CCCU’s failure to satisfy
2 Regulation E provides the prerequisite acts for demonstrating that CCCU has engaged in
3 an unlawful business practice under Section 17200. Pursuant to the UCL, Plaintiff seeks
4 to enjoin CCCU from failing to follow Regulation E’s mandates to the extent it has not
5 already corrected its improper actions. This includes, but is not limited to, marketing its
6 overdraft program, continuing to obtain new members’ “consent” to be assessed overdraft
7 fees using an opt-in disclosure agreement that violates Regulation E, and continuing to
8 assess overdraft fees on Regulation E transactions for previously opted-in members until
9 it obtains the consent of those members using a Regulation E-complaint opt-in disclosure
10 agreement. *See* Cal Bus. & Prof. Code § 17200, *et seq.*

11 5. Based on CCCU’s violations, Plaintiff seeks damages as provided by
12 Regulation E and the UCL. Plaintiff also seeks to enjoin CCCU from continuing to
13 market its Regulation E overdraft program and/or obtain new members’ “consent” to be
14 assessed overdraft fees by using an opt-in disclosure agreement that violates Regulation E
15 and from continuing to assess any further overdraft fees on Regulation E transactions
16 until it obtains the consent of current members using a conforming Regulation E opt-in
17 disclosure agreement.

18 **I NATURE OF THE ACTION**

19 6. All allegations herein are based upon information and belief except those
20 allegations pertaining to Plaintiff or counsel (unless otherwise stated). Allegations
21 pertaining to Plaintiff or counsel are based upon, *inter alia*, Plaintiff’s or counsel’s
22 personal knowledge, as well as Plaintiff’s or counsel’s own investigation. Furthermore,
23 each allegation alleged herein either has evidentiary support or is likely to have
24 evidentiary support, after a reasonable opportunity for additional investigation or
25 discovery.

26 7. Plaintiff has brought this class and representative action to assert claims in
27 his own right, as the class representative of all other persons similarly situated, and in his
28 capacity as a private attorney general on behalf of the members of the general public.

1 Regulation E requires CCCU to obtain informed consent, by way of a written stand-alone
2 document that fully and accurately describes in an easily understandable way its overdraft
3 services, before charging members an overdraft fee on one-time debit card and ATM
4 transactions. Because of the substantial harm caused by large overdraft fees on relatively
5 small debit card and ATM transactions, Regulation E requires financial institutions to put
6 all mandated overdraft information in one clear and easily understood document that is
7 properly presented to customers for their consideration. Financial institutions are not
8 permitted to circumvent this requirement by referencing, or relying on, their account
9 agreements, disclosures, or marketing materials. Regulation E expressly requires a
10 financial institution to include all the relevant terms of its overdraft program within the
11 four corners of the document, creating a separate agreement with account holders
12 regarding the institution's Regulation E overdraft policies.

13 8. CCCU does not meet these requirements. It used an opt-in disclosure
14 agreement that inaccurately, misleadingly, and/or ambiguously described the
15 circumstances in which CCCU would charge an overdraft fee on a paid transaction.
16 Specifically, CCCU defined an overdraft in its opt-in disclosure agreement as occurring
17 when the member does "not have enough money in [the member's] account to cover a
18 transaction, but [CCCU] pay[s] it anyway." But CCCU's automated decision to assess
19 overdraft fees is not based on whether there is enough money in the actual account
20 balance to pay the transaction. Instead, CCCU calculates account balances for overdraft
21 purposes using an artificially reduced calculation created by CCCU's own internal
22 bookkeeping called the "available balance," which deducts money it unilaterally decides
23 should be held for future transactions. When these future holds are accounted for, the
24 calculation often results in a negative "available balance" existing only on paper, even
25 though there is actually money in the account to cover a transaction and a positive
26 account balance at the time of payment and posting. While this practice is unfair on its
27 face, the disclosure of the practice is at issue, not the practice itself.

28

1 9. Accordingly, CCCU’s opt-in disclosure agreement not only failed to
2 accurately disclose to members which balance is used to assess an overdraft fee (which
3 failing to disclose in a clear and understandable way is all that is required for a
4 Regulation E violation), it suggested that its overdraft policies for Regulation E
5 transactions apply a member’s actual balance when determining whether to charge an
6 overdraft fee, when it actually uses a different, artificially lower balance.

7 10. CCCU’s use of the artificially reduced account balance instead of the actual
8 account balance to determine whether to assess overdraft fees is material. Based on
9 analysis with other financial institutions, it is likely CCCU assessed overdraft fees on 10-
10 20% more Regulation E overdraft transactions than would otherwise be the case if it used
11 the actual balance to determine if an account was overdrawn.

12 11. Based on information and belief, CCCU may have updated its opt-in
13 disclosure agreement to purportedly more accurately reflect its overdraft practices for
14 new members opening accounts at the credit union. However, based on information and
15 belief, CCCU did not provide an updated opt-in disclosure agreement to existing
16 members, and did not re-opt-in them in using an accurate agreement. Because
17 Regulation E requires CCCU to obtain verifiable affirmative consent of a member’s
18 agreement to opt into its Regulation E overdraft program using an accurate and non-
19 ambiguous opt-in disclosure agreement, by not re-opting in members using an accurate
20 form, CCCU continues to violate Regulation each time it charges these members
21 overdraft fees on one-time debit and ATM transactions,

22 12. Plaintiff has been harmed by CCCU’s violation of Regulation E and the
23 UCL. He was opted-in to CCCU’s Regulation E overdraft program using the inaccurate,
24 misleading, and/or ambiguous description of CCCU’s overdraft practices, and has been
25 assessed overdraft fees on Regulation E transactions (including at least one transaction
26 that would not have received an overdraft fee using the actual balance, but was assessed
27 an overdraft fee using the available balance) that was not permitted because CCCU had
28

1 earlier obtained Plaintiff’s “consent” using a noncompliant Regulation E opt-in disclosure
2 agreement.

3 II PARTIES

4 13. Plaintiff Tony Brunson is a resident and citizen of Los Angeles County,
5 California, and a CCCU member at all relevant times to this Complaint.

6 14. Based on information and belief, CCCU is a credit union with its
7 headquarters and principal place of business in San Diego, California. CCCU maintains
8 approximately two dozen branches, 60 “shared branches, and numerous ATMs
9 throughout San Diego and Riverside Counties.

10 15. Without limitation, defendants DOES 1 through 5, include agents, partners,
11 joint ventures, subsidiaries, and/or affiliates of Defendant and, upon information and
12 belief, also own and/or operate Defendant’s branch locations. As used herein, where
13 appropriate, the term “Defendant” is also inclusive of Defendants DOES 1 through 5.

14 16. Plaintiff is unaware of the true names of Defendants DOES 1 through 5.
15 Defendants DOES 1 through 5 are thus sued by fictitious names, and the pleadings will
16 be amended as necessary to obtain relief against Defendants DOES 1 through 5 when the
17 true names are ascertained, or as permitted by law or the Court.

18 17. There exists, and at all times herein mentioned existed, a unity of interest
19 and ownership between the named defendants (including DOES) such that any corporate
20 individuality and separateness between the named defendants has ceased, and that the
21 named defendants are *alter egos* in that they effectively operate as a single enterprise, or
22 are mere instrumentalities of one another.

23 18. At all material times herein, each Defendant was the agent, servant, co-
24 conspirator, and/or employer of each of the remaining defendants; acted within the
25 purpose, scope, and course of said agency, service, conspiracy, and/or employment and
26 with the express and/or implied knowledge, permission, and consent of the remaining
27 defendants; and ratified and approved the acts of the other Defendants. However, each of
28

1 these allegations are deemed alternative theories whenever not doing so would result in a
2 contradiction with the other allegations.

3 19. Whenever reference is made in this Complaint to any act, deed, or conduct
4 of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct
5 by or through one or more of its officers, directors, agents, employees, or representatives
6 who was actively engaged in the management, direction, control, or transaction of
7 Defendant's ordinary business and affairs.

8 20. As to the conduct alleged herein, each act was authorized, ratified, or
9 directed by Defendant's officers, directors, or managing agents.

10 **III JURISDICTION AND VENUE**

11 21. This Court has federal question subject matter jurisdiction over this case
12 under 28 U.S.C. § 1331 and 15 U.S.C. § 1693m, and has supplemental jurisdiction over
13 Plaintiff's state law claims, pursuant to 28 U.S.C. § 1367(a).

14 22. Venue is proper in this District because CCCU maintains its headquarters in
15 this District, transacts business in this District, and CCCU executed the unlawful policies
16 and practices which are the subject of this action in this District.

17 **IV BACKGROUND**

18 **A. Defendant CCCU**

19 23. CCCU is a credit union headquartered in San Diego, California, with
20 branches and ATMs in several cities across San Diego and Riverside Counties. As of
21 December 31, 2020, according to its financial filings, CCCU reported having nearly
22 200,000 members and holding over \$3.2 billion in assets. CCCU reported that in 2020 it
23 collected approximately \$7.9 million in fee income, of which overdraft fees are believed
24 to constitute a significant percentage.

1 24. One of the main services CCCU offers members is a “share draft” or
2 checking account.¹ A checking account balance can increase or be credited in a variety of
3 ways, including automatic payroll deposits; electronic deposits; incoming transfers;
4 deposits at a branch; and deposits at ATM machines. Debits decreasing the amount in a
5 checking account also can be made by using a debit card for purchases of goods and
6 services (point of sale purchases) that can be one-time purchases or recurring automatic
7 purchases; through withdrawal of money at an ATM; or by electronic purchases.
8 Additionally, some of the other ways to debit the account include writing checks; issuing
9 electronic checks; scheduling Automated Clearing House (ACH) transactions (which can
10 include recurring automatic payments or one-time payments); transferring funds; and
11 other types of transactions that debit from a checking account.

12 **1. Assessment of Overdraft Fees**

13 25. In connection with its processing of debit transactions (debit card, ATM,
14 check, ACH, and other similar transactions), CCCU assesses overdraft fees (a fee for
15 paying an overdrawn item) and non-sufficient funds (“NSF”) fees (a fee for a declined,
16 unpaid returned item) to its members’ accounts when it claims to have determined that an
17 account has been overdrawn.

18 26. The underlying principle for charging overdraft fees is that when a financial
19 institution pays a transaction by advancing its own funds to cover the account holder’s
20 insufficient funds, it may charge a *contracted and/or disclosed* fee, provided that
21 charging the fee is not prohibited by some legal regulation. The fee CCCU charges here
22 constitutes very expensive credit in the overdraft context that harms the poorest
23 customers and creates substantial profit. According to a 2014 Consumer Financial
24 Protection Bureau (“CFPB”) study:²

25 _____
26 ¹ Share draft account is a credit union’s formal nomenclature for what is more commonly
27 known as a “checking” account at banks.

28 ² https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf (last
visited Nov. 22, 2021).

- 1 • Overdraft and NSF fees constitute the majority of the total checking account
2 fees that customers incur.
- 3 • The transactions leading to overdrafts are often quite small. In the case of
4 debit card transactions, the median amount of the transaction that leads to an
5 overdraft fee is \$24.
- 6 • The average overdraft fee for bigger banks is \$34 and \$31 for smaller banks
7 and credit unions.

8 Accordingly, as highlighted in the CFPB Press Release related to this study:

9 Put in lending terms, if a consumer borrowed \$24 for three days
10 and paid the median overdraft of \$34, **such a loan would carry
a 17,000 percent annual percentage rate (APR).**

11 (Emphasis added.)³

12 27. Overdraft and NSF fees constitute a primary revenue generator for banks
13 and credit unions. According to one banking industry market research company, Moeb's
14 Services, banks and credit unions in 2018 alone generated an estimated \$34.5 billion on
15 overdraft fees.⁴

16 28. CCCU's financial filings and practices reveal that it has followed these
17 trends to the letter. CCCU charges an overdraft fee of \$27 per item. Even if it had been
18 properly charging overdraft fees, the \$27 overdraft fee bears no relation to its minute risk
19 of loss or cost for administering overdraft services. But an overdraft fee's practical effect
20 is to charge members that pay them an interest rate with an APR in the thousands.

21 2. Impact of Overdraft Fees

22 29. Accordingly, overdraft fees are punitive fees rather than service fees, which
23

24 ³ CFPB, CFPB Finds Small Debit Purchases Lead to Expensive Overdraft Charges
25 (7/31/2014) [https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-
26 debit-purchases-lead-to-expensive-overdraft-charges/](https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-small-debit-purchases-lead-to-expensive-overdraft-charges/) (last visited Nov. 22, 2021).

27 ⁴ Moeb's Services, *Overdraft Revenue Inches Up in 2018* (March 27, 2019),
28 [http://www.moeb's.com/Portals/0/pdf/Articles/Overdraft%20Revenue%20Inches%20Up
%20in%202018%200032719-1.pdf?ver=2019-03-27-115625-283](http://www.moeb's.com/Portals/0/pdf/Articles/Overdraft%20Revenue%20Inches%20Up%20in%202018%200032719-1.pdf?ver=2019-03-27-115625-283) (last visited Nov. 22,
2021).

1 makes it even more unfair because most account overdrafts are accidental and involve a
2 small amount of money in relation to the fee. A 2012 study found that more than 90% of
3 customers who were assessed overdraft fees overdrew their accounts by mistake.⁵ In a
4 2014 study, more than 60% of the transactions that resulted in a large overdraft fee were
5 for less than \$50.⁶ More than 50% of those assessed overdraft fees do not recall opting
6 into an overdraft program, (*id.* at p. 5), and more than two-thirds of customers would
7 have preferred the financial institution decline their transaction rather than being charged
8 a very large fee, (*id.* at p. 10).

9 30. Finally, the financial impact of these fees falls on the most vulnerable among
10 the banking population with the least ability to absorb the overdraft fees. Younger, lower-
11 income, and non-white accountholders are among those most likely to be assessed
12 overdraft fees. (*Id.* at p. 3.) A 25-year-old is 133% more likely to pay an overdraft penalty
13 fee than a 65-year-old. (*Id.*) More than 50% of the customers assessed overdraft fees
14 earned under \$40,000 per year. (*Id.* at p. 4.) And non-whites are 83% more likely to pay
15 an overdraft fee than whites. (*Id.* at p. 3.)

16 **B. Regulation E**

17 31. For many years, banks and credit unions have offered overdraft services to
18 their account holders. Historically, the fees these services generated were relatively low,
19 particularly when methods of payment were limited to cash, check, and credit card. But
20 the rise of debit card transactions replacing cash for smaller transactions—especially for
21 younger customers who carried lower balances—provided an opportunity for financial
22 institutions to increase the number of transactions in a checking account that could
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25 ⁵ Pew Charitable Trust Report, *Overdraft America: Confusion and Concerns about Bank
Practices*, at p. 4 (May 2012), [https://www.pewtrusts.org/-
/media/legacy/uploadedfiles/pcs_assets/2012/sciboverdraft20america1pdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2012/sciboverdraft20america1pdf.pdf) (last
26 visited Nov. 22, 2021).

27 ⁶ Pew Charitable Trust Report, *Overdrawn*, at p. 8 (June 2014),
28 [https://www.pewtrusts.org/-
/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf](https://www.pewtrusts.org/-/media/assets/2014/06/26/safe_checking_overdraft_survey_report.pdf) (last visited Nov.
22, 2021).

1 potentially be considered overdraft transactions, and for which the financial institution
2 could assess a hefty overdraft fee. The increase in these types of transactions was timed
3 perfectly for financial institutions, which faced falling revenue as a result of lower overall
4 interest rates and the rise of competitive innovations such as no-fee checking accounts.
5 Financial institutions thus recognized in overdraft fees a new and increasing revenue
6 stream.

7 32. As a result, the overdraft process became one of the primary sources of
8 revenue for financial depository institutions—banks and credit unions—both large and
9 small. As such, financial institutions became eager to provide overdraft services to
10 consumers because not only do overdrafts generate revenue, they do so with little risk.
11 When an overdraft is covered, it is on average repaid in three days, meaning that the
12 financial institution advances small sums of money for no more than a day or two.

13 33. Using common understanding, an overdraft occurs when two conditions are
14 satisfied. First, the consumer initiates a transaction that will result in the money in the
15 account falling below zero if the financial institution makes payment on the transaction.
16 Second, the financial institution pays the transaction by advancing its own funds to cover
17 the shortfall. An overdraft, therefore, is an extension of credit. The financial institution
18 advancing the funds, allows the account holder to continue paying transactions even
19 when the account has no money in it, or the account has insufficient funds to cover the
20 amount of the withdrawal.⁷ The financial institution uses its own money to pay the
21 transaction, on the assumption that the account holder will eventually cover the shortfall.

22 34. Before the Federal Reserve amended Regulation E regarding requirements
23 for overdraft services, many financial institutions unilaterally adopted internal “overdraft
24 payment” plans. Consumers would initiate transactions that financial institutions would
25 identify as “overdrafts,” then the financial institution would cover the overdraft while
26 charging the standard overdraft fee. Under such programs, consumers were charged a
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28 ⁷ For a thorough description of the mechanics of an “overdraft,” *see*
<https://www.investopedia.com/terms/o/overdraft.asp> (last visited Aug. 20, 2021).

1 substantial fee—on average higher than the debit card transaction triggering the overdraft
2 itself—without ever having made any choice as to whether they wanted such transactions
3 approved or instead declined and providing the opportunity to select another form of
4 payment rather than turning a \$4 cup of coffee at Starbucks into a \$40 cup of coffee.

5 35. The Federal Reserve, which has regulatory oversight over financial
6 institutions, recognized that banks and credit unions had strong incentives to adopt these
7 punitive overdraft programs. Banks and credit unions could rely on charging high fees for
8 very little service and almost no risk on thousands of transactions per day, giving
9 consumers no choice in the matter if they wanted to have a bank account at all. It is for
10 these reasons that in 2009, the Federal Reserve Board amended Regulation E to require
11 financial institutions to obtain affirmative consent (or so-called “opt in”) from account
12 holders for overdraft coverage on ATM and non-recurring “point of sale” debit card
13 transactions. After Regulation E’s amendment, a financial institution could only lawfully
14 charge an overdraft fee on one-time debit card purchases and ATM withdrawals if the
15 consumer opted into the financial institution’s overdraft program. Otherwise, the bank or
16 credit union could either cover the overdraft without charging a fee, or direct the
17 transaction to be denied at the point of sale. Further, without the opt-in, the financial
18 institution could not charge an NSF fee because denying an ATM withdrawal or one-time
19 debit card purchase meant no transaction had ever taken place, and thus there was no
20 transaction to return.

21 36. After the CFPB’s creation, it subsequently undertook the study referenced
22 above regarding financial institutions’ overdraft programs and whether they were
23 satisfying consumer needs. Unsurprisingly, the CFPB found that overdraft programs had
24 a series of problems. The most pressing problem was that overdraft services were costly
25 and damaging to account holders. The percentage of accounts experiencing at least one
26 overdraft (or NSF) transaction in 2011 was 27%, and the average amount of overdraft
27 and NSF-related fees paid by accounts that paid fees was \$225. The CFPB further
28 estimated that the banking industry may have collected anywhere from \$12.6 to \$32

1 billion in consumer NSF and overdraft fees in 2011, depending on what assumptions the
2 analyst used in calculating the percentage of reported fee income should be attributed to
3 overdrafts. The CFPB also noted that there were numerous “variations in overdraft-
4 related practices and policies,” all of which could “affect when a transaction might
5 overdraw a consumer’s account and whether or not the consumer would be charged a
6 fee.”⁸

7 37. Given the state of overdraft programs prior to Regulation E’s amendment, it
8 is easy to understand why the Federal Reserve was concerned about protecting consumers
9 from financial institutions unilaterally imposing high fees. Banks and credit unions in this
10 scenario had significant advantages over consumers when it came to imposing overdraft
11 policies. By defaulting to charging fees for point-of-sale transactions, banks and credit
12 unions created for themselves a virtual no-lose scenario—advance small amounts of
13 funds (average of \$24) for a small period of time (average of 3 days), then charge a large
14 fee (average of \$34) that is unrelated to the amount of money advanced on behalf of the
15 customer, resulting in an APR of thousands of percent interest (using averages—17,000%
16 APR), all while assuming very little risk because only a very small percentage of
17 overdraft customers fail to repay an overdraft.

18 38. Because of this, Regulation E does not merely require a financial institution
19 to obtain an opt-in disclosure agreement before charging fees for transactions that result
20 in overdrafts, it also provides that the opt-in disclosure agreement must satisfy certain
21 requirements to be valid. The agreement must be a stand-alone document, segregated
22 from other forms, disclosures, or contracts provided by the financial institution. It must
23 also accurately disclose to the account holder the institution’s overdraft charge policies.
24 The account holder’s choices must be presented in a “clear and readily understandable
25 manner.” 12 C.F.R. § 1005.4(a)(1). The financial institution must ultimately establish that
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27 ⁸ The Federal Reserve has previously noted that “improvements in the disclosures
28 provided to consumers could aid them in understanding the costs associated with
overdrawing their accounts and promote better account management.” 69 Fed. Reg.
31761 (June 7, 2004).

1 the account holder has opted-in to overdraft coverage either through a written agreement,
2 or through a confirmation letter to the customer confirming opt-in if the opt-in has taken
3 place by telephone or computer after being provided a compliant opt-in disclosure
4 agreement.

5 39. Further, when the Federal Reserve amended Regulation E to require
6 consumer opt-in for overdraft protection, it expected that financial institutions would not
7 actively encourage opt-in as a means to recover lost revenue resulting from the opt-in
8 requirement. This expectation was made clear in the official interpretation of the
9 amendment which stated that “under Regulation DD,⁹ advertisements may not be
10 misleading or inaccurate” and similarly that financial “institutions must not market their
11 overdraft services in a manner that constitutes an unfair or deceptive practice within the
12 meaning of the Federal Trade Commission Act, 15 U.S.C. 41, *et seq.*” *See* Electronic
13 Fund Transfers, 75 FR 31665-01, 2010 WL 2212981 (F.R. June 4, 2010). Further, after
14 implementation of the Consumer Financial Protection Act of 2010, financial institutions
15 were prohibited from engaging in any “unfair, deceptive, or abusive act or practice . . . in
16 connection with any transaction with a consumer for . . . overdraft services.” 12 U.S.C. §
17 5531(a).

18 40. In the wake of Regulation E, some financial institutions simply decided to
19 forego charging overdraft fees on non-recurring debit card and ATM transactions. These
20 include large banks such as Bank of America, and smaller banks such as One West Bank,
21 First Republic Bank, and Mechanics Bank. However, most financial institutions
22 continued to maintain overdraft services on one-time debit card and ATM withdrawals.
23 As such, these banks and credit unions must satisfy Regulation E’s requirements in order
24 to obtain compliant affirmative consent from their account holders before charging
25 overdraft fees on eligible transactions.

26
27
28 ⁹ Regulation DD applies to depository institutions other than credit unions. The
equivalent for state-chartered credit unions is TISA, 12 C.F.R. § 707.1, *et seq.*

1 41. But financial institutions did not stop with charging these exorbitant penalty
2 fees. Instead, many of them began manipulating the process as to when they would
3 consider a transaction an overdraft, because the more overdrafts they could create, the
4 more their profits would increase. To that end, they charged overdraft fees no longer just
5 when the financial institution actually advanced money on behalf of the customer, but
6 extended overdraft fees to transactions paid with their customers' own money. That is, a
7 financial institution would unilaterally decide the account was overdrawn not because an
8 account lacked funds, but based on an artificial calculation involving the money in the
9 account minus holds the financial institution unilaterally reserved for future payments at
10 some future date.

11 42. Most banks and credit unions calculate two account balances related to their
12 accounting of a customer checking account. "Actual balance," "ledger balance," "current
13 balance" or even "balance" are all terms used to describe the actual amount of the
14 account holder's money in the account at any particular time. In contrast, "available
15 balance" is a term of art the financial industry uses to describe the balance reduced from
16 the actual account balance by the amount the bank or credit union has either held from
17 deposits or held from the account because of authorized debit transactions that have not
18 yet come in (and may never come in) for payment.¹⁰ But absent further explanation
19 introducing these concepts to consumers, terms like "available balance" have little or no
20 meaning to reasonable consumers. As a result, it is important for financial institutions to
21 clarify what "available balance" means because it is only by defining that term that
22 consumers can know what it means.

23 43. Although financial institutions calculate the two balances, the
24 actual/ledger/current balance is the official balance of an account. It is used when
25 financial institutions report deposits to regulators, when they pay interest on an account,
26

27 ¹⁰ Some financial institutions use a third balance called the collected balance, which is
28 also an internal calculated balance that is the actual account balance minus only deposit
holds, and does not include debit holds.

1 and when they report the amount of money in the account in monthly statements to the
2 customer—the official record of the account.

3 44. While there is no regulation barring any financial institution from deciding
4 whether it will assess overdraft or NSF fees based on the actual account balance or the
5 “available balance” for overdraft and NSF assessment purposes, per Regulation E, the
6 terms of the overdraft program must be clearly and accurately disclosed. Whether the
7 financial institution uses the actual money in the account or some other artificial balance
8 to assess overdraft fees, is information the customer needs to understand the overdraft
9 program.

10 45. Many financial institutions use the “available balance” for overdraft
11 assessment purposes as it consistent with these institutions’ self-interest because the
12 available balance is always the same or lower, by definition, than the actual balance. The
13 actual balance includes all money in the account. On the other hand, the available balance
14 always subtracts any holds placed on the funds in the account that may affect the money
15 in the account in the future. It never adds funds to the account. To be clear, even when a
16 financial institution has put a hold on funds in an account, the funds remain in the
17 account. The financial institution’s “hold” is merely an internal characterization the bank
18 or credit union uses to categorize some of the money. All of the account holder’s money
19 remains in the account, even the money CCCU has defined as “held.” The fact that the
20 money has a “hold” on it does not mean it has been removed from the account.

21 46. The difference between which of the two balances a financial institution may
22 use to calculate overdraft transactions is material to both the financial institution and
23 account holders. Prior investigation in similar lawsuits demonstrates that financial
24 institutions using the available balance, instead of actual balance, increase the number of
25 transactions that are assessed overdraft fees approximately 10-20%. What happens in
26 those 10-20% of transactions is that sufficient funds are in the account to pay the
27 transaction and therefore the bank or credit union has not advanced any funds to the
28 customer. At all times, the financial institution uses the customer’s own money to pay the

1 transaction, which really means there has never been an overdraft at all—yet the financial
2 institution charges an overdraft fee on the transaction anyway.

3 47. A hypothetical demonstrates what the financial institution does under these
4 circumstances. Suppose that an individual has \$1,000. The individual intends to use \$800
5 of this amount to pay rent. The individual then intends to use the other \$200 to make his
6 monthly car payment. But before the rent and car payment come due, the individual
7 receives a \$40 water bill which informs that the bill must be paid immediately, or water
8 service will be cut off. The individual now takes \$40 from the money he has earmarked
9 for his car payment to pay the water bill. This individual has not spent more money that
10 he has on hand—but he does need to find an additional \$40 before the car payment comes
11 due. And if the individual does find the additional \$40 before paying the car payment,
12 there will never be a problem. If he falls short, he may choose to proceed with the
13 transaction anyway, for example, by writing a check for the car payment when he does
14 not have funds to cover the bill. He would then create a potential “overdraft” of his funds
15 for the car payment, but not the rent payment and the water bill.

16 48. The same pattern holds for financial institutions that calculate overdrafts
17 using the actual (or ledger or current) balance of an account. Suppose the same individual
18 put the \$1,000 in his checking account under similar circumstances on the 27th of the
19 month. That day, he also authorizes his \$800 rent to be paid on the first of the next
20 month, and his \$200 car payment to be paid on the third of the next month. The
21 individual then realizes that the \$40 payment on his water bill must be paid that day—the
22 27th of the month—or he will incur a fee. He approves the water bill payment, and it
23 posts immediately. Then, a few days later, he transfers an additional \$40 into the account
24 which is enough to offset the water bill payment before the initial \$800 rent and \$200 car
25 payments post and clear the account. All three payments are made with the individual’s
26 own account funds. The financial institution never uses its own funds as an advance, and
27 there is no “overdraft” of the account because the balance always remains positive.
28 However, even if the customer does not transfer the \$40, it is only the car payment which

1 posts last that is paid without sufficient money in the account to cover it. Thus, there is
2 only one transaction (*i.e.*, the car payment) eligible for an overdraft fee.

3 49. A financial institution using the “available balance” method of calculating
4 overdrafts would come to a different conclusion. Because the available balance subtracts
5 from the account the amount of money that the financial institution is “holding” for other
6 pending transactions, the financial institution considers the money set aside and
7 unavailable, even though it is still in the account. This means that after the \$800 and \$200
8 transactions are scheduled, the “available balance” of the account is \$0 even though
9 \$1,000 still remains in the account. Under these circumstances, when the individual
10 makes the additional \$40 payment and it posts first, the “available balance” is negative
11 and the accountholder is charged an overdraft fee—even though the original \$1,000 is
12 still in the account. And what is worse, even if the accountholder deposits \$40 in the
13 account before the original \$800 and \$200 payments post and clear, he is still subject to
14 the overdraft fee for the \$40 transaction even though the financial institution never
15 “covered” any portion of the payment with its own funds. Finally, what is worse still, if
16 the customer does not make a deposit to cover the overdraft, the customer will be
17 assessed an overdraft fee for all three transactions. Thus, using the available balance,
18 although the financial institution only has to advance its own funds for one transaction
19 (*i.e.*, the car payment), the financial institution will assess three overdraft fees tripling its
20 profits from the same transactions.

21 50. Financial institutions have been put on notice by regulators, banking
22 associations, their insurance companies and risk management departments, and from
23 observing litigation and settlements that the practice of using the available balance
24 instead of the actual amount of money in the account (*i.e.*, the actual, ledger, or current
25 balance) to calculate overdrafts *without clear disclosure of that practice* likely violates
26 Regulation E and other state laws. For instance, the FDIC stated in 2019:

27 Institutions’ processing systems utilize an “available balance”
28 method or a “ledger balance” method to assess overdraft fees.
The FDIC identified issues regarding certain overdraft programs
that used an available balance method to determine when

1 overdraft fees could be assessed. Specifically, FDIC examiners
2 observed potentially unfair or deceptive practices when
3 institutions using an available balance method assessed more
4 overdraft fees than were appropriate based on the consumer's
actual spending or when institutions did not adequately describe
how the available balance method works in connection with
overdrafts.¹¹

5 The CFPB provided in its Winter 2015 Supervisory Highlights, that:

6 A ledger-balance method factors in only settled transactions in
7 calculating an account's balance; an available-balance method
8 calculates an account's balance based on electronic transactions
9 that the institutions have authorized (and therefore are obligated
10 to pay) but not yet settled, along with settled transactions. An
11 available balance also reflects holds on deposits that have not yet
12 cleared. Examiners observed that in some instances, transactions
13 that would not have resulted in an overdraft (or an overdraft fee)
14 under a ledger-balance method did result in an overdraft (and an
overdraft fee) under an available-balance method. At one or more
financial institutions, examiners noted that these changes to the
balance calculation method used were not disclosed at all, or
were not sufficiently disclosed, resulting in customers being
misled as to the circumstances under which overdraft fees would
be assessed. Because these misleading practices could be
material to a reasonable consumer's decision making and
actions, they were found to be deceptive.¹²

15 51. Under Regulation E, the financial institution may decide which balance it
16 chooses to use for overdraft fees on one-time debit card and ATM transactions, but it is
17 also very clear that it must disclose this practice accurately, clearly and in a way that is
18 easily understood. As the Regulation E opt-in disclosure agreement must include this
19 information in a stand-alone document, the use of available balance must be stated and
20 explained in the opt-in disclosure agreement to conform to Regulation E and permit the
21 financial institution from charging that customer overdraft fees on one-time debit card
22 and ATM transactions. Either inaccurately or ambiguously describing the use of which
23 balance a financial institution uses as part of its overdraft practice violates the plain
24 language of Regulation E.

25
26
27 ¹¹[https://www.fdic.gov/regulations/examinations/consumercompsupervisoryhighlights.p](https://www.fdic.gov/regulations/examinations/consumercompsupervisoryhighlights.pdf)
28 [df](https://www.fdic.gov/regulations/examinations/consumercompsupervisoryhighlights.pdf) (last visited Nov. 22, 2021).

¹²[https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-](https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf)
[2015.pdf](https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf), p. 8 (last visited Nov. 22, 2021).

1 **C. CCCU’s Regulation E Practices**

2 52. CCCU has opted members into its Regulation E overdraft program using an
3 opt-in disclosure agreement titled, “What You Need to Know About Overdrafts and
4 Overdraft Fees.” A reasonable consumer reading a disclosure agreement requiring a
5 signature or acknowledgment, and which relates to overdrafts and overdraft fees and
6 represents that it contains information the member needs to know about overdrafts and
7 overdraft fees, would rely on the opt-in disclosure agreement without supplementing the
8 knowledge with reference to other marketing materials or account agreement language
9 relating to overdrafts.

10 53. The opt-in disclosure agreement explained that an overdraft occurs “when
11 you do not have enough money in your account to cover a transaction, but we pay it
12 anyway.” The agreement made no reference to “available” balance or any description of
13 how CCCU’s internal hold policies affect the balance. The opt-in disclosure agreement
14 instead only explained that an overdraft occurs when there is not “enough money in [the]
15 account” and CCCU covers the transaction with its own funds. But CCCU failed to
16 explain what it means for the member to not have “enough money” in the account. In
17 fact, CCCU does charge overdraft fees even when there is enough money in the account
18 to cover the transaction and it uses that money to pay the transaction (not its own funds),
19 which means that the opt-in disclosure agreement was not accurate.

20 54. Many courts have already found that the exact same language is ambiguous,
21 at the least, as to whether it means the actual balance or the available balance is used in
22 determining overdraft fees and constitutes a Regulation E violation.¹³ By using
23

24 ¹³ *Tims v. LGE Cmty. Credit Union*, 935 F.3d 1228, 1237-38, 1243-45 (11th Cir. 2019);
25 *Wellington v. Empower Fed. Credit Union*, 2021 WL 1377798, *4 (N.D.N.Y. Apr. 13,
26 2021); *Bettencourt v. Jeanne D’Arc Credit Union*, 370 F. Supp. 3d 258, 261-66 (D. Mass.
27 2019); *Pinkston-Poling v. Advia Credit Union*, 227 F. Supp. 3d 848, 855-57 (W.D. Mich.
28 2016); *Walbridge v. Northeast Credit Union*, 299 F. Supp. 3d 338, 343-46; 348 (D.N.H.
2018) (holding that terms such as “enough money,” “insufficient funds,” “nonsufficient
funds,” “available funds,” “insufficient available funds,” and “account balance” were
ambiguous such that the Reg E claim was not dismissed); *Smith v. Bank of Hawaii*, No.
16-00513 JMS-RLP, 2017 WL 3597522, at *6–8 (D. Haw. Apr. 13, 2017) (“sporadic”

1 inaccurate, misleading, and/or ambiguous language to describe what constitutes an
2 overdraft, CCCU failed to provide the clear and easily understandable description of its
3 overdraft services that Regulation E demands.

4 55. Institutions that use an account's "available" balance to calculate overdrafts
5 disclose it in their opt-in disclosure agreements. For example, Synovus Bank defines an
6 overdraft similarly to CCCU (*i.e.*, as when there is not enough money in an account), but
7 adds the additional caveat that it "authorize[s] and pay[s] transactions using the Available
8 Balance in [the] account," and then specifically defines the Available Balance. TD
9 Bank's opt-in disclosure agreement states as follows: "An overdraft occurs when your
10 available balance is not sufficient to cover a transaction, but we pay it anyway. Your
11 available balance is reduced by any 'pending' debit card transactions (purchases and
12 ATM withdrawals) and includes any deposited funds that have been made available
13 pursuant to our Funds Availability Policy." Similarly, Communication Federal Credit
14 Union's opt-in disclosure agreement states, "[a]n overdraft occurs when you do not have
15 enough money in your account to cover a transaction, or the transaction exceeds your
16 available balance, but we pay it anyway. 'Available Balance' is your account balance less
17 any holds placed on your account."

18 56. In addition, many financial institutions that use the actual balance to
19 determine whether an account is in overdraft (meaning it looks strictly at the amount of
20 funds in an account), as does, *e.g.*, MidFlorida Credit Union, use language that references
21 the actual balance, not the available balance. (See [https://www.midflorida.com/terms-
22 and-conditions/overdraft-agreement/](https://www.midflorida.com/terms-and-conditions/overdraft-agreement/) (last visited Nov. 22, 2021) (explaining that the
23

24 use of terms such as "available" funds or balances insufficiently explained to consumer
25 when overdraft fee could be charged and ambiguous use of terms in opt-in agreement
26 constituted a proper allegation of a Reg E violation); *Walker v. People's United Bank*,
27 305 F. Supp. 3d 365, 375-76 (D. Conn. 2018) (holding that allegations were sufficient to
28 state a cause of action for violation of Reg E where opt-in form failed to provide
customers with a valid description of overdraft program); *Ramirez v. Baxter Credit
Union*, No. 16-CV-03765-SI, 2017 WL 1064991, at *4-8 (N.D. Cal. Mar. 21, 2017);
Gunter v. United Fed. Credit Union, No. 315CV00483MMDWGC, 2016 WL 3457009,
at *3-4 (D. Nev. June 22, 2016).

1 language “[a]n overdraft occurs when you do not have enough money in your account to
2 cover a transactions, but MIDFLORIDA pays it anyway” refers to the “[a]ctual
3 balance”).) Thus, if there is sufficient money in the account to cover a transaction—even
4 if the money is subject to a hold for pending transactions—then the financial institution
5 will not charge an overdraft fee.

6 57. Because CCCU failed to accurately, clearly, and in an easily understandable
7 way disclose its overdraft policies, it failed to provide its members with a Regulation E
8 complaint opt-in disclosure agreement and did not obtain the proper affirmative consent
9 from members to charge them overdraft fees on one-time debit card and ATM
10 transactions. Further, even if discovery shows that CCCU has updated its opt-in
11 disclosure agreement to accurately reflect its overdraft procedures, on information and
12 belief, CCCU did not provide that agreement to current members who previously opted in
13 using a non-compliant opt-in disclosure agreement, nor did it re-opt-in those members
14 with an accurate agreement. Thus, to the extent CCCU continues to charge overdraft fees
15 to any member based on affirmative consent obtain through a non-compliant opt-in
16 disclosure agreement, it continues to violate Regulation E.

17 V FACTUAL ALLEGATIONS AGAINST DEFENDANT

18 58. At all relevant times, CCCU used the “available balance,” and not the actual
19 account balance, to determine whether to assess overdraft fees on one-time debit card and
20 ATM transactions.

21 59. At all relevant times, CCCU knew or should have known that in order to
22 legally charge overdraft fees to members, it was required to first obtain affirmative
23 consent from each member using a Regulation E compliant stand-alone opt-in disclosure
24 agreement. Regulation E compliance requires, at a minimum, that a financial institution
25 accurately disclose all material parts of its overdraft program and policies in the opt-in
26 disclosure agreement in clear and easily understood language.

27 60. At all relevant times, CCCU used an identical opt-in disclosure agreement
28 with Plaintiff and all putative class members that defined an overdraft as occurring “when

1 you do not have enough money in your account to cover a transaction, but we pay it
2 anyway.”

3 61. This definition of overdraft would disclose and be interpreted by reasonable
4 members to mean as follows: (1) “not enough money in your account” means the Actual
5 balance/Current Balance/Ledger Balance in the account; (2) to “cover a transaction”
6 means that the overdraft decision is made at time of posting and payment; and (3) “the
7 transaction is paid anyway” means that CCCU has advanced or loaned the member
8 money to pay the transaction. However, as CCCU determines overdraft fees based on the
9 “available balance” that factors in credit and debit holds, approximately 10-20% of
10 overdraft fees are assessed on transactions when there was money in the account to cover
11 the transaction at the time it was posted and paid, and CCCU did not advance or loan the
12 member any money to pay the transaction.

13 62. The opt-in disclosure agreement did not, *inter alia*, accurately and in a clear
14 and easily understandable way describe what constitutes an overdraft and under what
15 circumstances the member would be assessed an overdraft fee, and as such the opt-in
16 disclosure agreement did not comply with Regulation E’s requirements.

17 63. To the extent CCCU used and/or uses an opt-in disclosure agreement that
18 did or does not accurately and clearly describe its overdraft practices, CCCU has no legal
19 basis on which to charge members overdraft fees on one-time debit card and ATM
20 transactions, yet it does so anyway.

21 64. At all relevant times, CCCU knew it was using a specific “available”
22 balance methodology to assess overdraft fees, and further knew or should have known
23 that its methodology should be clearly and accurately described in a stand-alone
24 document. CCCU also knew or should have known that its opt-in disclosure agreement
25 failed to provide an accurate, clear, and easily understandable definition of an overdraft
26 when it identified an overdraft as “when you do not have enough money in your account
27 to cover a transaction, but the transaction is paid anyway.”
28

1 \$435.78. Despite Plaintiff's positive balance, CCCU charged Plaintiff a \$27 overdraft fee
2 as a result of the transaction. Based on information and belief, CCCU was not required to
3 advance any of its own funds to cover the transaction, and Plaintiff was only assessed an
4 overdraft fee because CCCU used the available balance instead of the actual balance to
5 determine if the account was overdrawn.

6 72. Plaintiff opted-in to CCCU's overdraft program on February 26, 2019 using
7 a non-complaint opt-in disclosure agreement as described herein. Based on information
8 and belief, CCCU has not provided Plaintiff with an updated opt-in disclosure
9 agreements, nor has it re-opted him in using an accurate disclosure agreement. By
10 failing to obtain members', including Plaintiff's, affirmative consent through re-opting
11 them in using an accurate opt-in disclosure agreement, CCCU continues to violate
12 Regulation E each time it charges them overdraft fees on one-time debit and ATM
13 transactions.

14 73. The extent of improper charges CCCU assessed upon Plaintiff and other
15 members will be determined in discovery using CCCU's records.

16 74. Plaintiff did not and could not have, exercising reasonable diligence,
17 discovered both that he had been injured and the actual cause of that injury until he met
18 with his attorneys. While Plaintiff understood that he was assessed fees, he did not
19 understand the cause of those fees until 2021 because CCCU was creating confusion
20 among its members by describing different practices in agreements and other materials it
21 was disseminating to members. This not only reasonably delayed discovery, but CCCU's
22 affirmative representations and actions also equitably toll any statute of limitations, and
23 also additionally equitably estop CCCU.

24 VII CLASS ALLEGATIONS

25 75. The preceding allegations are incorporated by reference and re-alleged as if
26 fully set forth herein.

27 76. Plaintiff brings this case, and each of the respective causes of action, as a
28 class action.

1 77. The “Class” is composed of:

2 **The Regulation E Class:**

3 All California CCCU members who have or have had accounts
4 with CCCU who were assessed an overdraft fee on a one-time
5 debit card or ATM transaction based on a non-compliant opt-in
6 disclosure agreement as described herein beginning one year
7 prior to filing the Complaint and ending on the date the Class is
8 certified. Following discovery, this definition will be amended as
9 appropriate.

10 **The UCL, Section 17200 Class:**

11 All California CCCU members who have or have had accounts
12 with CCCU who were assessed an overdraft fee on a one-time
13 debit card or ATM transaction based on a non-complaint opt-in
14 disclosure agreement as described herein beginning four-years
15 preceding the filing of this complaint and ending on the date the
16 Class is certified. Following discovery, this definition will be
17 amended as appropriate.

18 78. Together, the classes shall be collectively referred to herein as the “Class.”
19 Excluded from the Class are: 1) any entity in which CCCU has a controlling interest; 2)
20 officers or directors of Defendant; 3) this Court and any of its employees assigned to
21 work on the case; and 4) all employees of the law firms representing Plaintiff and the
22 Class Members.

23 79. This action has been brought and may be properly maintained on behalf of
24 each member of the Class pursuant to Federal Rules of Civil Procedure, Rule 23(a),
25 (b)(2), and (b)(3).

26 80. **Numerosity** – The members of the Class (“Class Members”) are so
27 numerous that joinder of all Class Members would be impracticable. While the exact
28 number of Class Members is presently unknown to Plaintiff and can only be determined
through appropriate discovery, Plaintiff believes based on the percentage of account
holders harmed by these practices in circumstances with similar banks and credit unions,
that the Class is likely to include thousands of CCCU members.

81. Upon information and belief, CCCU has databases, and/or other
documentation, of its members’ transactions and account enrollment. These databases

1 and/or documents can be analyzed by an expert to ascertain which of CCCU's members
2 has been harmed by its practices and thus qualify as a Class Member. Further, the Class
3 definitions identify groups of unnamed plaintiffs by describing a set of common
4 characteristics sufficient to allow a member of that group to identify himself or herself as
5 having a right to recover. Other than by direct notice through mail or email, alternative
6 proper and sufficient notice of this action may be provided to the Class Members through
7 notice published in newspapers or other publications.

8 82. **Commonality** – This action involves common questions of law and fact.
9 The questions of law and fact common to both Plaintiff and the Class Members include,
10 but are not limited to, the following:

- 11 • Whether CCCU used and/or uses the available balance for making a
12 determination of whether to assess overdraft fees on one-time debit card and
13 ATM transactions.
- 14 • Whether CCCU's opt-in disclosure agreement violated and/or violates
15 Regulation E because it did or does not accurately, clearly, and in an easily
16 understandable way describe CCCU's Regulation E overdraft program.
- 17 • Whether CCCU violated Regulation E by assessing overdraft fees on one-
18 time debit card and ATM transactions against Plaintiff and Class Members.
- 19 • Whether CCCU's conduct in violation of Regulation E also violates the
20 UCL.
- 21 • Whether CCCU continues to violate Regulation E and/or the UCL by opting
22 in members and the public using an inaccurate opt-in disclosure agreement
23 or by failing to re-opt in members previously opted-in using a non-complaint
24 opt-in disclosure agreement and continuing to assess those members
25 overdraft fees on one-time debit card and ATM transactions.
- 26 • Whether, *inter alia*, CCCU violated Regulation E and/or the UCL by failing
27 to opt members into its overdraft program by legal means, including
28 properly publishing the opt-in form; obtaining and preserving members'

1 written consent; and sending confirmation of members' decision to opt-in
2 and instructions on how to opt out of the overdraft program.

3 83. **Typicality** – Plaintiff's claims are typical of all Class Members. The
4 evidence and the legal theories regarding CCCU's alleged wrongful conduct committed
5 against Plaintiff and all of the Class Members are substantially the same because the opt-
6 in disclosure agreement CCCU used to opt-in Plaintiff is the same as the opt-in disclosure
7 agreement CCCU used to opt-in the other Class Members. Plaintiff and the Class
8 Members have each been assessed overdraft fees on one-time debit card and ATM
9 transactions. Accordingly, Plaintiff will serve the interests of all Class Members.

10 84. **Adequacy** – Plaintiff will fairly and adequately protect the interests of the
11 Class Members. Plaintiff has retained competent counsel experienced in class action
12 litigation, and specifically financial institution overdraft class action cases to ensure such
13 protection. There are no material conflicts between the claims of the representative
14 Plaintiff and the members of the Class that would make class certification inappropriate.
15 Plaintiff and counsel intend to prosecute this action vigorously.

16 85. **Predominance and Superiority** – The matter is properly maintained as a
17 class action because the common questions of law or fact identified herein and to be
18 identified through discovery predominate over questions that may affect only individual
19 Class Members. Further, the class action is superior to all other available methods for the
20 fair and efficient adjudication of this matter. Because the injuries suffered by the
21 individual Class Members are relatively small compared to the cost of the litigation, the
22 expense and burden of individual litigation would make it virtually impossible for
23 Plaintiff and Class Members to individually seek redress for CCCU's wrongful conduct.
24 Even if any individual person or group(s) of Class Members could afford individual
25 litigation, it would be unduly burdensome to the courts in which the individual litigation
26 would proceed. The class action device is preferable to individual litigation because it
27 provides the benefits of unitary adjudication, economies of scale, and comprehensive
28 adjudication by a single court. In contrast, the prosecution of separate actions by

1 individual Class Members would create a risk of inconsistent or varying adjudications
2 with respect to individual Class Members that would establish incompatible standards of
3 conduct for the party (or parties) opposing the Class and would lead to repetitious trials
4 of the numerous common questions of fact and law. Plaintiff knows of no difficulty that
5 will be encountered in the management of this litigation that would preclude its
6 maintenance as a class action. As a result, a class action is superior to other available
7 methods for the fair and efficient adjudication of this controversy. Absent a class action,
8 Plaintiff and the Class Members will continue to suffer losses, thereby allowing CCCU's
9 violations of law to proceed without remedy and allowing CCCU's to retain the proceeds
10 of its ill-gotten gains.

11 86. Plaintiff does not believe that any other Class Members' interests in
12 individually controlling a separate action are significant, in that Plaintiff has
13 demonstrated above that his claims are typical of the other Class Members and that he
14 will adequately represent the Class. This particular forum is desirable for this litigation
15 because Plaintiff's claims arise from activities that occurred largely therein. Plaintiff does
16 not foresee significant difficulties in managing the class action in that the major issues in
17 dispute are susceptible to class proof.

18 87. Plaintiff anticipates the issuance of notice, setting forth the subject and
19 nature of the instant action, to the proposed Class Members. Upon information and belief,
20 CCCU's own business records and/or electronic media can be utilized for the
21 contemplated notices. To the extent that any further notices may be required, Plaintiff
22 anticipates using additional media and/or mailings.

23 88. This matter is properly maintained as a class action pursuant to Federal
24 Rules of Civil Procedure, Rule 23 in that without class certification and determination of
25 declaratory, injunctive, statutory and other legal questions within the class format,
26 prosecution of separate actions by individual members of the Class will create the risk of:
27

- inconsistent or varying adjudications with respect to individual members of

28 the Class which would establish incompatible standards of conduct for the

1 parties opposing the Class; or

- 2 • adjudication with respect to individual members of the Class would, as a
3 practical matter, be dispositive of the interests of the other members not
4 parties to the adjudication or substantially impair or impede their ability to
5 protect their interests.

6 Common questions of law and fact exist as to members of the Class and
7 predominate over any questions affecting only individual members, and a class action is
8 superior to other available methods of the fair and efficient adjudication of the
9 controversy, including consideration of:

- 10 • the interests of the members of the Class in individually controlling the
11 prosecution or defense of separate actions;
12 • the extent and nature of any litigation concerning the controversy already
13 commenced by or against members of the Class; and
14 • the desirability or undesirability of concentrating the litigation of the claims
15 in the particular forum; and the difficulties likely to be encountered in the
16 management of a class action.

17 89. CCCU has acted or refused to act on grounds generally applicable to the
18 Class, thereby making appropriate final declaratory and injunctive relief with respect to
19 the Class as a whole under Federal Rules of Civil Procedure, Rule 23(b)(2). Moreover, on
20 information and belief, Plaintiff alleges that CCCU’s use of a non-compliant Regulation
21 E opt-in disclosure agreement is substantially likely to continue into the future if an
22 injunction is not entered.

23 **FIRST CAUSE OF ACTION**
24 **(Violation of Regulation E)**

25 90. The preceding allegations are incorporated by reference and re-alleged as if
26 fully set forth herein.

27 91. By charging overdraft fees on ATM and non-recurring debit card
28 transactions, CCCU violated Regulation E, 12 C.F.R. §§ 1005, *et seq.*, whose “primary

1 objective” is “the protection of individual consumers,” 12 C.F.R. § 1005.1(b), and which
2 “carries out the purposes of the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693, *et seq.*,
3 the ‘EFTA,’” 12 C.F.R. § 1005.1(b).

4 92. Specifically, CCCU’s conduct violated Regulation E’s “Opt In Rule.” *See* 12
5 C.F.R. § 1005.17. The Opt In Rule states: “a financial institution . . . *shall not assess a fee*
6 *or charge . . . pursuant to the institution’s overdraft service, unless the institution: (i)*
7 *[p]rovides the consumer with a notice in writing [the opt-in notice] . . . describing the*
8 *institution’s overdraft service”* and (ii) “[p]rovides a reasonable opportunity for the
9 consumer to *affirmatively consent*” to enter into the overdraft program. *Id.* (emphasis
10 added). The notice “shall be clear and readily understandable.” 12 C.F.R. § 1005.4(a)(1).
11 To comply with the affirmative consent requirement, a financial institution must provide
12 a segregated description of its overdraft practices that is accurate, non-misleading and
13 truthful and that conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide a
14 reasonable opportunity to opt-in after receiving the description. The affirmative consent
15 must be provided in a way mandated by 12 C.F.R. § 1005.17, and the financial institution
16 must provide confirmation of the opt-in in a manner that conforms to 12 C.F.R.
17 § 1005.17. Furthermore, choosing not to “opt-in” cannot adversely affect any other
18 feature of the account, nor can the financial institution influence a member’s decision to
19 opt-in.

20 93. The intent and purpose of this opt-in disclosure agreement is to “assist
21 customers in understanding how overdraft services provided by their institutions
22 operate . . . by explaining the institution’s overdraft service . . . in a clear and readily
23 understandable way”—as stated in the Official Staff Commentary, 74 Fed. Reg. 59033,
24 59035, 59037, 59040, 59048, which is “the CFPB’s official interpretation of its own
25 regulation,” “warrants deference from the courts unless ‘demonstrably irrational,’” and
26 should therefore be treated as “a definitive interpretation” of Regulation E. *Strubel v.*
27 *Capital One Bank (USA)*, 179 F. Supp. 3d 320, 324 (S.D.N.Y. 2016) (quoting *Chase*
28

1 *Bank USA v. McCoy*, 562 U.S. 195, 211 (2011) (so holding for the CFPB’s Official Staff
2 Commentary for the Truth In Lending Act’s Reg Z)).

3 94. CCCU failed to comply with Regulation E, 12 C.F.R. § 1005.17, which
4 requires affirmative consent before a financial institution may assess overdraft fees
5 against member accounts through an overdraft program for ATM withdrawals and non-
6 recurring debit card transactions. CCCU has failed to comply with the 12 C.F.R.
7 § 1005.17 opt-in requirements, including failing to provide members an accurate and
8 non-ambiguous description of the overdraft program that members can understand in a
9 “clear and readily understandable way.”

10 95. CCCU has also selected an opt-in method that fails to satisfy 12 C.F.R. §
11 1005.17 because, *inter alia*, it states in the non-conforming disclosure agreement that an
12 overdraft occurs when there is not enough money in the account to cover a transaction
13 but CCCU pays it anyway. But, in fact, CCCU assesses overdraft fees even when there is
14 enough money in the account to pay for the transaction and CCCU needs to advance no
15 funds at all. This is accomplished by using the internal bookkeeping available balance to
16 assess overdraft fees, rather than the actual and official balance of the account. CCCU
17 failed to use language to describe the overdraft service that identified that it was using the
18 available balance to assess overdraft fees, which meant that in a significant percentage of
19 the transactions that were the subject of the overdraft fee, there was money in the account
20 to cover the transaction and CCCU did not have to advance any money – yet CCCU
21 assessed an overdraft fee anyway.

22 96. Further, based on information and belief, even if CCCU updated its opt-in
23 disclosure agreement to purportedly more accurately reflect its overdraft practices, it did
24 not provide that agreement to Plaintiff or members who previously opted-in using an
25 inaccurate and/or ambiguous opt-in agreement as described herein. By not re-opting in
26 members using a Regulation E-complaint form, CCCU violates Regulation E each time it
27 assesses overdraft fees on one-time debit and ATM transactions,
28

1 97. As a result of violating Regulation E’s prohibition against assessing
2 overdraft fees on ATM and non-recurring debit card transactions without obtaining valid
3 affirmative consent to do so which requires use of a complaint opt-in disclosure
4 agreement, CCCU was not and is not legally permitted to assess any overdraft fees on
5 one-time debit card or ATM transactions, and it has harmed Plaintiff and the Class
6 Members by assessing overdraft fees on one-time debit card and ATM transactions.

7 98. As a result of CCCU’s violations of Regulation E, 12 C.F.R. § 1005, *et seq.*,
8 Plaintiff and members of the Class are entitled to damages, as well as attorneys’ fees and
9 costs of suit, pursuant to 15 U.S.C. § 1693m.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of California Unfair Competition Law,**
12 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

13 99. The preceding allegations are incorporated by reference and re-alleged as if
14 fully set forth herein.

15 100. CCCU’s conduct described herein violates the UCL, codified at California
16 Business and Professions Code § 17200, *et seq.* The UCL prohibits, and provides civil
17 remedies for, unfair competition. Its purpose is to protect both consumers and
18 competitors by promoting fair competition in commercial markets for goods and services.
19 In service of that purpose, the California Legislature framed the UCL’s substantive
20 provisions in broad, sweeping language. By defining unfair competition to include any
21 “any unlawful, unfair or fraudulent business act or practice,” the UCL permits violations
22 of other laws to serve as the basis of an independently actionable unfair competition
23 claim, and sweeps within its scope acts and practices not specifically proscribed by any
24 other law.

25 101. The UCL expressly provides for injunctive relief, and contains provisions
26 denoting its public purpose. A claim for injunctive relief under the UCL is brought by a
27 plaintiff acting in the capacity of a private attorney general. A private litigant may also
28 obtain restitution of sums paid as a result of the unfair acts alleged in the complaint.

1 102. As further alleged herein, CCCU’s conduct violates the UCL’s “unfair”
2 prong. First, CCCU’s conduct violates the UCL insofar as it charges overdraft fees in
3 violation of public policy and/or the text of Regulation E. CCCU’s conduct was not
4 motivated by any legitimate business or economic need or rationale.

5 103. The harm and adverse impact of CCCU’s conduct on Class Members and
6 the general public was neither outweighed nor justified by any legitimate reasons,
7 justifications, or motives. The harm to Plaintiff and Class Members arising from CCCU’s
8 unfair practices relating to the imposition of the improper fees outweighs the utility, if
9 any, of those practices.

10 104. CCCU’s unfair business practices as alleged herein are immoral, unethical,
11 oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff and
12 Class Members, and the general public. CCCU’s conduct was substantially injurious to
13 consumers in that they have been forced to pay improper, abusive, and/or unconscionable
14 overdraft fees.

15 105. CCCU’s conduct also violates the UCL’s “unlawful” prong to the extent it
16 violated Regulation E’s prohibitions against using an opt-in disclosure agreement that
17 misinformed members and the public about its overdraft policies and did not satisfy
18 Regulation E’s requirements.

19 106. As a direct and proximate result of CCCU’s UCL violations, Plaintiff and
20 Class Members have been assessed improper and illegal overdraft fees. Those funds
21 have been removed from members’ accounts, and CCCU has received, or will receive,
22 income, profits, and other benefits, which it would not have received if it had not engaged
23 in the violations of Section 17200 described in this Complaint.

24 107. Further, absent public injunctive relief prohibiting CCCU from
25 misrepresenting and omitting material information concerning its overdraft fee policy at
26 issue in this action in the future and requiring CCCU to immediately stop charging illegal
27 overdraft fees unless and until it re-opts-in current members using a Regulation E
28 complaint opt-in disclosure agreement, Plaintiff and other existing members, and the

1 general public, will suffer from and be exposed to CCCU's conduct violative of the UCL.

2 108. Plaintiff requests that he be awarded all other relief as may be available by
3 law, pursuant to California Business & Professions Code § 17203. In restitution, Plaintiff
4 seeks the return of all improperly charged overdraft fees within the statute of limitations
5 period. Plaintiff further seeks a public injunction enjoining CCCU from harming the
6 general public by improperly marketing its overdraft program and/or continuing to obtain
7 new members' "consent" to assess overdraft fees by using an opt-in disclosure agreement
8 and methods that violate Regulation E, and failing to re-opt in members using the an
9 complaint opt-in disclosure agreement, if one exists. Plaintiff also seeks to enjoin CCCU
10 from assessing further overdraft fees on Regulation E transactions until it obtains the
11 consent of current members using a Regulation E-conforming opt-in disclosure
12 agreement and opt-in methods. Further, Plaintiff seeks to enjoin CCCU from assessing
13 any further overdraft fees on transactions pursuant to the available balance, which is in
14 direct violation of its contract with its members.

15 **VIII PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff and the Class pray for judgment as follows:

- 17 a. for an order certifying this action as a class action;
- 18 b. for an order requiring CCCU to disgorge, restore, and return all
19 monies wrongfully obtained together with interest calculated at the
20 maximum legal rate;
- 21 c. for injunctive relief barring CCCU from misrepresenting its
22 Regulation E overdraft program and enrolling individuals in its
23 overdraft program or continuing to assess overdraft fees to members
24 previously enrolled without obtaining informed consent through a
25 compliant Regulation E Opt-In Agreement;
- 26 d. for damages pursuant to 15 U.S.C. § 1693m;
- 27 e. for civil penalties;
- 28 f. for an order enjoining the continued wrongful conduct alleged herein;

- g. for costs;
- h. for pre-judgment and post-judgment interest as provided by law;
- i. for attorneys’ fees under the Electronic Fund Transfer Act, the common fund doctrine, and all other applicable law; and
- j. for such other relief as the Court deems just and proper.

Dated: December 10, 2021

Respectfully Submitted,

/s/ David C. Wright

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**Pro Hac Vice* application to be submitted

Attorneys for Plaintiff Tony Brunson
and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members demand a trial by jury on all issues so triable.

Dated: December 10, 2021

/s/ David C. Wright

David C. Wright (State Bar No. 177468)

Attorneys for Plaintiff Tony Brunson
and the Putative Class

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

TONY BRUNSON, individually, and on behalf of all others similarly situated,

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

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

McCune Wright Arevalo, LLP
3281 E. Guasti Rd., Ste 100, Ontario, California 91761
Telephone: (909) 557-1250

DEFENDANTS

CALIFORNIA COAST CREDIT UNION, and DOES 1 through 5, inclusive,

County of Residence of First Listed Defendant (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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. § 1331
Brief description of cause: Violation of the Electronic Fund Transfer Act (Regulation E, 12 C.F.R. §§ 1005)

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: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/10/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ David C. Wright

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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