

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CAROL TIMS, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

LGE COMMUNITY CREDIT UNION,

Defendant.

**Civil Action No. 1:15-cv-04279-  
TWT**

**CLASS ACTION:  
FIRST AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

**FIRST AMENDED COMPLAINT**

Plaintiff CAROL TIMS (“Plaintiff”), by her attorneys, hereby brings this class and representative action against LGE COMMUNITY CREDIT UNION (referred to herein as “LGECCU” or “Defendant”). All allegations herein are based upon information and belief except those allegations which pertain to Plaintiff, which are based on personal knowledge. Plaintiff’s information and belief are based upon, inter alia, Plaintiff’s own investigation and the investigation conducted by Plaintiff’s attorneys. Each allegation either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

## **NATURE OF THE ACTION**

1. This is a putative class and representative action brought by Plaintiff to assert claims in her own right, and in her capacity as the class representative of all others persons similarly situated, whose checking accounts were improperly assessed overdraft fees by Defendant. This class action seeks monetary damages, restitution, and injunctive relief against LGECCU arising from LGECCU's breach of its contracts with its customers in its implementation of an overdraft fee program. Specifically, Plaintiff asserts that LGECCU charged overdraft fees for transactions for which there was money in the checking account to cover said transactions, thereby breaching the express terms of its consumer contracts. Plaintiff also alleges that because it provided inaccurate and untruthful overdraft information to Plaintiff and the members of the Class regarding the overdraft practice, under Regulation E of the Electronic Fund Transfer Act, 12 C.F.R. § 1005.17, LGECCU was not authorized to assess overdraft fees to consumers for debit card and non-recurring debit card charges. However, LGECCU did charge its customers, including Plaintiff, overdraft fees for ATM and debit card transactions.

## **PARTIES**

2. Plaintiff is a resident of Lake City, Florida, a Florida citizen, and was a member of LGECCU at all times relevant to the class action allegations.

3. Based on information and belief, Defendant LGECCU is a state chartered credit union with its headquarters located in Marietta, Georgia.

4. Plaintiff is unaware of the true names of other potential defendants and the pleadings will be amended as necessary when the true names are ascertained, or as permitted by law or by the Court.

5. Whenever reference is made in this First Amended Complaint (“FAC”) to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives who was actively engaged in the management, direction, control, or transaction of Defendant’s ordinary business and affairs.

6. As to the conduct alleged herein each act was authorized, ratified, or directed by Defendant’s officers, directors, or managing agents.

### **VENUE AND JURISDICTION**

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. Jurisdiction is also proper pursuant to the Class Action Fairness Act 28 U.S.C. § 1332(d) because: 1) the claims of the proposed class when aggregated together exceed \$5,000,000, and 2) some putative class members are residents of different states than Defendant LGECCU.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(1) because Defendant LGECCU is a resident of and does business in this District and a substantial part of the events and/or omissions giving rise to the claims asserted herein occurred in this District.

### **FACTUAL ALLEGATIONS**

#### **A. LGECCU's Unlawful Overdraft Program**

9. LGECCU is a Georgia-based credit union with approximately \$1 billion in assets that provides banking services to approximately 100,000 members through eight (8) branches in Georgia. One of the services offered by LGECCU to consumer banking customers is a checking account. One of the features LGECCU offers with a checking account is a debit card that can be used for a variety of transactions including buying goods and services, as well as the ability to write checks, withdraw from ATM (automated teller machine), schedule ACH (Automated Clearing House) transactions, such as certain recurring payments, and other types of transaction items that debit from the checking account. In connection with processing debit items (including debit card, ATM, check, ACH, and other types of transactions), LGECCU assesses overdraft fees to its customers when it determines that the customer's account is overdrawn.

10. Credit unions, like banks, have increasingly turned to overdraft fees as a highly lucrative profit center. A Federal Deposit and Insurance Corporation (FDIC) report estimated that overdraft fees represent 74% of the total service charges that are imposed on deposit accounts in the United States. According to the June 11, 2013, report entitled, “CFPB Study of Overdraft Programs”<sup>1</sup>, credit unions generated \$7.4 billion in overdraft fees in 2012 (p. 14).

11. The high cost of an overdraft fee is usually unfairly punitive. In a 2012 study, more than 90% of customers who were assessed overdraft fees overdrew their account by mistake. (May 2012 Pew Charitable Trust report entitled “Overdraft America: Confusion and Concerns about Bank Practices”, at p. 4). More than 60% of the transactions that resulted in a large overdraft fee were for less than \$50. (June 2014 Pew Charitable Trust report entitled “Overdrawn”, at p. 8). More than 50% of those who were assessed overdraft fees do not recall opting into an overdraft program (*id.* at 5), and more than two-thirds of customers would have preferred the financial institution decline their transaction rather than paying the transaction into overdraft and charging a very large fee (*id.* at 10).

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<sup>1</sup> The Consumer Financial Protection Bureau (CFPB) study may be found at: [http://files.consumerfinance.gov/f/201306\\_cfpb\\_whitepaper\\_overdraft-practices.pdf](http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf)

12. Unfortunately, the customers who are assessed these fees are the most vulnerable customers. Younger, lower-income, and non-white account holders are among those who were more likely to be assessed overdraft fees. (*Id.* at 1). A 25 year-old is 133% more likely to pay an overdraft penalty fee than a 65 year-old. (*Id.* at 3). More than 50% of the customers assessed overdraft fees earned under \$40,000 per year. (*Id.* at 4). Non-whites are 83% more likely to pay an overdraft fee than whites. (*Id.* at 3).

13. In reaction to banks and credit unions taking advantage of millions of customers through the unfair practice of charging overdraft fees through methodologies that maximize the possible number of expensive overdraft fees to be charged, a substantial amount of litigation on these issues has occurred over the past few years. The results of this litigation include a trial verdict in California and nationwide settlements wherein banks and credit unions have been ordered or have agreed to pay unfairly assessed overdraft fees back to their customers in an amount well in excess of a **billion** dollars.

14. The federal government has also stepped in to provide additional protections to customers with respect to abusive overdraft policies. In 2010, the Federal Reserve Board enacted regulation permitting financial institutions to charge overdraft fees on ATM and one-time debit card charges only if the institution first

obtained the affirmative consent of the customer. 12 C.F.R. § 1005.17 (Regulation E’s “Opt-In Rule”).

15. To qualify as affirmative consent, the opt-in notice/agreement must include, but is not limited to the following:

- The customer must be provided the overdraft policy, including the dollar amount of any fees that will be charged for an overdraft;
- The opt-in consent must be obtained separately from other consents and acknowledgements;
- The consent cannot serve any purpose other than opting into the overdraft program;
- The consent cannot be a pre-selected checked box;
- The financial institution may not provide different terms for the account depending on whether the customer opted in to the overdraft program.

If the financial institution does not obtain proper, affirmative consent from the customer that meets all of the requirements of the Opt-In Rule, then it is not allowed to charge overdraft fees on ATM and one-time debit card transactions.

16. At all relevant times, LGECCU has had an overdraft program (referred to as “Courtesy Pay”) in place for assessing overdraft fees on ATM and debit card

transactions, which is: (1) contrary to the express terms of its contracts with members; (2) contrary to how LGECCU represents its overdraft program to its members; and (3) contrary to what members expect when assessed overdraft fees.

17. LGECCU's member contracts advise that LGECCU is entitled to assess an overdraft fee when "an item is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item (NSF)" (*see "Membership and Account Agreement"* ("Account Agreement") at p. 2, attached hereto as Exhibit 1), and further advises "You are not charged for using Courtesy Pay unless you present an item against insufficient funds." (Account Agreement at p. 10). In another member contract, LGECCU defines an overdraft as when there is not enough money in the account to cover a transaction, but LGECCU pays it anyway. (*See Exhibit 2, "What You Need to Know About Overdrafts and Overdraft Fees"* ("Opt-In Agreement") attached hereto.) (LGECCU's Account Agreement and Opt-In Agreement are hereinafter collectively referred to as "Customer Agreements").

18. LGECCU's contractual promises in its Customer Agreements to only assess overdraft fees when there is not enough money in the account to cover the item was also provided to customers in other disclosures and marketing materials it provided to customers.

19. However, contrary to its Customer Agreements, and other marketing materials indicating that LGECCU will only charge overdraft fees when there is not enough money in the checking account to cover the transaction, LGECCU's practice when assessing an overdraft fee on a transaction is to ignore whether there is money in the account, and instead make the automated decision on assessing overdraft fees based on an artificial internal calculation (sometimes known as the "available balance") rather than the actual balance.

20. The available balance is the actual balance minus anticipated debits in the future (that may or may not occur) and deposits that have not yet cleared pursuant to its funds availability policy. The use of an internal available balance rather than the money in the account to determine whether a transaction results in an overdraft and is subject to an overdraft fee is directly contrary to LGECCU's Customer Agreements. The result is that LGECCU improperly charges members overdraft fees in situations when there is money in the account to cover the transaction.

21. Whether a financial institution relies on the ledger balance versus the available balance is a primary concern for the Consumer Financial Protection Bureau ("Bureau") due to the substantial harm it causes to customers. As the Bureau concluded from its studies of actual financial institutions in its Supervisory

Highlights, Winter 2015, at p.8<sup>2</sup>:

A ledger-balance method factors in only settled transactions in calculating an account's balance; an available-balance method calculates an account's balance based on electronic transactions that the institutions have authorized (and therefore are obligated to pay) but not yet settled, along with settled transactions. An available balance also reflects holds on deposits that have not yet cleared. Examiners observed that in some instances, transactions that would not have resulted in an overdraft (or an overdraft fee) under a ledger-balance method did result in an overdraft (and an overdraft fee) under an available-balance method.

When the balance calculation method is not adequately disclosed, the Bureau concluded that this results in "customers being misled", as this information is "material to a reasonable consumer's decision-making and actions", and consumers being "substantially injured". (*Id.* at p. 9.)

22. This substantially harmful practice is in breach of LGECCU's Customer Agreements. Additionally, the practice of charging overdraft fees even when there is sufficient money in the account to cover the transaction is inconsistent with how LGECCU describes the circumstances of when it assesses overdraft fees in other customer materials. Further, LGECCU has failed to inform customers of the conditions under which overdraft fees will be assessed in both its Customer Agreements and other marketing materials.

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<sup>2</sup> [http://files.consumerfinance.gov/f/201503\\_cfpb\\_supervisory-highlights-winter-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf)

23. Plaintiff and the Class members have performed all conditions, covenants, and promises required by each of them in accordance with the terms and conditions of the contracts.

24. Meanwhile, Plaintiff and the Class members could not have anticipated the harm resulting from Defendant's practice throughout the class periods. In its study, the Bureau concluded that when a financial institution creates the "overall impression" that it would determine overdraft transactions and fees based on the ledger balance and not the available balance, then 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." The Bureau further found that "consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures)." (Supervisory Highlights, Winter 2015, at p.9.)

25. Therefore, Plaintiff, on behalf of herself and all others similarly situated, seeks relief as set forth below.

**B. Unlawful Overdraft Fees Assessed to Plaintiff Carol Tims**

26. Plaintiff was harmed by Defendant's practice of charging overdraft fees when there was money in the account to cover the transaction. Plaintiff entered into an agreement, and upon information and belief, opted-in the overdraft program with

LGECCU, wherein LGECCU contracted to charge overdraft fees only if there was not money to cover the transaction. LGECCU breached its Customer Agreements with Plaintiff, and in breaching the Opt-In Agreement, violated Regulation E. It will be necessary to obtain Defendant LGECCU's records to determine each occasion when LGECCU engaged in this practice and the damage to Plaintiff as a result. However, to give two (2) separate examples: (1) on June 29, 2013, Plaintiff was charged an overdraft fee of \$30.00 on a debit card transaction despite having money in her account to cover the transaction; and on September 17, 2013, Plaintiff was again charged an overdraft fee of \$30.00 despite having money in her account to cover the transaction. Accordingly, it is with reasonable belief that a complete review of Plaintiff's and LGECCU's records will show multiple instances LGECCU improperly charged Plaintiff overdraft fees for transactions despite Plaintiff having money in her account to cover the transactions.

27. Moreover, the assessment and unilateral taking of improper overdraft fees further reduces the balance and amount of funds in the account, resulting in, and aggressively causing subsequent, otherwise non-overdrafting transactions to be improperly treated as transactions for which LGECCU assesses further overdraft fees. This practice was deemed to be deceptive and substantially harmful to

customers by the Consumer Finance Protection Bureau, which made the following conclusions in its studies:

Examiners also observed at one or more institutions the following sequence of events after the institutions switched balance-calculation methods: 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.

(*Infra*, Supervisory Highlights, Winter 2015, a pp. 8-9.) As such, a complete evaluation of LGECCU's records is necessary to determine the full extent of Plaintiff's harm from this practice.

28. Plaintiff will also conduct discovery to determine whether other class members were charged overdraft fees without being opted-in to the overdraft fee program at all.

## **CLASS ACTION ALLEGATIONS**

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

30. Plaintiff brings this case, and each of her respective causes of action, as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of the following classes.

31. The “Class” is composed of two potential classes:

### **The Positive Balance Class:**

**All US residents who have or have had accounts with LGECCU who incurred overdraft fees for debit transactions when the ledger balance in the checking account was sufficient to cover the transactions in the six (6) years preceding the filing of this Complaint.**

### **The Regulation E Class:**

**All US residents who have or have had accounts with LGECCU who incurred overdraft fee(s) for ATM and non-recurring debit card transactions since August 15, 2010 who were opted-in to the overdraft program for ATM and non-recurring debit card transactions through the use of the Opt-In Agreement that defined an overdraft as when the customer does not have enough money in their account to cover a transaction, but the credit union pays it anyway.**

32. Excluded from the above Classes (the two proposed Classes will collectively hereinafter be referred to as the “Class”) are: (1) any entity in which

Defendant LGECCU has a controlling interest; (2) officers or directors of LGECCU; (3) this Court and any of its employees assigned to work on the case; and (4) all employees of the law firms representing Plaintiff and the Class.

33. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

34. This action has been brought and may be properly maintained on behalf of each member of the Class proposed herein under Federal Rule of Civil Procedure 23.

35. **Numerosity of the Class (Federal Rule of Civil Procedure 23(a)(1))**

– The members of the Class are so numerous that a joinder of all members would be impracticable. While the exact number of the members of the Class is presently unknown to Plaintiff, and can only be determined through appropriate discovery, Plaintiff believes that the Class is likely to include thousands of members.

36. Upon information and belief, Defendant has databases, and/or other documentation, of its customers' transactions and account enrollment. These databases and/or documents can be analyzed by an expert to ascertain which of LGECCU's customers have been harmed by its practices and thus, which customers

qualify as Class members. Further, the Class definitions identify groups of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify him or herself as having a right to recover. Other than by direct notice by mail or email, alternatively proper and sufficient notice of this action may be provided to the Class members through notice published in newspapers or other publications.

37. **Commonality (Federal Rule of Civil Procedure 23(a)(2)** – This action involves common questions of law and fact. These common questions of law and fact take precedence over those questions that may only affect individual Class members. The questions of law and fact common to both Plaintiff and the Class members include, but are not limited to, the following:

- a. Whether Defendant LGECCU had standardized Account Agreements during the Class period that were provided to its customers;
- b. Whether Defendant LGECCU had standardized Opt-In Agreements during the Class period that was provided to its customers;
- c. Whether Defendant LGECCU's conduct breached the Opt-In Agreement by use of an automated system of assessing overdraft fees

for transactions when customers' checking accounts had money to cover the transactions;

d. Whether Defendant LGECCU's conduct violated 12 C.F.R. § 1005.17.

38. **Typicality (Federal Rule of Civil Procedure 23(a)(3))** – Plaintiff's claims are typical of all of the members of the Class. The evidence and the legal theories regarding Defendant's alleged wrongful conduct are substantially the same for Plaintiff and all of the Class members, as the relevant agreements and the challenged overdraft fee practice that was applied to Defendant's customers' accounts are uniform for Plaintiff and all Class members.

39. **Adequacy (Federal Rule of Civil Procedure 23(a)(4))** – Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained competent counsel experienced in class action litigation to ensure such protection. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate. Plaintiff and her counsel intend to prosecute this action vigorously.

40. **Predominance and Superiority (Federal Rule of Civil Procedure 23(b)(3))** – The common questions of law or fact identified herein and to be identified through discovery take precedence over questions that may affect only

individual Class members. Further, the class action is superior to all other available methods for the fair and efficient adjudication of matter. Because the injuries suffered by the individual Class members may be relatively small, the expense and burden of individual litigation would make it virtually impossible for Plaintiff and Class members to individually seek redress for Defendant's wrongful conduct. Even if any individual person or group(s) of Class members could afford individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and comprehensive adjudication by a single court. In contrast, the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the party (or parties) opposing the Class and would lead to repetitious trials of the numerous common questions of fact and law. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Plaintiff and the Class members will continue to suffer losses, thereby allowing these violations of

law to proceed without remedy and allowing Defendant LGECCU to retain the proceeds of its ill-gotten gains.

41. Plaintiff contemplates the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Defendant LGECCU's own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional media and/or mailings.

42. The matter is properly maintained as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

a. Without class certification and determination of declaratory, injunctive, statutory, and other legal questions within the class format, prosecution of separate actions by individual members of the Class will create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or

2. Adjudication with respect to individual members of the Class which would as a practical matter be dispositive of the interests of

the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

b. The parties opposing the Class have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole; or

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

1. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;

2. The extent and nature of any litigation concerning controversy already commenced by or against members of the Class;

3. The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

4. The difficulties likely to be encountered in the management of a class action.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

43. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein. This cause of action relates to the Positive Balance Class only.

44. Plaintiff and each of the Class members entered into contracts with Defendant covering the subject of overdraft transactions. These contracts were drafted by and are binding on Defendant LGECCU.

45. The contracts authorized Defendant LGECCU to assess overdraft fees only for ATM and non-recurring debit card transactions for which there was not money in the account to cover the transaction. LGECCU has breached these contracts.

46. The contracts incorporated by reference all applicable laws regarding their subject matter, including 24 C.F.R. § 1005.17, which mandates that the opt-in agreement for assessing overdraft fees for ATM and non-recurring debit card transactions be separate from the account agreement and accurately describe the overdraft fee practice.

47. Plaintiff and the Class members have performed all conditions, covenants, and promises required by each of them on their part to be performed in

accordance with the terms and conditions of the contracts, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

48. Defendant breached the expressed terms of the contracts by, inter alia, assessing overdraft fees when there was money in the account to cover the transaction(s).

49. As a proximate result of Defendant's breach of the contracts, Plaintiff and the Class members have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

**SECOND CAUSE OF ACTION**  
**(Breach of The Covenant of Good Faith and Fair Dealing)**

50. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein. This cause of action relates to the Positive Balance Class only.

51. Plaintiff and each of the Class members entered into contracts with Defendant covering the subject of overdraft transactions. These contracts were drafted by and are binding on Defendant LGECCU.

52. The contracts authorized Defendant LGECCU to assess overdraft fees only for ATM and non-recurring debit card transactions for which there was not

money in the account to cover the transaction. LGECCU has breached these contracts.

53. Further, good faith is an element of every contract pertaining to the assessment of overdraft fees. Whether by common law or statute, all such 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. Thus, 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.

54. The material terms of the contracts also included the implied covenant of good faith and fair dealing, whereby Defendant LGECCU covenanted that it would, in good faith and in the exercise of fair dealing, deal with Plaintiff and each Class member fairly and honestly and do nothing to impair, interfere with, hinder, or potentially injure Plaintiff's and the Class members' rights and benefits under the contract.

55. Plaintiff and the Class members have performed all conditions, covenants, and promises required by each of them on their part to be performed in

accordance with the terms and conditions of the contracts, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

56. Defendant breached the implied covenant of good faith and fair dealing based on this practice.

57. As a proximate result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiff and the Class members have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment/Restitution)**

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

59. As a result of the wrongful misconduct alleged above, Defendant LGECCU unjustly received millions of dollars in overdraft fees.

60. This is supported by the Consumer Finance Protection Bureau, which has concluded that inadequate disclosure of the type of balance-calculation used to determine overdraft transactions and their resultant fees that create additional overdraft fee harm constitutes an Unfair, Deceptive, or Abusive Acts or Practices.

(CFPB Bulletin 2013-07<sup>3</sup>, at p. 2 (defining Unfair, Deceptive, or Abusive Acts or Practices based on the FTC balancing test: “1) It causes or is likely to cause substantial injury to consumers; 2) The injury is not reasonably avoidable by consumers; and 3) The injury is not outweighed by countervailing benefits to consumers or to competition”); CFPB Supervisory Highlights, Winter 2015, at p. 9 (“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 the fees under these circumstances was found to be unfair.”).)

61. Because Plaintiff and the Class members paid the erroneous overdraft fees assessed by Defendant LGECCU, Plaintiff and the Class members have conferred a benefit on Defendant. Defendant has knowledge of this benefit, as well as the wrongful circumstances under which it was conveyed, and yet have voluntarily accepted and retained the benefit conferred. Should it be allowed to

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<sup>3</sup> [http://files.consumerfinance.gov/f/201307\\_cfpb\\_bulletin\\_unfair-deceptive-abusive-practices.pdf](http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf)

retain such funds, Defendant will be unjustly enriched. Therefore, Plaintiff and the Class members seek relief as set forth in the Prayer below.

**FOURTH CAUSE OF ACTION**  
**(Money Had and Received)**

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

63. Defendant LGECCU has obtained money from Plaintiff and the Class members by the exercise of undue influence, menace or threat, compulsion or duress, and/or mistake of law and/or fact.

64. As a result, Defendant LGECCU has in its possession money which in equity belongs to Plaintiff and the Class members, and thus, this money should be refunded to Plaintiff and the Class members. Therefore, Plaintiff and the Class members seek relief as set forth in the Prayer below.

**FIFTH CAUSE OF ACTION**  
**(Violation of Electronic Fund Transfer Act)**

65. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein. This cause of action relates to the Regulation E Class only.

66. Because of its failure to truthfully and accurately provide the conditions under which an overdraft fee will be assessed, Defendant failed to comply with

Regulation E, 12 C.F.R. § 1005.17, which requires affirmative consent before a financial institution is permitted to assess overdraft fees on customers' accounts through an overdraft program for ATM and non-recurring debit card transactions. Specifically, Defendant expressly stated in the Opt-in Agreement that it would only assess an overdraft fee for transactions for which there is not enough money in the account to cover the transaction, when in actual practice, Defendant assesses overdraft fees even when there is money in the account to cover the transaction.

67. As a result of assessing overdraft fees in circumstances for which it did not garner the consent necessary to do so pursuant to Regulation E, Defendant has harmed Plaintiff and the Class.

68. Alternatively, to the extent that Defendant unlawfully failed to opt-in customers into this overdraft fee program, Defendant has harmed the Class.

69. Due to Defendant LGECCU's failure to comply with Regulation E, 12 C.F.R. § 1005.17, Plaintiff and members of the Class are entitled to actual and statutory damages, as well as attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1693m.

### **PRAYER**

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

1. For an order certifying this action as a class action;

2. For compensatory damages on all applicable claims and in an amount to be proven at trial;
3. For an order requiring Defendant to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;
4. For an order enjoining the wrongful conduct alleged herein, including ceasing to charge overdraft fees for transactions for which there was money in the account to cover the transaction, and providing accurate and reliable information regarding the overdraft practice;
5. For costs;
6. For pre-judgment and post-judgment interest as provided by law;
7. For attorneys' fees under the Electronic Fund Transfer Act, the common fund doctrine, or other applicable laws or contracts; and
8. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

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

DATED this 22nd day of April, 2016.

By: /s/ Richard D. McCune

Richard D. McCune, *Pro Hac Vice*  
Cal. Bar No. 132124

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*Attorneys for Plaintiff Carol Tims and the  
Putative Class*

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# EXHIBIT “1”

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**EX. 1**



## Membership and Account Agreement

The following contains the rules that govern your account(s) with us. Please read carefully. If you sign your membership application or continue to have an account with us, you agree to these rules, our by-laws, and any by-law amendments. You agree to pay the fees we charge and you give us the right to collect any fees, as earned, directly from the account balance. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included. This agreement is subject to applicable federal laws and the laws of the state of Georgia (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this information is to summarize the existing rules applicable to the more common transactions; establish rules to govern transactions or events which the law does not regulate; establish rules for certain events or transactions which the law already regulates but permits variation by agreement; and provide to you the following: (1) Terms and Conditions, (2) Privacy Policy, (3) Electronic Funds Transfers Disclosure, (4) Funds Availability Policy and Truth in Savings information. This document uses the words "we", "our" and "us" meaning the credit union. And the words "you", "your" and "I" mean the owner(s) of this account and any "agent" appointed by or on behalf of the owner(s) to sign on the account in a representative capacity. "Credit Union" or "LGE" refers to LGE Community Credit Union. If you have any questions, please call us.

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

**Ownership of account and beneficiary designation:** These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We reserve the right to refuse some forms of ownership on any or all of our accounts. **Individual Account** - is owned by one person. **Joint Account - With Survivorship (And Not As Tenants In Common)** - is owned by two or more persons. Each of you intends that upon your death the balance in the account will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. **Revocable Trust or Pay-On-Death Account** - If two or more of you create such an account, you own the account jointly with survivorship. **Beneficiaries** may be named on your account that acquires the right to withdraw only if: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares or designated percentages, without right of survivorship. This means that the sums in the account may be paid to any surviving beneficiaries individually or otherwise. However, no amount will be paid to any beneficiary, their heirs or successors, who are not living at the time the account becomes payable to beneficiaries. POD beneficiary designations do not apply to IRA Accounts. We have no obligation to notify any beneficiary of any POD account or the vesting of any beneficiaries' interest in an account. The person(s) creating either of these account types reserves the right to: (1) change beneficiaries, (2) change account types, (3) withdraw all or part of the deposit at any time, and (4) close the account. **Corporate, Partnership, and other Organizational Accounts** - We will usually require a separate authorization form designating the person permitted to withdraw and the conditions required for withdrawal from any account in the name of a legal entity such as a partnership, corporation, or other organization. We will honor the authorization according to its terms until it is amended or terminated in writing by the governing body of the organization.

**Transactions from Your Account(s):** Generally, you may withdraw and/or transfer funds from your account(s) at any time subject to the limitations set forth in this section and the Funds Availability Disclosure in effect at the time of the deposit. Payments upon your order may be made in coin, bills, or other instruments or via electronic means at our option.

**Payment Order of Your Transactions:** To assist you in handling your account(s) with us, we are providing you with the following information regarding how we process the items that you authorize. When processing items drawn on your account, our policy is to pay them as we receive them. We commonly receive items to be processed against your account(s) multiple times per day in what is referred to as presentment files. Each presentment file received commonly contains a large amount of a specific type of item (Check, ACH, or ATM/POS). It is common for each of these presentment files to contain multiple items to be processed against your particular account. In this case, when multiple items are received at once, the items will be paid as follows: checks are paid in order of check number, lowest to highest; ACH items in each presentment file post credits first, then debits paid by dollar amount, lowest to highest; ATM/POS items are paid in the order they are presented. Items performed in person such as withdrawals or checks cashed at one of our locations or a shared branch, are generally paid at the time they are performed. **Why this is Important to You:** The order in which

items are paid is important if there is not enough money in your account to pay all of the items that are presented. Our payment policy may cause your larger, and perhaps more important, items to not be paid first (such as your rent or mortgage payment), but may reduce the amount of overdraft or NSF fees you have to pay if funds are not available to pay all of the items. If an item is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item (NSF). The amounts of the overdraft and NSF fees are disclosed within our Fee Schedule. We encourage you to make careful records and practice good account management. This will help you to avoid writing checks or drafts without sufficient funds and incurring the resulting fees.

**Account Access:** a. Authorized User(s). All withdrawals, transfers and transactions made by any person to whom you have at any time provided authority or the means to access your accounts or other services shall be deemed authorized by you, and the Credit Union will not have any responsibility or liability whatsoever for such withdrawals, transfers or other transactions. b. Access to Account Information. You agree that all owners, borrowers and authorized users, may have access to all of the information you provide to us, or which we gather and maintain regarding our relationships with you; and that they may provide authority to others. This includes, but is not limited to information regarding transactions, account history, your loan relationships with us, and other information relating to or arising with regard to any of your accounts, loans or other services with us. Further, you understand that we utilize a consolidated statement for your accounts, account services, loans and all other services with us. You understand and agree that we are authorized to send jointly and/or provide to any individual owner or borrower a statement that includes all of the information on the consolidated statement even though all parties receiving the statement may not be owners or borrowers as to all of the accounts or services addressed in the statement. c. Sharing Information with Other Persons, Co-Borrowers, Co-Signers/Guarantors, Owners of Collateral Pledged and Others. You hereby consent and agree that we may share any information regarding your obligations with us or collateral pledged to secure any obligations you owe to the Credit Union with the persons listed in this subsection if we receive a request which we in good faith believe to be related to any such obligations, refinancings, sales, trades, transfers, exchange or Transactions. Also, you consent and agree that we may provide pay-off or payment information to persons or entities who seek to make payments on your behalf, including potential "pay-offs". This may include account numbers and information necessary to process payments. d. Access to Third Parties. When you give another party access to your accounts or account information you understand and agree that we have no liability or obligation for any errors, claims or losses of any type of nature whatsoever relating to any transactions initiated as a result of your relationship with that third party, including any claims or losses that may arise from any access to your accounts or personal information. Third Parties: To expedite the matters herein for your benefit, you agree that we can rely on the representations made to us by a third party, and our duties to you hereunder do not require us to investigate or document a request for such information.

**Disabilities:** We will accommodate reasonable requests to assist members with disabilities. In order to do so you agree to notify us of any disability and/or accommodation requests. You will notify us regarding any service providers you wish to use; and you will provide us with information to allow us to identify the service providers.

**Agents:** An agent is someone who you authorize to have access to this account on your behalf. We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the agent are for your benefit. This may be done by allowing your agent to sign on the space as an authorized signer on the membership application, or by separate form (such as a power of attorney). An agent is not an owner of the account. We may refuse to accept an agent or an agency account.

**Pledges:** Unless you tell us differently in writing, each owner of this account may pledge all or any part of the funds in it for any purpose to which we agree. Any pledge of this account must first be satisfied before the rights of any joint account survivor, pay-on-death beneficiary, or trust account beneficiary becomes effective. For example, if one joint tenant pledges the deposit evidenced by this agreement for a debt (i.e. uses it to secure a debt) and then dies, (1) the surviving joint tenant's rights in this account do not take effect until the debt has been satisfied and (2) the debt may be satisfied with the funds in this account.

**Amendments:** Any written notification of other changes required by applicable law or regulation will be sent to you at the address that you have provided the credit union. You agree to keep us informed about your current address at all times. Notice from us to any one of you is notice to all of you.

**Termination of Accounts and Services:** We, in our sole discretion, may terminate, limit or restrict, or change the terms, as we in our sole discretion deem appropriate, any of your account(s) or service(s), including but not limited to loan services, or place a freeze on any sums on deposit with us at any time without notice or require you to close your account(s)/service(s) and apply for a new account(s)/services(s) if: (1) there is a request to change the owners or authorized users; (2) there is a fraud/forgery or unauthorized use committed or reported; (3) there is a dispute as to ownership of any account or sum on deposit; (4) there are any share drafts that are lost or stolen; (5) there are returned unpaid items-Transactions not covered by an overdraft plan agreement with us or any abuse of any such plan per our assessment thereof; (6) there is any misrepresentation regarding any account(s) or service(s); (7) the Credit Union incurs any loss or believes it may incur any loss relating to any loan(s), account(s) or service(s) you have with us; (8) if we believe you have been negligent in protecting any access devices or codes; (9) we deem it necessary to protect the Credit Union from any risks or losses, or otherwise deem it to be in the best interests of the Credit Union, our members or our employees; (10) you breach any promise under this Agreement or any other agreements with us including but not limited to any default or other delinquency with regard to any loan or other agreements; (11) if bankruptcy or any other insolvency proceeding is filed by or against you, or if we otherwise deem you to be insolvent or incapable of meeting your obligations to us; (12) you refuse or fail to cooperate as provided in this Agreement; or (13) you violate any Credit Union policy, procedure or standard or any law, regulation or rule. We, on our own accord, may place a stop payment on any share draft, item or Transaction if we are notified or otherwise reasonably believe that any of the foregoing circumstances have occurred. If you do not accept any deposit or part of a deposit that we attempt to return after termination, then such

deposit will no longer earn dividends. You may terminate a single party account at any time by notifying us in writing. We have the rights to require the written consent of all parties to a multiple party account for termination. Club accounts may be terminated if deposits are not made within certain time periods in successive periods. We are not responsible for any draft, withdrawal, item or Transaction after your account is terminated. However, if we pay any item after termination, you agree to reimburse us upon demand.

**Account transfer:** This account may not be transferred or assigned without our prior written consent.

**Direct deposits:** If, in connection with a direct deposit plan, we deposit any amount in this account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from this account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**Right to repayment of indebtedness:** You each agree that we may (without prior notice) charge against and deduct from this account any due and payable debt owed to us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. Funds may be applied from any account in which you have a beneficial interest; and may include funds regardless of the source including but not limited to deposits of funds representing the payment of Social Security, Veterans benefits, or any other funds that may be subject to limitations under federal or state laws. Any application of funds hereunder shall be deemed a voluntary transfer that you have authorized. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we charge the account. This includes any balance for the due date which we properly accelerate under the note. Our right to repayment does not apply to this account if: (a) it is an Individual Retirement Account or other tax-deferred retirement account, (b) the debt is created by a consumer credit transaction under a credit card plan, (c) the debt is secured by a security deed in favor of us, and is secured by your principal residence, or (d) the debtor's right of withdrawal arises only in a representative capacity. We will not be liable for the dishonor of any check or draft when the dishonor occurs because we charge and deduct an amount you owe us from your account. You agree to hold us harmless from any claim arising as a result of our exercise of our right to repayment.

**Recording Conversations:** You understand and agree that for our mutual protection we may record any of our telephone conversations.

**"E-Mail" and Facsimile Communications:** You acknowledge and agree that the Internet is considered inherently insecure. Therefore, you agree that we have no liability to you whatsoever for any loss, claim or damages arising or in any way related to our response(s) to any e-mail or other electronic communication, which we in good faith believe you have submitted to us. We have no duty to investigate the validity or to verify any e-mail or other electronic communication; and may respond to an e-mail at either the address provided with the communication, the e-mail address in your Membership Application, or any other application or written communication actually received by us. Any account owner may change the e-mail address for statements or other information from us at any time. The Credit Union may not immediately receive e-mail communications that you send. We reserve the right to require any notices from you to be submitted to us in writing, and we may refuse to send certain information through unsecured e-mail communications. You expressly consent and agree to us, our agents or any parties we authorize sending and your receiving any communications hereunder by facsimile or other electronic methods including any offers for Credit Union, affiliate or third party services and/or products.

### **Electronic Fund Transfer Disclosure**

This agreement and disclosure contains important information regarding electronic fund transfer services the credit union may offer to its members, some of which may not apply to your account. Electronic funds transfers (EFTs) are electronically initiated transfers of money involving a deposit account at the Credit Union and multiple access options including automated teller machine (ATMs), ATM card, Visa Debit card, Memberline Audio Response, Online Banking, Point of Sale (POS) purchase transactions, Automated Clearing House (ACH) transactions, and wire transfer services. This is done for the purposes of ordering, authorizing, or instructing the credit union to debit or credit an account. Use of any of these services constitutes your acceptance of the terms and conditions of the Electronic Fund Transfer Disclosure and following agreements. This document is also in addition to any terms, conditions, and disclosures for these and any other electronic fund transfer services that you receive.

**Authorization:** You authorize us and any third party acting on the credit union's behalf, to serve as your agent in processing payments to targeted merchants and/ or transfers to and from targeted accounts pursuant to your payment and/or payment instructions. You authorize us to post such payment and/ or transfer to your designated account(s). You understand that in instances where there are insufficient funds in your designated account, we may not make certain payments and/ or transfers.

**Business Days:** Our business days are Monday through Friday excluding legal holidays and holidays posted in the credit union office.

**Address and Telephone:** Our address is LGE Community Credit Union, 430 Commerce Park Drive, Marietta, GA 30060. During normal business hours you may contact us by phone at 770-424-0060 or 1-800-541-8921. After hours you may call 1-866-677-7151 to report a lost or stolen ATM or Visa debit card.

**ACH and Wire Transfers:** You may initiate or receive credits or debits to your account through ACH or wire transfer. You agree that if you receive funds by wire or ACH transfer, we are not required to notify you at the time the funds are received. The transfer will be shown on your periodic statement. We may provisionally credit your account for an ACH transfer before we receive final settlement. We may reverse the provisional credit or you will refund us the amount if we do not receive final settlement. When you initiate a wire transfer, you may identify either the recipient or any financial institution by name and account or identifying number. The credit union (and other institutions) may rely on the account or other identifying number as the proper identification even if it identifies a different party or institution.

**Electronic Check Conversions:** Your check can result in an electronic funds transfer. This can happen in several ways. For example, you can purchase goods or pay for services and authorize a merchant or service provider to convert your check into an EFT, or at the time you offer a check to a merchant or service provider, you may be asked to authorize the merchant or service provider to electronically collect a charge in the event the check is returned for insufficient funds. Paying such a fee electronically is an electronic funds transfer. Your authorization to make these types of Electronic Fund Transfers may be expressed in writing or implied through the posting of a sign.

**ATM safety precautions:** As with all financial transactions, please exercise discretion when using an ATM. You are responsible for your own safety. The following suggestions may be helpful.

1. Minimize your time spent at a machine. Have your card ready and prepare for your transaction prior to arriving at the ATM.
2. As soon as your transaction is complete, place your money in your purse or wallet. Count the cash later in the safety of your car or home. Remember to retrieve your card and receipt immediately after your transaction.
3. Always save your receipts. Do not leave them at the ATM; they may contain account information.
4. Protect your Personal Identification Number (PIN). Do not lend your ATM or Visa Debit card to anyone. Do not give anyone your PIN. Do not write your PIN where it can be discovered or store it with your card.
5. Prevent others from seeing you enter your PIN by using your body to shield their view.
6. When you make an ATM transaction, be mindful of your surroundings and remain alert. If you notice anything suspicious, or any other problem arises after you start an ATM transaction, cancel the transaction, take your card, and leave.
7. Do not accept assistance from anyone you do not know.
8. Avoid ATMs in dark or remote places. Be sure the ATM site (including the parking area) is well lit. It may be safer to bring someone with you when you make a transaction.
9. At a drive-up ATM, keep your doors locked and all passenger windows up.
10. Look at the ATM before using it. If it doesn't look right, don't use it. If an ATM has any unusual signage, don't use it.
11. We want the ATM to be safe and convenient for you. Therefore, please tell us if you know of any problem with an ATM facility. Report all crimes and any suspicious activity to us and to the police.

**Automated Teller Machine (ATM):** You may access your account(s) by using your ATM or Visa Debit card and Personal Identification Number (PIN) in LGE owned ATMs or any other authorized regional, national, or international ATM network to:

1. Withdraw cash from your checking or savings account. (You may withdraw no more than \$500 per day per account).
2. Make deposits to your credit union checking or savings accounts in LGE owned ATMs or by accessing an ATM owned by another financial institution that participates in the CO-OP, C.U. Here, Pulse or C.U. 24 Networks.
3. Make advances on your line of credit.
4. Make payments to your line of credit in LGE owned ATMs only.
5. Transfer funds between your credit union checking and savings account.
6. Obtain account balances on your checking, savings, and line of credit.
7. Some of these services may not be available at all terminals.

**LGE Memberline (audio response):** If you have a Memberline access code with the credit union, you may use your access code at a touch-tone telephone to:

1. Make transfers between your LGE checking, savings account(s) and/or other LGE co-owned accounts.
2. Make payments and request advances on your line of credit.
3. Obtain account balances on your checking, savings, and line of credit.
4. Obtain the most recent checks that have cleared your checking account.
5. Request a withdrawal by check.
6. Stop payment on pre-printed checks.
7. Re-order checks.
8. Access credit card information and other services the credit union may provide.
9. Deposit, checking, and payroll inquiries are limited to the most recent transactions involving the relevant account.
10. You can access Memberline with your access code by calling 770-424-0060, 770-424-3641, or 1-800-541-8921.

**LGE Online Banking:** You may use your Online Banking password to:

1. Make transfers between your checking, savings, or loan account(s), and/or other accounts at the credit union.
2. Request advances on your line of credit.
3. Obtain account balances on your checking, savings, and line of credit.
4. Obtain deposit, loan, and payroll deduction history within the most recent transactions involving the relevant account.
5. Obtain the most recent checks that have cleared your checking account.
6. Request withdrawal by check.
7. Make bill payments by enrolling and accessing Web Bill Pay (See Fee Schedule for fees).
8. Sign up for and access eStatements.
9. Access other services that the credit union may provide.
10. You can access Home Banking by visiting our website at [www.LGEccu.org](http://www.LGEccu.org).

**ATM Card/Visa Debit Card:** By signing (or otherwise initiating) an application, by signing the back of the ATM and/or Visa Debit card, a sales invoice or receipt, or by using or allowing the use of either of the cards and/or its account number and/or your personal identification number (PIN), you acknowledge and confirm that you have requested that the card(s)

be activated or that it is a renewal or replacement of an existing card. Each time your Visa Debit card and/or ATM card is properly used at a point of sale terminal, you authorize the credit union to debit your account for the total amount indicated on any debit advice originated by the use of your card, whether or not you have signed any sales authorization. We will handle such debit transactions the same as authorized checks drawn on your account. The credit union will not be responsible for any claim you may have against any business establishment for refusing to honor your ATM or Visa Debit card. The Visa Debit card is a product of the VISA Corporation; therefore, covered by all the security features and safeguards that VISA provides.

**ATM Card Transactions:** After your ATM card is activated, you, or anyone authorized by you, or any party to an account which may be accessed through use of the card or the account number, may withdraw cash at automated teller machines, access your checking account to purchase goods (in person), pay for services (in person) and obtain cash from a merchant, if the merchant permits, or from a participating financial institution. When you do so, you authorize us to deduct the funds from your account to cover your transactions.

**Visa Debit Card Transactions:** After your Visa Debit card is activated, you, or anyone authorized by you, or any party to an account which may be accessed through use of the card or the account number, may withdraw cash at automated teller machines, access your checking account to purchase goods (in person), pay for services (in person) and obtain cash from a merchant, if the merchant permits, or from a participating financial institution. We may, at our discretion, return any check or other item drawn on your account to ensure there are sufficient funds to cover a card transaction. If there are insufficient funds in your account to cover a transaction, the difference may be transferred from another account, or if you have an overdraft line of credit with us, an advance may be made under the terms of that agreement to cover the transaction if a sufficient amount is within your available credit limit. We are not obligated to pay out any funds if the balance in your account is not sufficient and there is no other account with sufficient funds or an overdraft line of credit. If we elect to pay out such funds, you agree to pay the deficiency on demand or immediately following receipt of your monthly statement, whichever comes first, plus any overdraft charges in effect under the terms and conditions of your account. We are not responsible for and do not directly or indirectly give any guarantee or warranty with regard to the quality, suitability, or fitness for a particular purpose, or any other characteristic of any goods or services purchased by use of the card. You agree to settle any dispute about a purchase with the merchant or service provider who honored the card. You may not stop payment with respect to any transaction originated by use of your debit card.

**Limitations on Use: ATM and Visa Debit cards:** **For your protection, there are limits on the dollar amount of cash withdrawals or transfers you can make per day from your account at an ATM or POS terminal with a Personal Identification Number (PIN).** Due to certain technical limitations your withdrawal and purchase may be limited to \$500.00 per 24-hour period.

**Gambling/Illegal Transactions:** No charges or debits incurred for gambling transactions will be knowingly honored by the credit union, and it shall be the credit union's policy to attempt to "block" all such transactions. An ATM or Visa Debit card may not be used for any illegal transaction.

**Ownership of Cards:** The ATM and Visa Debit card are at all times credit union property. We may revoke and discontinue the use of your card(s) at any time. You understand and agree that we have the right to request return or proof of destruction of the card(s) at any time and you agree to do so immediately. You agree to follow our instructions with regard to the return or destruction of your ATM and/or Visa Debit card immediately as well as discontinuing their use. You also understand and agree to keep your card(s) in a safe place, not write your PIN on your card or store it with the card, not disclose your PIN to anyone, and report any unauthorized or erroneous transactions to the credit union immediately.

**Passwords/Security:** After receiving your password/access code from us, you agree to change it immediately when logging on to Memberline or Online Banking for the first time. You agree not to give or make your access code, password, or PIN for any credit union electronic service available to any unauthorized individuals. If a third party should gain access to your online Online Banking password or Memberline access code you are responsible for changing your password/access code to deny the third party's access to your banking information and you agree to do so immediately through the appropriate service and to contact the credit union immediately. Use of the access code, password, or PIN by you or by anyone with your authorization will be considered the same as your written signature authorizing us to complete any transaction or request communicated through the service. If you authorize another person to use your access code, password or PIN, that person can use a credit union service to perform any of the functions that you may perform. You agree to assume responsibility for all transactions initiated through our online service with your user ID and/or password up to the limits allowed by applicable law.

**Fees and Charges:** There are certain charges for the EFT services as set forth on the Fee Schedule. If you request an advance on your line of credit account such transactions may be subject to charges under the terms and conditions of your Consumer Loan Agreement. If you use an ATM that is not operated by LGE, you may be charged a surcharge by the ATM operator or an ATM network utilized for such a transaction. The ATM surcharge will be debited from your account if you elect to complete the transaction.

**Posting Foreign Transactions on Billing Statements:** An International Service Assessment (ISA) Fee will be assessed on all transactions where the merchant country differs from the country of the card issuer. An ISA fee of 1% will be assessed for multiple-currency international transactions and a 0.8% ISA fee for single-currency international transactions. Visa defines multiple-currency transactions as transactions made in foreign countries involving currency conversion to U.S. dollars. Single-currency transactions are international transactions not involving currency conversion to U.S. dollars. The converted transaction amount will be shown separately from the International Service Assessment Fee on your billing statement. This fee will be assessed on all international purchases, credit vouchers, and cash disbursements.

**Foreign Transaction Currency Exchange Rate:** The exchange rate for transactions in a foreign currency will be a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives, or the government mandated rate in effect for the applicable central processing date plus the International Service Assessment Fee.

**Prauthorized Credits:** If you have a direct deposit made to your account at least once every 60 days from the same person or company, you can use Memberline, Online Banking, or call us at 770-424-0060 to find out whether or not the deposit has been made.

**Periodic Statements:** All EFT transactions will be recorded on your periodic statements. You will receive a monthly account statement from us for your checking account(s). You will receive a monthly account statement from us for your base savings account(s), unless there are no transfers in a particular month. In any case, you will get a statement at least quarterly.

**Receipts:** You can receive a receipt at the time you make any transfer to or from your account using one of our ATMs. You may receive a receipt when using your Visa Debit card in an ATM or with a purchase from a merchant. You will not receive a receipt for a Memberline or Online Banking transaction.

**Liability for Unauthorized Transactions:** Tell us at ONCE if you believe your card and/or PIN, access code, or password to any EFT service has been lost, stolen, or used without your permission, or if a direct payment has been made or may be made out of your account without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card, PIN, access code or your password, you can lose no more than \$50. If you do NOT tell us within 2 business days and we can prove we could have stopped the unauthorized usage from occurring, you could lose as much as \$500. If your statement shows EFTs that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. Time periods may be extended for hospital stays or extended trips that may have prevented you from notifying us sooner.

**Consumer Liability for Visa and Interlink Transactions:** If a transaction is made with your card or card number without your permission and is either a Visa, Interlink or Plus transaction, your liability will be zero. If we determine you have been grossly negligent or fraudulent in the handling of your account or card, zero liability will not apply and your liability will be determined in accordance with the above paragraphs under the "Liability for Unauthorized Transactions" section of this document. Zero liability does not apply to unauthorized use of your Visa Debit card and PIN at an ATM. We may require a statement regarding your claim.

**Stop Payment Procedures and Notice of Varying Amounts on Electronic Funds Transfers (ACH):** If you have told us in advance to make regular payments out of your account(s), you can stop any of these payments by: Calling or writing us at the telephone number or address stated in the address and telephone section of this document. We must receive your request three (3) business days or more before the payment is scheduled to be made. If you call, we may require you to put your request in writing and get it to us within 14 days after you call. Refer to our Fee Schedule for stop payment fees. If these regular payments may vary in amount, the person you are going to pay will tell you ten (10) days before each payment when it will be made and the amount. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

**Liability for Failure to Stop Payment of Prauthorized Transfer:** If you request for LGE to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**Disclosure to Third Parties:** Your credit union will disclose information to third parties about your account or the transfers you make:

1. Where it is necessary for completing transfers
2. In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant
3. In order to comply with a government agency or court orders
4. If you give us written permission

**Cancellations:** The credit union can at any time discontinue your access to your account(s) by use of your ATM card, Visa Debit card, Memberline, and/or Online Banking. Except as prohibited by applicable law, we may change the terms of this Agreement. Without limiting the foregoing, the credit union may cancel any other of these services (or the credit union may refuse to reissue these services) if the credit union determines that you have negligently or recklessly used or failed to safeguard the services.

**Errors:** In case of errors or questions about your electronic fund transfers, pre-authorized direct deposits or payments involving asset accounts: Telephone us at 770-424-0060 or 1-800-541-8921, or write to us at LGE Community Credit Union, 430 Commerce Park Drive, Marietta, GA 30060 as soon as you can if you think your statement or receipt is wrong, or if you need more information about a transfer on your statement or receipt. We must hear from you no later than 60 days after we send you the FIRST statement on which the problem or error appeared.

1. Tell us your name and account number.
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount of the suspected error. If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days (5 business days if the transfer involved a Visa Debit card POS transactions) after we hear from you and will correct any error promptly. If we need more time we may

take up to 45 days (90 days if the transfer involved a POS transaction, a new account, or a foreign initiated transfer) to investigate your complaint or question. If we decide to do this we will issue you a provisional credit to your account within 10 business days (5 business days for Visa Debit card POS transactions) for the amount you think is in error. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may reverse the provisional credit to your account. Your account is considered a new account for 30 days after the first deposit is made, unless you already have an established account with us before the account is opened. If we decide that there was no error, we will send you a written explanation within 3 business days after we complete our investigation and reverse the provisional credit(s) from your account. You may ask for copies of the documents that we used in our investigation.

**Equipment:** We are not responsible for any loss, damage or injury caused by your equipment or software, the services, or any technical or editorial errors contained in or omissions from any user guide related to the services. We will not be responsible for any direct, indirect, special, or consequential damage arising in any way out of the installation, use or maintenance of your equipment, software, or the services, except where the law requires a different standard.

## **Funds Availability Disclosure**

This disclosure describes your ability to withdraw funds at LGE Community Credit Union. It only applies to the availability of funds in "transaction accounts" subject to Regulation CC. Generally transaction accounts are accounts that do not limit the number of types of withdrawals or transfers that may be made from the account. The credit union reserves the right to delay the availability of funds deposited to accounts not governed by Regulation CC for periods longer than those disclosed in this policy. Please ask us if you have questions about which accounts are affected by this policy disclosure. Our policy is to make funds from your deposits available to you on the same business day we receive your deposit. At that time, you can withdraw the funds in cash and/or we will use the funds to pay checks that you have written. For determining the availability of your deposits, every day is a business day except, Saturdays, Sundays, and federal holidays. If you make a deposit after 4:30 P.M., or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

**Same Day Availability:** Certain items are subject to same day availability and generally will be made available for withdrawal on the same day of the deposit. These items include;

1. Cash deposits of U.S. coins and currency
2. Electronic payments, including wire transfers and automatic clearinghouse transfers.
3. U.S. treasury checks, but only if endorsed and deposited into the account of the payee of the check.
4. U.S. postal money orders, but only if endorsed and deposited into the account of the payee of the postal money order.
5. Federal Reserve bank or federal home loan bank checks, but only if endorsed and deposited into the account of the payee.
6. Cashier's, certified, and teller's checks, but only if endorsed and deposited into the account of the payee.
7. "On-us" checks drawn on the credit union and presented at the credit union.
8. State of Georgia and local Georgia government checks, but only if endorsed and deposited into the account of the payee.

**Longer delays may apply:** In some cases, we will not make all of the funds that you deposit by check available to you on the same day we receive your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. However, the first \$200 of your deposit will be available on the first business day after the day of your deposit. If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice the business day after we receive your deposit. If you will need the funds from a deposit right away, you should ask us when the funds will be available. In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

1. You deposit checks totaling more than \$5,000 on any one day;
2. You deposit a check that has been returned unpaid;
3. You have over drawn your account repeatedly in the last six months;
4. We believe a check you deposit will not be paid;
5. There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day your deposit is otherwise available for withdrawal.

**Special rules for new accounts:** If you are a new member, the following special rules will apply during the first 30 days your account is open. Funds from deposits of U.S. Treasury, cashier's, certified, teller's, traveler's, and state and local government checks will be available on the same day of your deposit, if the deposit meets certain conditions. For example: the checks must be payable to you. Funds from deposits of checks drawn on LGE Community Credit Union will be available on the same business day as the day of your deposit. Funds from all other check deposits will be available no later than the seventh business day after the day of your deposit.

**Automated teller machine deposits (ATM):** ATM deposits (cash or checks) of \$5,000 or less made at a LGE Community Credit Union ATM will be available to you on the 2<sup>nd</sup> business day after the day we receive your deposit. Deposits in excess of \$5,000 are subject to be held an additional 4 business days. ATM deposits (cash or checks) made at a non LGE Community Credit Union ATM will be available to you on the 5<sup>th</sup> business day after the day we receive your deposit.

**Electronic Check Deposits:** Electronic check deposits of \$5,000 or less will be available to you on the 2<sup>nd</sup> business day after the day we receive your deposit. Deposits in excess of \$5,000 are subject to be held an additional 4 business days.

**Restrictive legends:** We are not required to honor any restrictive legend on items you write unless we have agreed to the

restriction in writing signed by an officer of the credit union. Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00".

#### **Substitute Checks And Your Rights**

**What is a substitute check?** To make check processing faster, federal law permits banks to replace original checks with "substitute checks". These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check. Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

**Your rights regarding substitute checks:** In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees). The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law. If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) no later than 45 calendar days after we received your claim. We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

**How do I make a claim for a refund?** If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at LGE Community Credit Union, Support Services Department, 430 Commerce Park, Marietta, Ga. 30060 or you may call 770-424-0060 or 1-800-541-8921. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances. Your claim must include: (1) A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect); (2) An estimate of the amount of your loss; (3) An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and (4) A copy of the substitute check and/or the following information to help us identify the substitute check: the check number, the name of the person to whom you wrote the check, and the amount of the check.

#### **Truth-In-Savings Disclosure**

##### **Savings Account**

**Rate information:** The dividend rate and annual percentage yield are variable and may change at any time. Youth Savings Accounts convert to regular Savings Accounts upon reaching the age of 23. Reference LGE's rate sheet for current rates and APYs that apply.

**Compounding and crediting:** Dividends will be compounded every quarter. Dividends will be credited to your account every quarter.

**Dividend period:** For this account type, the dividend period is quarterly. For example, the beginning date of the first dividend period of the calendar year is January 1, and the ending date of such dividend period is March 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example above is April 1.

**Minimum balance requirements:** The minimum balance required to open this account is \$5.00. You must maintain a minimum daily balance of \$5.00 in your account each day to obtain the disclosed annual percentage yield.

**Balance computation method:** Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

**Transaction limitations:** During any calendar month, you may make withdrawals or transfers by mail, ATM (if available) or in person. You may not, however, make more than six withdrawals or transfers to another Credit Union account of yours or to a third party by means of a preauthorized, automatic, telephonic, online banking, or audio response transfer or instruction. A preauthorized transfer includes any arrangement with us to pay a third party from your account upon oral or written orders, including orders received through ACH. We will reject transactions which exceed the above limit. If excessive transactions continue to occur, we reserve the right to close your account.

##### **Money Market Account**

**Rate information:** The Money Market Account is a tiered rate account. The dividend rate and annual percentage yield may change at any time. Once a particular range is met, the dividend rate and annual percentage yield for that range will apply to the full average daily balance of your account. Refer to LGE's rate schedule.

**Compounding and crediting:** Dividends will be compounded monthly and credited to your account monthly.

**Dividend period:** For this account type, the dividend period is monthly. For example, the beginning date of the first dividend period of the calendar year is January 1, and the ending date of such dividend period is January 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example above is February 1.

**Balance computation method:** Dividends are calculated by the average daily balance method which applies a periodic

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rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

**Minimum Balance Requirement:** See LGE's rate schedule for the current minimum balance.

**Transaction Limitations:** During any calendar month, you may make withdrawals or transfers by mail, ATM (if available) or in person. You may not, however, make more than six withdrawals or transfers to another Credit Union account of yours or to a third party by means of a preauthorized, automatic, telephonic, online banking, or audio response transfer or instruction. A preauthorized transfer includes any arrangement with us to pay a third party from your account upon oral or written orders, including orders received through ACH. We will reject transactions which exceed the above limit. If excessive transactions continue to occur, we reserve the right to close your account.

**High Rate Checking**

**Rate information:** The High Rate Checking account dividend rate(s) and annual percentage yield(s) (APY) are variable and may change at any time. The higher dividend rate and APY for this account will be paid only when all credit union established requirements are met within each statement cycle, otherwise it will be a non-dividend bearing account. The higher dividend rate and APY will be applicable to balances up to \$25,000.00. Reference the credit union rate schedule for current rates and APYs that apply.

**Requirements to earn higher account rate:** The requirements to earn the higher rate applicable to this account may change at any time at the credit union's discretion. The current requirements are 1) Log on to Online Banking at least once during the current month; 2) Receive eStatements in lieu of paper statements; 3) Provide and maintain a valid email address; 4) Minimum of one monthly direct deposit into the account or one monthly automatic payment from the account. Transfers between your existing LGE accounts do not satisfy this requirement; 5) level one: perform any combination between 15-30 LGE Visa debit card or credit card transactions – excluding ATM transactions and credit card cash advances or level two: perform any combination of at least 31 or more LGE Visa debit card or credit card transactions – excluding ATM transactions and credit card cash advances. The Visa debit card transactions only include point of sale transactions that have paid on the account before the end of the month.

**Compounding and crediting:** Dividends will be compounded every month. Dividends will be credited to your account each month.

**Dividend period:** For this account type, the dividend period is monthly. For example, the beginning date of the first dividend period of the calendar year is January 1, and the ending date of such dividend period is January 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example above is February 1.

**Minimum balance requirements:** No minimum balance required.

**Balance computation method:** Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

**Simply Free Checking**

**Rate information:** The dividend rate and annual percentage yield may change at any time.

**Compounding and crediting:** Dividends will be compounded every month. Dividends will be credited to your account every month.

**Dividend period:** For this account type, the dividend period is monthly, for example, the beginning date of the first dividend period of the calendar year is January 1, and the ending date of such dividend period is January 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example above is February 1.

**Minimum balance requirements:** The minimum balance required to open this account is the cost of the first order of checks.

**Balance computation method:** Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

**Fees:** No monthly maintenance charge.

**Checking Agreement:** By signing (or otherwise initiating) an application you hereby authorize LGE Community Credit Union to honor checks signed by any of the undersigned and to charge payments against said account. If this agreement is signed by more than one person, all sums paid in on shares by any or all of said persons shall be owned by them jointly, with right of survivorship. Sums shall be subject to the withdrawal or receipt by any of them and payment to any of them or their survivors shall be valid and shall discharge the credit union from any liability for such payment. No part of the shares in this account may be used as collateral security for a loan. Only check and other methods approved by the credit union may be used to withdraw funds from the checking account. The credit union is under no obligation to pay a check which exceeds the balance in the checking account, however, the credit union may transfer funds in exact dollar transfers and charge said transfer of Member's credit union preauthorized line-of-credit or Member's Share Savings account in accordance with the choice(s) made by the undersigned on the checking application for overdraft protection, provided that there is credit available in said line-of-credit or there are sufficient shares in said Share Savings account. There will be a charge to the checking account for each overdraft protection transfer in accordance to the rate schedules adopted by the credit union from time to time. Unless the Member has overdraft protection, or if the amount of such protection is insufficient, the Member shall be liable to the credit union for any check paid by the credit union that overdraws the Member's checking account. The credit union may debit the Member's Share account(s) (and other checking accounts) in the amount of any such overdraft. The credit union is not obligated to honor a check the date of which is more than six months old. Except for negligence, the credit union is not liable for any action it takes regarding

payment or non-payment of a check. Any objection of an item shown on a periodic statement of the checking account shall be waived unless made in writing to the credit union on or before the 20<sup>th</sup> day following the day that the statement is mailed, except to the extent that may be otherwise provided by law; including but not limited to, member's right to dispute billing errors or to dispute an electronic fund transfer. Any loss, theft, or unauthorized use of the checks shall be reported immediately to the credit union. All non-cash items received in the checking account will be credited subject to final payment. The checking account shall be subject to service charges in accordance with the rate schedules adopted by the credit union. The use of the checking account is subject to such other terms, conditions, and requirements as the credit union may establish from time to time. The right or authority of the credit union under this agreement shall not be changed or terminated by said Members, except by written notice of the credit union, which shall not affect prior transactions. This Agreement may be cancelled at any time by the credit union, upon credit union sending written notice to the member by regular U.S. mail. Such cancellation shall not affect prior transactions, nor shall it prejudice credit union's right to seek restitution or to charge member's line-of-credit for checks paid by the credit union. Member agrees, upon such cancellation, to write no further checks and to return all unused checks to the credit union immediately.

**CHECKS FROM SOURCE OTHER THAN CREDIT UNION APPROVED VENDOR:** The Credit Union approved vendor(s) for check printing is selected based upon their high standards for printing checks. Other companies that provide check printing services may not meet the high standards of our approved vendor(s) or may print terms or limitations that we do not agree to on such checks. Therefore, you acknowledge and agree that we have no responsibility or liability to you whatsoever resulting, arising or relating from/to: non-payment; returns as no account/insufficient funds or otherwise; limitations we do not specifically agree to in writing; or any other processing/payment error with regard to any check that is not printed by our approved vendor(s).

**Custodial Accounts:** Custodial accounts are established in compliance with the "Georgia Transfer to Minors Act" (O.C.G.A. Sec. 44-5-111). Although the account is established under the minor's social security number, the custodian is responsible for administration of the account. The custodian may not use his/her social security number to accrue interest. All interest earned must be reported under the social security number of the minor for tax purposes. The gift to minors act specifically protects Credit Unions who act upon the instructions of a custodian. The act says that a Credit Union acting on the instructions of a custodian: (1) Is not responsible for determining whether the person was duly designated as a custodian or whether any transfer to or by the person as custodian is in accordance with Georgia Law, (2) Is not obliged to inquire into the validity of any instrument or instruction signed or given by the custodian, or (3) Is not bound to see to the application by the custodian of any money paid or delivered to him or her in accordance with Georgia Law. Anyone within our field of membership may establish a custodian account for any minor (under 21). Only one custodian is allowed on each custodial account. No custodial account will be opened without the minor's social security number.

**Custodial and Other Fiduciary Accounts**

The Credit Union may open other accounts pursuant to a court order to facilitate your request for a trust, custodial, probate or other acceptable purposes. We make no representations and give no advice concerning any such accounts and may refuse to open any account or refuse to follow any instruction that may expose us to any expense or liability. Any individual acting as an agent, guardian, personal representative, trustee, custodian or in some other fiduciary capacity must be designated to us as such on the Signature Card, as well as any other documentation we may require. We are authorized to follow the directions of any such agent/fiduciary until we receive written notice that the agency is terminated and have had a reasonable time to act upon the notice. Further, you specifically agree that we are not liable for the misapplication of funds by your agent/fiduciary.

**Courtesy pay:** Courtesy Pay is a discretionary service offered to members in good standing as defined by the credit union. This non-contractual service represents a purely discretionary courtesy or privilege that LGE Community Credit Union may provide to its checking account holders from time to time, and which may be withdrawn or withheld by LGE at any time without prior notice, reason, or cause. Courtesy Pay allows LGE to provide a higher level of service to our accountholders by helping to protect your account and reputation when an inadvertent overdraft occurs. If you receive a direct deposit, social security or other federal benefit check, you must opt-out if you do not want us to apply those funds to repay an overdraft. Courtesy Pay is not a loan and is only intended as short-term coverage for unanticipated, occasional overdraft situations on your checking account. Courtesy Pay is not obligated to pay any item presented for payment if a checking account does not contain sufficient collected funds. With Courtesy Pay, LGE will strive to pay non-sufficient fund items including checks and ACH/Pre-authorized drafts and/or electronic debit transactions presented for payment. With Courtesy Pay, LGE will strive to pay such items based on the member's checking account relationship including but not limited to how long the account has been open, as well as dollar amount and frequency of periodic deposits made to the account consistent with past practices.

LGE Community Credit Union will charge a fee for each check and/or item whether paid or returned as disclosed in the fee schedule. Any and all credit union fees and charges, including, without limitation, nonsufficient funds fees/overdraft fees/Courtesy pay fees (as set forth in the fee schedule) will be included in this limit.

If you would like LGE to strive to pay ATM withdrawals and point of sale debit transactions as a part of this discretionary program, you must opt-in to receive coverage of these transactions.

You are not charged for using Courtesy Pay unless you present an item against insufficient funds. Whether we pay or return an item, your account may be assessed a fee, either as a Courtesy Pay charge or a Non-Sufficient funds charge but you will not be charged both fees. For current charges per item, see our Fee Schedule.

If you choose to have overdraft coverage of ATM withdrawals, we strongly recommend that you first perform a balance inquiry before making an ATM withdrawal. Should you request a withdrawal that will overdraw your account, LGE may honor that request by drawing on your Courtesy Pay limit and/or any other overdraft protection you may have with the credit union. The ATM receipt will show the amount withdrawn. It may not indicate your withdrawal has taken your

account negative or accessed Courtesy Pay and/or other overdraft protection funds, or charged a fee. The total of the discretionary Courtesy Pay (negative) balance, including any and all fees and charges, is due and payable upon demand. You will continue to be liable, jointly and severally, for all such amounts.

It is anticipated that you will make a deposit immediately to cover an overdrawn balance. If your account remains in an overdraft status we may suspend the payment of items drawn off of insufficient funds until your account is once again in good standing. If your account remains in a negative balance for an extended period of time, this may result in a closed account status.

Any discretionary payment (or other negotiation or processing) by LGE of any non-sufficient funds check(s) and/or items does not obligate LGE to pay any additional non-sufficient funds check(s)/item(s) presented.

Using Courtesy Pay may be more costly than other overdraft payment options we may offer. You have the option to opt-out of this service by writing us at 430 Commerce Park Dr., Marietta, GA 30060; or calling us at 770-424-0060; or by opting out of Debit/ATM-only related charges by making the selection after logging into your Online Banking; or by obtaining, completing, and returning the appropriate Overdraft Opt-out Forms as found on our website.

Certain accounts do not qualify for this privilege.

**Share Certificate Disclosure Statement**

**Earnings section:** Dividends will accrue from the date of issue and shall be paid at the rate and frequency stated on your certificate. The annual percentage yield is based on an assumption that dividends will remain in the account until maturity. A withdrawal will reduce earnings. Shares withdrawn before the end of a dividend period may not earn dividends for that entire dividend period. Credit Union By-Laws give the Credit Union the authority to enforce a notice of up to 60 days for withdrawal of share. Certificates opened online and not fully funded will be non-dividend bearing until minimum balance requirement is met.

**Minimum balance requirements:** Refer to Rate Schedule. Minimum balance requirements may differ for promotional offers.

**Balance computation method:** We use the daily balance method to calculate dividends. This method applies a daily periodic rate to the balance in the account each day.

**Compounding frequency:** Dividends will be compounded monthly unless at account opening you arrange for monthly dividend payments.

**Transaction limitations:** After the account is opened, you may not make additions into the account until the maturity date unless allowed by special promotional offer. You may not make withdrawals of principal from the account unless allowed by special promotional offer. Withdrawals from principal may be allowed for IRA Certificate accounts if you have attained the age of 59 ½. A penalty will be charged if you have reached the age of 59 ½ and you withdraw the IRA certificate below the minimum balance or close the certificate. You may not make withdrawals of dividends from your account unless you arrange for monthly dividend payments at account opening.

**Automatic renewal:** Upon expiration of the initial term, the certificate will be automatically renewed for the same term at the dividend rate and conditions in effect at the time of renewal. The share certificate account will automatically renew at each maturity unless (1) withdrawn or transferred within the ten (10) day grace period immediately following the scheduled renewal date or (2) the Credit Union gives written notice within 30 days of maturity that this certificate will not be renewed. During the grace period, if you choose not to auto renew the current certificate, the rate in effect will be the same rate earned on our base savings. Certificate redemption shall be on the assigned maturity date or the next business day if the maturity falls on a Sunday or credit union holiday. Special promotional offers may allow for automatic renewal at a different term than original certificate. Refer to share certificate for chosen renewal option.

**Non-renewal:** If you choose non-renewal of certificate, at maturity, the funds will be distributed to your share account or distributed by check. Certificate rate will not be paid beyond date of maturity. Please review your certificate statement for chosen option. *Exception: Certificates opened online will be automatically renewed.*

**Penalty Section For all Certificates:**

You have agreed to leave the principal of this account on deposit for the full term stated in your Certificate. If all or part of the principal is withdrawn before the maturity date, the Credit Union may charge you a penalty. Unless stated otherwise, owners of accounts with a stated term of 24 months or less shall forfeit an amount equal to up to 180 days dividends on the entire principal amount when any withdrawal is allowed. Unless stated otherwise, owners of accounts with a stated term of more than 24 months shall forfeit an amount equal to up to 540 days dividends on the entire principal amount when any withdrawal is allowed. The penalty may be calculated at the rate paid on the deposit at the time of the withdrawal. The penalty will, if necessary, be taken from the principal amount of the deposit.

**We may choose not to apply penalties in the following circumstances:** (1) Death of any owner of this certificate. (2) Owner of certificate is determined to be incompetent by a court or other body of competent jurisdiction. (3) Where the account is an IRA and the owner attains age 59 ½ or becomes disabled. (4) If account is withdrawn within ten day grace period. (5) After a merger or where federal deposit insurance has been lost.

If this Certificate is payable to joint owners with right of survivorship, such owners agree each with the other and with the Credit Union that the sum represented by this Certificate and all accumulations thereon are and shall be owned by them as joint owners with right of survivorship, and either such owner alone shall have the right and authority to take action affecting this Certificate. Any notice provided for herein shall be good and valid when given by or directed to either of such owners, and payment to or on direction of either of such owners, or the survivor, shall be valid and discharge the Credit Union from liability.

**Bonuses:** LGE Community Credit Union may periodically offer a bonus in conjunction with a deposit account. On the occasion that this offer is made, you will be notified of any minimum balance or time requirements to obtain this bonus.

## Common Features

**National Credit Union Share Insurance Fund:** Member accounts in this credit union are federally insured by the National Credit Union Share Insurance Fund.

**Bylaw requirements:** You must meet our field of membership requirements and complete payment of one share in your Base Savings account as a prerequisite to membership. If the owners of this account withdraw the \$5 share or the balance is drawn below \$5 then credit union membership will cease and the account will be closed.

**LGE Community Credit Union** bylaws give us the authority to impose a notice of up to 60 days for withdrawals of shares.

**Accrual of dividends on non-cash deposits:** Dividends will begin to accrue on the business day you place non-cash items (for example, checks) to your account.

**Transaction limitation:** We reserve the right to at any time require not less than seven days notice in writing before each withdrawal from an interest-bearing account other than a time deposit, or from any other savings account as defined by Regulation D.

**Nature of dividends:** Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

**Additional information:** The credit union board of directors may change some or all of the features and terms and conditions of your account(s) from time to time. Any written notification required by applicable law will be sent to you at the address which you have provided the credit union.

**LGE Community Credit Union**  
430 Commerce Park Drive  
Marietta, Georgia 30060  
[www.LGEccu.org](http://www.LGEccu.org)

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# **EXHIBIT “2”**

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**EX. 2**

### Consent Form for Overdraft Services

#### What You Need to Know about Overdrafts and Overdraft Fees

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

1. We have overdraft protection plans which you elect, such as a transfer from savings and/or your line of credit loan to cover the needed funds.
2. We also offer an standard overdraft practice, known as Courtesy Pay, which will cover insufficient transactions presented on your checking account up to an amount determined by LGE. Courtesy Pay is only accessed after all other elected overdraft options have been depleted.
  - Types of transactions automatically covered by Courtesy Pay:
    - Checks
    - ACH transactions which include bill payment transactions
  - Types of transactions you must Opt In for to be covered by Courtesy Pay:
    - ATM transactions
    - Everyday debit card transactions

We pay either type of overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

3. Fees charged if LGE pays an overdraft:
  - For overdraft protection plans you will be charged a transfer fee of \$5.00 per transfer.
  - For standard overdraft practice - Courtesy Pay, we will charge you a fee of up to **\$30** each time we pay an overdraft.

There is no limit on the total fees we can charge you for overdrawing your account.

If you would like to add the security of ensuring ATM and debit card transactions will be honored, please make your selection below. If you'd like to opt in at a later time you can do so by calling us at 770-424-0060, ext 10311; or log onto Online Banking at [www.LGEccu.org](http://www.LGEccu.org) and opt in electronically; or complete the form below and either present it at a branch, fax it to 770-420-3850, or mail it to LGE Community Credit Union, 430 Commerce Park Drive, Marietta, Georgia 30060.

**Please note** - If not opted in to Courtesy Pay, your ATM or debit card transactions will be returned if presented without sufficient funds.

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I want LGE Community Credit Union to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I do not want LGE Community Credit Union to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Account Number: \_\_\_\_\_