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NO: 16-2-12148-4

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF PIERCE**

9 TODD WODJA, individually, and on behalf
10 of all others similarly situated,

11 Plaintiff,

12 v.

13 WASHINGTON STATE EMPLOYEES
14 CREDIT UNION, and DOES 1-10,

15 Defendants.
16

No.

CLASS ACTION

COMPLAINT FOR:

(1) Breach of Contract;
(2) Breach of the Implied Covenant of
Good Faith and Fair Dealing.

17 Plaintiff Todd Wodja (“Plaintiff”), by his attorneys, hereby brings this class and
18 representative action through this action against Washington State Employees Credit Union
19 (“WSECU” or “Defendant”) and DOES 1-10. All allegations herein are based upon information
20 and belief except those allegations which pertain to Plaintiff or his counsel, which are based on
21 personal knowledge. Plaintiff’s information and belief are based upon, inter alia, Plaintiff’s own
22 investigation and the investigation conducted by Plaintiff’s attorneys. Each allegation either has
23 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
24 further investigation or discovery.

25 **NATURE OF THE ACTION**

26 1. This is a class and representative action brought by Plaintiff to assert claims in his
27 own right and in his capacity as the class representative of all others similarly situated. This class
28 action seeks monetary damages, restitution, punitive damages, and injunctive relief against

COMPLAINT - 1

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1 Defendant WSECU arising from WSECU's breach of its contract with consumers in its
2 implementation of an overdraft fee program for ATM and debit card transactions. Specifically,
3 Plaintiff asserts that WSECU charged overdraft fees for transactions for which there were money
4 in the checking account to cover the transactions, thereby breaching the express and implied terms
5 of its contracts with customers.

6 **PARTIES**

7 2. Plaintiff is a resident of Tacoma, Washington, and was a member of WSECU at all
8 relevant times to the class action allegations.

9 3. Based on belief, Defendant WSECU is a state chartered credit union headquartered
10 in Olympia, Washington, but doing business in Pierce County, Washington.

11 4. Whenever in the complaint reference is made to any act, deed, or conduct of a
12 defendant corporation, the allegation means the defendant corporation engaged in the act, deed, or
13 conduct by or through one or more of its officers, directors, agents, employees, or representatives
14 who was actively engaged in the management, direction, control, or transaction of the defendant
15 corporation's ordinary business and affairs. (Doe Defendants are collectively referred to herein
16 and are included in the term "Defendant.")

17 5. As to the conduct alleged herein each act was authorized ratified or directed by
18 Defendant's officers, directors, or managing agents.

19 **VENUE AND JURISDICTION**

20 6. Pierce County Superior Court has jurisdiction pursuant to the Washington
21 Constitution, Article 4, § 6 and RCW 4.12.020 & RCW 19.86.090.

22 7. Venue is proper pursuant to RCW 4.12.020; RCW 4.28.185(a) & (b); and CR 82.

23 8. The claims of Plaintiff and the Class members are brought under state law causes of
24 action. There does not exist a federal question in this matter.

25 **FACTUAL ALLEGATIONS**

26 **A. WSECU's Unlawful Overdraft Program**

27 9. WSECU is a Washington State-based credit union with approximately \$2.2 billion
28 in assets that provides banking services to over 105,656 members through 19 branches in

1 Washington State. One of the services offered by WSECU to consumer banking customers is a
2 checking account. One of the benefits WSECU offers with a checking account is a debit card that
3 can be used for a variety of transactions including buying goods and services, as well as the ability
4 to write checks, withdraw from ATM machines, schedule ACH (Automated Clearing House
5 transactions) such as certain recurring payments, and other type of transaction items that debit
6 from the checking account. In connection with processing debit items (including debit card, ATM,
7 check, ACH and other types of transactions), WSECU assesses overdraft fees to its customers
8 when it determines that there are insufficient funds in the account.

9 10. Credit Unions, like banks, have increasingly turned to overdraft fees as a highly
10 lucrative profit center. According to the June 11, 2013 report entitled CFPB Study of Overdraft
11 Programs¹, credit unions generated \$7.4 billion in overdraft fees in 2012 (p. 14). That reflects an
12 increase of 15% in overdraft fees from 2007 to 2012. (*Id.* at p. 16). Overdraft and NSF fees now
13 generate over 50% of all fees, and constitute 11.6% of net income for credit unions. (*Id.* at p. 15.)

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

23 12. Unfortunately, the customers who are assessed these fees are the most vulnerable
24 customers. Younger, lower-income, and nonwhite account holders are among those who were
25 more likely to be assessed overdraft fees. (*Id.*, at p. 1.) A 25 year old is 133% more likely to pay
26 an overdraft penalty fee than a 65 year old. (*Id.*, at p. 3.) More than 50% of the customers
27

28

¹ http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf

1 assessed overdraft fees earned under \$40,000 per year. (*Id.*, at p. 4.) Nonwhites are 83% more
2 likely to pay an overdraft fee than whites. (*Id.*, at p. 3.)

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

10 14. Furthermore, the federal government has also stepped in to provide additional
11 protections to customers with respect to abusive overdraft policies. In 2010, the Federal Reserve
12 Board enacted regulation that financial institutions were only permitted to charge overdraft fees on
13 ATM and one-time debit card charges if they obtained the affirmative consent of the customer. 12
14 C.F.R. § 1005.17 (“Regulation E”).

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

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

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

1 16. For all times relevant to this complaint, WSECU has had an overdraft program
2 (sometimes referred to as "Overdraft Privilege") in place for assessing overdraft fees on ATM and
3 Debit Card transactions which is contrary to the express terms of its contracts with members; is
4 contrary to how WSECU represents its overdraft program to its members; and is contrary to what
5 consumers would expect as to when they would be assessed overdraft fees.

6 17. Under WSECU's contracts with its members, WSECU promised that it will only
7 assess an overdraft fee against an account when WSECU pays a transaction that results in a
8 negative balance for that account.

9 18. WSECU entered into a written contract with Plaintiff and its other customers titled
10 "Consumer Account Agreement" (hereinafter referred to as the "Account Agreement"), attached
11 hereto as Exhibit 1. Under the Account Agreement, WSECU is entitled to assess an overdraft fee
12 only if there is an "insufficient account balance", and "[i]f the Credit Union pays a draft that would
13 otherwise overdraw your account."

14 19. WSECU entered into a second agreement with Plaintiff and the class members
15 through the opt-in contract wherein under the section entitled "Overdraft Services Disclosure" and
16 "WHAT YOU NEED TO KNOW ABOUT OVERDRAFTS AND OVERDRAFT FEES",
17 WSECU states "*An overdraft occurs when you do not have enough money in your account to*
18 *cover a transaction.*" (Emphasis added), Overdraft Services Disclosure contract ("Opt-In
19 Contract") attached hereto as Exhibit 2. The Account Agreement and Opt-In Contract are
20 collectively referred to herein as "Customer Agreements."

21 20. WSECU's contractual promise in the Customer Agreements to only assess
22 overdraft fees when there is not enough money in the account to pay the item, was also provided to
23 customers in other disclosures and marketing materials it provided to customers.

24 21. However, contrary to the Customer Agreements, and other marketing materials that
25 WSECU will only charge overdraft fees when there is not enough money in the checking account
26 to cover the transaction, WSECU's practice when assessing an overdraft fee on a transaction is to
27 ignore whether there is money in the account, and instead make the automated decision on
28 assessing overdraft fees based on an artificial internal calculation (available balance) rather than

1 the actual balance. The available balance is the actual balance minus anticipated debits and
2 credits in the future (that may or may not occur). The use of an internal available balance rather
3 than the actual balance to determine whether a transaction is overdrawn and subject to an overdraft
4 fee is directly contrary to the language in the contract. The result is that WSECU improperly
5 charges members overdraft fees in situations when there is sufficient money in the account to pay
6 the items.

7 22. Whether a financial institution uses the ledger-balance method versus the available-
8 balance method is a primary concern for the Consumer Financial Protection Bureau (“Bureau”)
9 due to the substantial harm it causes to customers. The Bureau first concluded that overdraft fee
10 practices are intrinsically damaging to customers after conducting a study of actual practices which
11 demonstrated that: 1) ATM and debit card transactions are by far the most frequent transactions
12 that occur; 2) overdraft fee policies entail expensive fees at very little risk to the financial
13 institutions; and 3) opted-in accounts have seven times as many overdrafts that result in fees as not
14 opted-in accounts.² However, the Bureau also concluded that overdraft fee practices that rely on
15 the available balance substantially enhances the harm to customers. As the Bureau concluded from
16 its studies of actual financial institutions in its Supervisory Highlights, Winter 2015, at p.8³:

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

25 23. When the balance calculation method is not adequately disclosed, the Bureau has
26 found the use of the available-balance method instead of the ledger-balance method a deceptive
27 practice, as it results in “customers being misled” because this information is “material to a
28 reasonable consumer’s decision-making and actions”, and consumers are thereby “substantially
injured”. (*Id.* at p. 9.)

² http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf

1 24. Indeed, the federal court which has already issued an order in this case (prior to this
2 re-filing in state court) denying a motion to dismiss the breach of contract and breach of the
3 covenant of good faith and fair dealing claims, rejecting WSECU’s assertion that its contracts
4 clearly disclose its actual overdraft fee practice. Wodja v. Washington State Employees Credit
5 Union, No. C15-5693 BHS, 2016 WL 3218832 (W.D. Wash. June 9, 2016) (“this is a classic
6 breach of contract allegation.”).

7 25. Therefore, this practice is in breach of WSECU’s Customer Agreements. Further,
8 the practice of charging overdraft fees even when there are sufficient money/funds to cover the
9 transaction, is inconsistent with how WSECU describes the circumstances of when it assesses
10 overdraft fees in other customer materials. Further, WSECU has failed to adequately and properly
11 inform customers of the conditions under which overdraft fees will be assessed in other consumer
12 materials.

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

15 27. Meanwhile, Plaintiff and the Class members could not have anticipated the harm
16 resulting from Defendant’s practice throughout the class periods. The ledger balance is the official
17 balance of the account. It is the balance provided to the customer in monthly statements, which is
18 the official record of activity in the account. It is the balance used to determine interest on deposits
19 and any minimum balance requirements.

20 28. Further, based on information and belief, the ledger balance is the balance used by
21 WSECU to report its deposits to regulators, shareholders and the public. It is the deposit balance
22 provided to regulators in call reports and reserve reports. It is the balance used in financial reports
23 to shareholders and the balance used for internal financial reporting. It is the balance used by
24 credit reporting agencies in providing credit ratings of WSECU.

25 29. Therefore, Plaintiff, on behalf of herself and all others similarly situated, seeks
26 relief as set forth below.
27
28

³ http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf

1 **B. Unlawful Overdraft Fees Assessed to Plaintiff Todd Wodja**

2 30. Plaintiff was harmed by the practice of charging overdraft fees when there was
3 money in the account to cover the transaction. Plaintiff entered into the Customer Agreements
4 with WSECU, where WSECU would only charge overdraft fees on ATM and Debit Card
5 transactions if there was not sufficient funds or money to pay the transaction. WSECU breached
6 these agreements by charging Plaintiff overdraft fees on transactions when there was sufficient
7 funds/money to pay the transaction, and in so breaching the Opt-In Contract, violated Regulation
8 E. It will be necessary to obtain Defendant's records to determine each occasion when WSECU
9 engaged in this practice, and the resulting damage to Plaintiff from the practice. However, to give
10 just one example on June 18, 2015, Plaintiff had a beginning balance of \$395. Plaintiff then
11 withdrew \$300 from an ATM, leaving a balance of \$95. Plaintiff was then charged a \$27 overdraft
12 fee (called an Overdraft Privilege Fee) on the ATM transaction. Plaintiff was charged the
13 overdraft fee despite having sufficient funds/money (\$95) in his account to cover the transaction.
14 It is believed a complete review of Plaintiff's records will show multiple instances of Plaintiff
15 being improperly charged overdraft fees for transactions despite having sufficient money in his
16 account to cover the transaction. Furthermore, the assessment and unilateral taking of improper
17 overdraft fees, further reduces the balance and amount of funds in the account, resulting in
18 aggressively causing subsequent, otherwise non-overdraft transactions into transactions for which
19 further overdraft fees are assessed. This practice was deemed to be deceptive and substantially
20 harmful to customers by the Consumer Finance Protection Bureau, which made the following
21 conclusions in its studies:

22
23 Examiners also observed at one or more institutions the following sequence
24 of events after the institutions switched balance-calculation methods: a
25 financial institution authorized an electronic transaction, which reduced a
26 customer's available balance but did not result in an overdraft at the time of
27 authorization; settlement of a subsequent unrelated transaction that further
28 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

1 unfairly when they charged fees in the manner described above. Consumers
2 likely had no reason to anticipate this practice, which was not appropriately
3 disclosed. They therefore could not reasonably avoid incurring the overdraft
4 fees charged. Consistent with the deception findings summarized above,
5 examiners found that the failure to properly disclose the practice of charging
6 overdraft fees in these circumstances was deceptive.

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

9 31. Therefore, Plaintiff on behalf of himself and all others similarly situated, seeks
10 relief as set forth below.

11 **CLASS ACTION ALLEGATIONS**

12 32. Plaintiff brings this case, and each of his respective causes of action, as a class
13 action pursuant to Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of the following
14 classes.

15 33. The "Class" is composed of.

16 **All United States residents who have or have had accounts with WSECU who
17 incurred overdraft fees for debit transactions when there was money in the
18 checking account to pay the transactions since September 28, 2009.**

19 34. Excluded from the above Class is any entity in which Defendant has a controlling
20 interest, and officers or director of Defendant, this Court and any employees assigned to work on
21 the case, and all employees of the law firms representing Plaintiff and the Class.

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

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

27 36. **Numerosity of the Class (Rule of Civil Procedure 23(a)(1))** – The members of
28 the Class are so numerous that a joinder of all members would be impracticable. Defendant is the
second largest credit union in the state of Washington with about 200,000 members. While the
exact number of the members of the Class is unknown to Plaintiff at this time and can be

1 determined only by appropriate discovery, Plaintiff believes that the Class is likely to include
2 thousands of members.

3 37. Upon information and belief, Defendant retains the databases, or other
4 documentation, of transactions and account enrollment which will be analyzed by an expert to
5 ascertain all members of the Class who have been harmed by the practice. Further, the Class
6 definition identifies groups of unnamed plaintiffs by describing a set of common characteristics
7 sufficient to allow a member of that group to identify himself or herself as having a right to
8 recover based on the description. Other than by direct notice by mail and email, alternatively
9 proper and sufficient notice of this action may be provided to the Class members through notice
10 published in newspapers or other publications.

11 38. **Commonality and Predominance (Rule of Civil Procedure 23(a)(2)** – The action
12 involves common questions of law and fact. Those common questions of law or fact predominate
13 over questions that may affect only individual Class members. The questions of law and fact
14 common to Plaintiff and the Class members include, among others, the following:

- 15 a. Whether Defendant had a standardized Opt-In Contract during the class period
16 that were provided to customers; and
17 b. Whether Defendant breached this customer agreement by use of an automated
18 system of assessing overdraft fees for ATM and debit card transactions when
19 customers' checking accounts had sufficient funds/money to cover the
20 transactions.

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

26 40. **Adequacy (Rule of Civil Procedure 23(a)(4))** – Plaintiff will fairly and adequately
27 protect the interests of the Class members. Plaintiff has retained competent counsel experienced in
28 class action litigation to ensure such protection. There are no material conflicts between the claims

1 of the representative Plaintiff and the members of the Class that would make class certification
2 inappropriate. Plaintiff and his counsel intend to prosecute this action vigorously.

3 41. **Superiority (Rule of Civil Procedure 23(b)(3))** – The class action is superior to all
4 other available methods for the fair and efficient adjudication of this case or controversy. Because
5 the injury suffered by the individual Class members may be relatively small, the expense and
6 burden of individual litigation make it virtually impossible for Plaintiff and Class members
7 individually to seek redress for the alleged wrongful conduct. Even if any individual persons or
8 group(s) of Class members could afford individual litigation, it would be unduly burdensome to
9 the courts in which the individual litigation(s) would proceed. The class action device is
10 preferable to individual litigation(s) because it provides the benefits of unitary adjudication,
11 economies of scale, and comprehensive adjudication by a single court. In contrast, the prosecution
12 of separate actions by individual Class members would create a risk of inconsistent or varying
13 adjudications with respect to individual Class members that would establish incompatible
14 standards of conduct for the party (or parties) opposing the Class and would lead to repetitious
15 trials of the numerous common questions of fact and law. Plaintiff knows of no difficulty that will
16 be encountered in the management of this litigation that would preclude its maintenance as a class
17 action. As a result, a class action is superior to other available methods for the fair and efficient
18 adjudication of this controversy. Absent a class action, Plaintiff and the Class members will
19 continue to suffer losses, thereby allowing these violations of law to proceed without remedy and
20 allowing Defendant to retain the proceeds of their ill-gotten gains.

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

26 43. This action is properly maintained as a Class Action pursuant to Rule 23(b) of the
27 Rules of Civil Procedure, in that:

28 a. Without class certification and determination of declaratory, injunctive,

1 statutory and other legal questions within the class format, prosecution of separate actions by
2 individual members of the Class will create the risk of:

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

6 ii. Adjudication with respect to individual members of the Class which
7 would as a practical matter be dispositive of the interests of the other members not parties to the
8 adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

20 iii. The desirability or undesirability of concentrating the litigation of
21 the claims in the particular forum;

22 iv. The difficulties likely to be encountered in the management of a
23 Class Action.

24 **FIRST CAUSE OF ACTION**

25 **(For Breach of Contract)**

26 44. The preceding allegation are incorporated by reference and realleged as if fully set
27 forth herein.

28 45. Plaintiff and each of the Class members entered into the Customer Agreements

1 which was drafted by and is binding on Defendant.

2 46. The contracts authorize Defendant to assess overdraft fees only for ATM and non-
3 recurring debit card transactions for which there was not enough money in the account to pay the
4 item.

5 47. The contracts incorporated by reference all applicable laws regarding their subject
6 matter, including 12 C.F.R. § 1005.17, which mandates that all opt-in agreements for assessing
7 overdraft fees for ATM and non-recurring debit card transactions be separate from the account
8 agreement and accurately describe the overdraft fee practice, and bars financial institutions from
9 assessing fees for non-recurring debit card and ATM transactions if they have not fully complied
10 with that section's requirements.

11 48. Plaintiff and the Class members have performed all conditions, covenants, and
12 promises required by each of them on their part to be performed in accordance with the terms and
13 conditions of the contract, except for those they were prevented from performing or which were
14 waived or excused by Defendant's misconduct.

15 49. Defendant breached the expressed terms of the contracts by, inter alia, assessing
16 overdraft fees on debit transactions when there was enough money in the account to pay the item.

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

20 **SECOND CAUSE OF ACTION**

21 51. **(For Breach of the Implied Covenant of Good Faith and Fair Dealing)**The
22 preceding allegation are incorporated by reference and realleged as if fully set forth herein.

23 52. Plaintiff and each of the Class members entered into the Customer Agreements
24 which was drafted by and is binding on Defendant.

25 53. The contracts authorize Defendant to assess overdraft fees only for ATM and non-
26 recurring debit card transactions for which there was not enough money in the account to pay the
27 item.

28 54. The contracts incorporated by reference all applicable laws regarding their subject

1 matter, including 12 C.F.R. § 1005.17, which mandates that all opt-in agreements for assessing
2 overdraft fees for ATM and non-recurring debit card transactions be separate from the account
3 agreement and accurately describe the overdraft fee practice, and bars financial institutions from
4 assessing fees for non-recurring debit card and ATM transactions if they have not fully complied
5 with that section's requirements.

6 55. In addition, good faith is an element of every contract pertaining to the assessment
7 of overdraft fees. Whether by common law or statute, all such contracts impose upon each party a
8 duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing
9 contracts and discharging performance and other duties according to their terms, means preserving
10 the spirit—not merely the letter—of the bargain. Thus, the parties to a contract are mutually
11 obligated to comply with the substance of their contract in addition to its form. Evading the spirit
12 of the bargain and abusing the power to specify terms constitute examples of bad faith in the
13 performance of contracts.

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

19 57. Plaintiff and the Class members have performed all conditions, covenants, and
20 promises required by each of them on their part to be performed in accordance with the terms and
21 conditions of the contract, except for those they were prevented from performing or which were
22 waived or excused by Defendant's misconduct.

23 58. Defendant breached the implied covenant of good faith and fair dealing by, inter
24 alia, assessing overdraft fees on debit transactions when there was enough money in the account to
25 pay the item.

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

1 **PRAYER**

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

- 3 1. For an order certifying this action as a class action;
- 4 2. For compensatory and statutory damages on all applicable claims and in an amount
5 to be proven at trial;
- 6 3. For an order requiring Defendant to disgorge, restore, and return all monies
7 wrongfully obtained together with interest calculated at the maximum legal rate;
- 8 4. For an order enjoining the wrongful conduct alleged herein, including ceasing to
9 charge overdraft fees for transactions for which there was money in the account to cover the
10 transaction, and providing accurate and reliable information regarding the overdraft practice;
- 11 5. For costs;
- 12 6. For interest;
- 13 7. For attorneys' fees under the common fund doctrine, other applicable law, and the
14 customer account agreement.
- 15 8. For such other relief as the Court deems just and proper.

16 DATED this 21st day of October, 2016

FRIEDMAN | RUBIN

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*Attorneys for Plaintiff Todd Wodja and the
Putative Class*

EXHIBIT 1

CONSUMER

Account Agreement

WSECU

WSECU-130 09.13

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II. FUNDS AVAILABILITY POLICY

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This agreement is the contract of deposit which covers yours and our rights and responsibilities concerning membership and account(s) offered to you. In this agreement, the words "you" and "yours" mean those who sign the Account Card or Account Authorization Card ("Account Card"). The words "we," "us," and "our" mean WSECU ("Credit Union"). The word "account" means any one or more share or deposit accounts you have with the Credit Union.

The classification and form of ownership of your accounts are designated on your Account Card. You understand that unless you waive your rights, certain account designations such as joint with right of survivorship or Payable on Death (POD) beneficiary may be invalidated on the Credit Union's receipt of notice of marriage dissolution or a testamentary disposition as required by applicable law. By signing the Account Card that is a part of the agreement, each of you, jointly and severally, agree to the terms and conditions in this agreement, including the Funds Availability Policy, Electronic Funds Transfer Agreement and Check Guarantee Provisions, the Truth-in-Savings Disclosures (Rate and Fee Schedule) accompanying this agreement, any account receipt, the Credit Union's Bylaws and policies and any amendments which collectively govern your membership and accounts. You agree that additional accounts and services you request in the future will be governed by this agreement, as amended from time to time.

Important information about procedures for opening a new account

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account with our Credit Union. We will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

I. MEMBERSHIP AND ACCOUNTS

1. Membership Eligibility. To be eligible for membership in the Credit Union you must be an individual or entity qualifying within the Credit Union's field of membership and must purchase and maintain at least one share (the Membership Share Account) as required by the Credit Union's Bylaws. You authorize us to check your account, credit, and employment history and obtain a credit report from third parties, including credit reporting agencies, to verify your eligibility for the accounts and services you request.

WSECU reserves the right to refuse opening any account where we perceive the account name may be offensive or contain sexually explicit or other inappropriate language or connotations. In addition, if any share or loan name is also perceived in this manner, we will change it to the original account name.

We may obtain a credit report about you from a consumer reporting agency from time to time in order to evaluate or review your eligibility for accounts and services we offer. We retain personal and credit history information about you for future reference.

2. Individual Accounts. An individual account is an account owned by one depositor including any individual, corporation, partnership, trust, or other organization qualified for Credit Union membership. If the account is an individual account, the interest of a deceased individual owner will pass, (subject to applicable law) to the decedent's estate or POD beneficiary, if applicable.

3. Joint Accounts. An account owned by two or more persons is a joint account.

a. Rights of Survivorship. If your account is a joint account, the account is owned as a joint account with rights of survivorship unless otherwise stated on the Account Card. If the account is a joint account without right of survivorship, the interest of a deceased owner will pass to the decedent's estate. If the account is a joint account with right of survivorship, the deceased owner's interest will become the property of the surviving joint account owner(s). A surviving owner's interest is subject to the Credit Union's statutory lien for the deceased owner's obligations and to any security interest or pledge granted by a deceased owner, even if a surviving owner did not consent.

b. Rights of Joint Account Owners. Any joint account owner is authorized and deemed to act for the other owner(s) and the Credit Union may accept orders and instructions regarding the account and requests for future services from any other account owner. Each account owner guarantees the signature of the other owner(s). Any account owner may withdraw all funds in the account, stop payment on items drawn on an account, withdraw or pledge all or any part of the shares of any account (except funds representing a membership share) without the consent of the other account owner(s), and the Credit Union shall have no duty to notify any other joint account owner(s). If the Credit Union receives written notice of a dispute between account owners or receives inconsistent instructions from them, the Credit Union may suspend or terminate the account, require a court order to act, or require that all joint account owners agree in writing to any transaction concerning the account.

c. Joint Account Owner Liability. If any item deposited in a joint account is returned unpaid or an account is overdrawn, or if we do not receive final payment on any transaction, each of the multiple account owners is jointly and severally liable to the Credit Union for the amount of the returned item, overdraft, or unpaid amount and any charges, regardless of who created the overdraft, deposited or cashed the item, or benefited from the transaction. If any account owner is indebted to the Credit Union, the Credit Union may enforce its rights against any or all funds in the joint account regardless of who contributed the funds to the joint account.

4. POD/Trust Beneficiaries. A Payable on Death (POD) designation or Trust Account designation is an instruction to the Credit Union that a designated account is an account payable to the owner or owners during their lifetimes, and upon the death of the last joint account owner, payable to any named and surviving POD or trust beneficiary designated on his or her Account Card. Accounts payable to more than one beneficiary are owned jointly by such beneficiaries with right of survivorship. Any beneficiary designation shall not apply to Individual Retirement Accounts (IRAs) which shall be governed by a separate beneficiary designation. The Credit Union shall at no time have any obligation to notify any beneficiary of the existence of any account or the vesting of the beneficiary's interest in any account, except as otherwise provided by law.

5. Accounts for Minors. For any account except savings accounts established by or for a minor, the minor account owner must have a joint account owner or custodian who is at least eighteen (18) years of age who shall be jointly and severally liable to the Credit Union for any returned item, overdraft, or unpaid charges or amounts on such account. For a joint account, all funds in the account shall be owned as a joint account with rights of survivorship unless otherwise indicated on the Account Card. The Credit Union may make payments of funds directly to the minor without regard to his or her age. Unless a parent or guardian is a joint account owner, the parent or guardian shall not have any right to access the account. The Credit Union has no duty to inquire into the use or purpose of any transaction by the minor or joint account owner. The minor account owner's tax identification number must be shown on the Account Card.

6. Uniform Transfer to Minor Accounts. A Uniform Transfer to Minor Account (UTMA) is an individual account established by a custodian on behalf of an eligible minor (a person under twenty-one (21) years of age). The custodian shall open the account in the name of the minor, include the minor's social security number and must sign his or her own name on the Account Card. The custodian is the owner of the account for the exclusive right and benefit of the minor and barring a court order otherwise, is the only party entitled to make deposits to, withdrawals from, or close the account. In the event of the custodian's death, the Credit Union may place an administrative hold on the account until it receives instructions from any person authorized by law to withdraw funds or a court order authorizing such withdrawal. The Credit Union shall not change the account status when the minor reaches age eighteen (18) unless authorized in writing by all account owners.

7. Accounts for Living Trusts. An account of a living trust is an individual account held by one or more trustees of a trust for the benefit of one or more beneficiaries pursuant to a revocable trust agreement. Upon request of the Credit Union, the trustees shall sign an Account Card and provide any other evidence of the trustee's authority the Credit Union requires. The Trustee(s) warrants that a valid living trust has been created, is currently existing, and that the trustor(s), trustee(s) and primary beneficiary are eligible for membership in the Credit Union. The Credit Union does not act as a trustee and is under no obligation to inquire as to the powers or duties of the trustee(s). The trustee(s) agrees to notify the Credit Union in writing if a change of trustee occurs. The Credit Union may withhold payment of funds to any party until proper evidence of authority is provided and may rely upon the directions of any one trustee until a written notice of revocation of the living trust or an Account Change form is received. Funds may be released to any one trustee acting alone or with a co-trustee. The trustee(s) agrees to indemnify and hold the Credit Union harmless of any liability, claim, damage or loss arising as a result of unauthorized acts of any trustee or former trustee or acts of any trustee upon which the Credit Union relies prior to notice of revocation of the trust. This Agreement shall be binding on the trust, any trustee, successor trustee and beneficiaries.

8. Accounts of Businesses and Organizations. Accounts held in the name of a business or association member are subject to the same terms set forth in this agreement and the following additional rules: A majority of the members, officers or those who control the funds of a group, club, association or business must be eligible for membership in WSECU. WSECU does not offer business accounts to any type of money service/transfer business, such as, but not limited to: payday lending, casinos, wire transfer services and/or Quick Cash transfer services. In addition, WSECU does not support business accounts which engage in Internet Gambling activities or are opened with the purpose of supporting medical nursery services. The Credit Union reserves the right to require the member to provide an Account Authorization Card informing the Credit Union who is authorized to act on its behalf. You agree to notify the Credit Union of any change in authority. The Credit Union may rely on the written authorization until such time as the Credit Union is informed of changes in writing and has had a reasonable time to act upon such notice. The Credit Union may require that third-party checks payable to a business may not be cashed, but must be deposited to a business account. The Credit Union shall have no notice of any breach of fiduciary duties arising from a transaction by any agent of the account owner unless the Credit Union has actual notice of wrongdoing.

9. Representative Payee Accounts

a. Account Owner. The account owner named on the Representative Payee Account card is the sole owner of this account. The Representative Payee is authorized by the Social Security Administration to act on behalf of account owner but has no ownership interest in the account.

b. Authority of Representative Payee

I. The Representative Payee listed is the only authorized party to transact on this account. The Representative Payee certifies and agrees that the account owner's accounts and services will be governed by the terms set forth in the Membership and Account Agreement and our Rate and Fee Schedule, as amended from time to time.

II. The Credit Union is directed to accept and pay without further inquiry any item bearing the signature as indicated on the front side of Representative Payee Account Card, drawn against any of the account owner's accounts as indicated on the account card. Unless otherwise indicated, Representative Payee is expressly authorized to endorse all items payable to or owned by the account owner for deposit with or collection by the Credit Union and to execute such other agreements and to perform any other account transaction under the agreement. Representative Payee is authorized to receive account information from the Credit Union, either orally or in writing, and any information related to the account.

III. The authority given to the Representative Payee shall remain in full force

until written notice of revocation is delivered to and received by the Credit Union either by the Social Security Administration or a court appointed representative of the account owner. Any such notice shall not affect any items in process at the time notice is given. The Representative Payee will notify the Credit Union of any change in the account owner's status affecting the deposit relationship between the Account Owner and the Credit Union. The Representative Payee warrants that all actions he or she takes regarding the account will be for the sole benefit of the account owner and that Representative Payee will not conduct any transaction on the account that will personally benefit Representative Payee. The Credit Union may rely upon these representations and shall have no duty to inquire as to the powers and duties of the Representative Payee and shall have no notice of any breach of fiduciary duties by the Representative Payee unless the Credit Union has actual notice of wrongdoing.

c. Account Liability. The account owner agrees that the Credit Union shall not be liable for any losses due to the account owner's failure to notify the Credit Union of any unauthorized acts of Representative Payee or changes to the relationship between the Representative Payee and account owner. The account owner and Representative Payee agree to indemnify and hold Credit Union harmless of any claim or liability as a result of unauthorized acts of Representative Payee upon which Credit Union relies prior to notice of any account change or change of account owner.

10. Deposit Requirements. Funds may be deposited to any account in any manner approved by the Credit Union in accordance with the requirements set forth on the Rate and Fee Schedule. All accounts are non-assignable and non-negotiable to third parties. Certificate accounts are governed by the terms of this agreement and the terms and disclosures on your Certificate Rate and Fee schedule, which is incorporated herein by this reference.

a. Endorsements. You authorize the Credit Union, in its discretion, to accept transfers, checks, drafts and other items for deposit into any of your accounts, whether or not they are endorsed by all payees. You authorize the Credit Union to supply missing endorsements if the Credit Union chooses to supply such endorsements. The Credit Union reserves the right to verify all endorsements on third-party checks presented for deposit either in person or by comparison with member signature files. If insurance, government, and certain other checks or drafts require an endorsement as set forth on the back of the check, the Credit Union may require said endorsement. Endorsements must be placed in the space on the back of the check between the top edge and 1½ inches from the top edge. The Credit Union may accept drafts or checks with endorsements outside this space. However, if any such endorsement or other markings you or any prior endorser make on the check cause any delay or error in processing the item for payment, you will be responsible for any loss incurred by the Credit Union due to the delay or error.

b. Collection of Items. The Credit Union shall not be responsible for deposits made by mail or at an unstaffed facility until the Credit Union actually receives them. In handling items for deposit or collection, the Credit Union only acts as your agent and assumes no responsibility beyond the exercise of ordinary care. The Credit Union will not be liable for default or negligence of any correspondent or loss in transit and each correspondent will only be liable for his or her own negligence. The Credit Union reserves the right to send any item for collection.

c. Final Payment. All items or automated clearing house (ACH) transfers credited to your account are provisional and subject to our receipt of final payment. If final payment is not received, we reserve the right to charge your account for the amount of those items or ACH transfers and impose a return charge on your account. After we have received final payment, we refer to these deposits as collected items. If the Credit Union incurs any fee to collect any item, the Credit Union may charge such fee to your account. The Credit Union reserves the right to refuse or to return all or any item or funds transfer. The Credit Union shall have the right to charge back against your account all previously deposited items or other items endorsed by you that are returned to the Credit

Union unpaid regardless of whether the amount of the item has been available for your use.

d. Direct Deposits. The Credit Union may offer direct deposit options allowing you to pre-authorize deposits (e.g., payroll checks, Social Security or retirement checks, or other government checks) or pre-authorize transfers from other accounts at the Credit Union. You must authorize any direct deposits to your accounts with a separate authorization form. If applicable, you must notify the Credit Union at least thirty (30) days prior to any direct deposit or pre-authorized transfer if you wish to cancel or change the direct deposit or direct transfer option. Upon a filing of bankruptcy, if you fail to cancel any direct deposit authorization, you instruct your employer and the Credit Union to make and apply direct deposits in accordance with your authorization on file with the Credit Union. If the Credit Union is required to reimburse the U.S. government for any benefit payment directly deposited into your account for any reason, you agree the Credit Union may deduct the amount returned from any of your accounts, unless prohibited by law.

e. Crediting of Deposits. Deposits made on Saturdays, Sundays and Credit Union holidays will be credited to your account on the next business day. Ask for our current deposit cutoff time. Deposits received at unstaffed facilities such as night depositories will be credited on the day funds are removed and processed by the Credit Union. Items drawn from an institution located outside the United States are handled on a collection basis only. Deposits will be credited to your account when we receive final payment. You waive any notice of non-payment, dishonor, or protest regarding any items purchased or received by the Credit Union for credit to your account or for collection.

11. Account Access

a. Authorized Signature. In order to access any account, the Credit Union must have an authorized signature of yours on an Account Card. The Credit Union is authorized to recognize your signature, but will not be liable for refusing to honor any item or instruction of yours if it believes in good faith that the signature on such item or instruction is not genuine. If you have authorized the use of a facsimile signature, the Credit Union may honor any draft that appears to bear your facsimile signature even if it was made by an unauthorized person. If you give your account number to a third person, you authorize us to honor transactions initiated by the third person even if you did not specifically authorize a particular transaction, and you are liable for any subsequent transactions which may be processed by the third person.

b. Access Options. You may make withdrawals or transfers from your account in any manner which is permitted by the Credit Union (e.g., check, automated teller machines (ATMs), debit card, in person, by mail, automatic transfer, on line, or telephone). If the Credit Union accepts any draft that is not drawn on a form provided by the Credit Union, you will be responsible for any loss incurred by the Credit Union for handling the draft. The Credit Union may return as unpaid any check that is not drawn in the form provided by the Credit Union.

c. ACH and Wire Transfers. If offered, you may initiate or receive credits or debits to your account via wire transfer or ACH transfer. You agree that if you receive funds by wire or ACH transfer, the Credit Union is not required to notify you at the time the funds are received. Instead, the transfer will be shown on your periodic statement. The Credit Union may provisionally credit your account for an ACH transfer before it receives final settlement for the transfer. You agree that if the Credit Union does not receive final settlement for a transfer, it may reverse the provisional credit to your account, or you will refund the amount to the Credit Union. When you initiate a wire transfer, you must identify the recipient and any financial institution by name and by account or identifying number. The Credit Union and other institutions may rely on the account or other identifying number you give as the proper identification number, even if it identifies a different party or institution. Wire transfers are governed by Federal Reserve Regulation J if the transfer is cleared through the Federal Reserve. ACH transactions are governed by the rules of the National Automated Clearing House Association.

d. Credit Union Examination. The Credit Union may disregard information on any check other than the signature of the drawer, amount of the item, and any magnetic encoded information. You agree the Credit Union does not fail to exercise ordinary care in paying an item solely because its procedures do not provide for sight examination of items.

e. Electronic Check Transactions

(1) **Electronic Checks.** If you authorize a merchant to electronically debit your checking account using the routing, account and serial number of your check to initiate the transfer, whether the check is blank, partially or fully completed and signed, such authorization is an electronic check conversion. An electronic check conversion is an electronic funds transfer (EFT) subject to the terms of section III, Electronic Funds Transfer Agreement. You authorize us to honor any electronic check conversion from your checking account just the same as a regular written check.

(2) **Electronic Re-presented Checks.** If you write a check on a personal account that we return unpaid because of insufficient or uncollected funds, payee or any subsequent holder of the check may re-present the check to us, through an electronic instruction (Electronic Re-presented Check) to charge your account for the amount of the check. If we receive an electronic re-presented check, we will pay or return the electronic re-presented check as if the original paper check was presented to us. Any collection fee you authorize the merchant to debit from your account is an electronic funds transfer subject to the terms of Section III, Electronic Funds Transfer Agreement. If you want to reverse an electronic re-presented check, you must give us an affidavit within fifteen (15) days after we send or make available to you the periodic statement that reflects payment of that electronic re-presented check. In your affidavit, you must declare and swear under oath that the electronic re-presented check was ineligible or unauthorized. If we receive a proper notice or affidavit from you within the 15-day period, we will re-credit your account with the amount of the charge. If you wish to stop payment of any electronic re-presented check, you must follow the procedures contained in this Agreement for stopping payment of checks, not the procedures for stopping payment on electronic loan or bill payments. If you ask us to request the depositor's bank to send us the original paper check or a copy of the paper check and we provide it to you, you agree that you will not seek to have your account re-credited due to a prior stop payment order or if the item is otherwise ineligible for collection.

f. Shared Branching Access. Once you have been a member of WSECU for thirty (30) days you will be eligible to conduct your Credit Union transactions at shared branch facilities within the FSCC Shared Branch network. Please ask us for a list of the participating shared branch facilities.

12. Account Rates and Fees. The Credit Union's payment of dividends on any account is subject to the account rates and fees, earnings, payment and balance requirements as set forth on the Rate and Fee Schedule and each Certificate receipt, which are incorporated herein by this reference. You agree the Credit Union may impose fees and charges for the deposit account services provided by the Credit Union. A current Rate and Fee Schedule has been provided to you separately. You agree the Credit Union may change the Rate and Fee Schedule from time to time and you will be notified of such changes as required by law.

13. Transaction Limitations.

a. Withdrawal Restrictions. The Credit Union will permit a withdrawal only if you have sufficient available funds in your account to cover the full amount of the withdrawal or have an established overdraft protection plan. Drafts or other transfer or payment orders which are drawn against insufficient available funds will be subject to a service charge, as set forth in the Rate and Fee Schedule. If there are sufficient available funds to cover some but not all of your withdrawal orders, the Credit Union may allow those withdrawals for which there are sufficient available funds in any order at the Credit Union's discretion. The Credit Union may also refuse to allow a withdrawal in other cases; for example, any dispute between the owners about the account

(unless a court has ordered the Credit Union to allow the withdrawal); a legal garnishment or attachment is served; the account secures an obligation to the Credit Union; any required documentation has not been presented; or failure to repay a Credit Union loan on time. You will be advised of the reasons for refusal if such action is taken. The Credit Union reserves the right to require members to give notice in writing of any intended withdrawals from any share account of up to 90 days and any other deposit account (except checking accounts) of up to 60 days, as required by law, before such withdrawal.

b. Transfer Limitations. For savings accounts, you may make up to six (6) pre-authorized, automatic, telephone, online banking, or audio response transfers to another account of yours or to a third-party during any calendar month. A pre-authorized transfer includes any arrangement with the Credit Union to pay a third-party from the member's account upon oral or written orders including orders received through an ACH. It also includes purchase transactions processed with a debit card. There is no limit on the number of transactions you may make in the following manner: (i) transfers to any loan account with the Credit Union; (ii) transfers initiated in person, by mail, with signature or at an ATM. If a transfer request would exceed the transfer limitations set forth above in any statement period, the Credit Union may refuse or reverse the transfer, and your account will be subject to suspension or closure by the Credit Union and the Credit Union may impose a charge.

14. Overdrafts

a. Overdraft Liability. If on any day, the available funds in your checking account are not sufficient to cover checks and other items posted to your account, those checks and items will be handled in accordance with our overdraft procedures or an overdraft protection plan you have with us. The Credit Union has no duty to notify you of an insufficient funds check. The Credit Union's determination of an insufficient account balance may be made at anytime between presentation and the Credit Union's midnight deadline with only one review of the account required. Your account will then be subject to a charge for the item whether paid or returned as set forth in the Rate and Fee Schedule. Except as otherwise agreed in writing, the Credit Union, by covering one or any overdraft, does not agree to cover overdrafts in the future and may discontinue covering overdrafts at any time. If the Credit Union pays a draft that would otherwise overdraw your account, you agree to pay the overdraft amount immediately. We reserve the right to pursue collection of previously dishonored items at any time, including giving a payor bank extra time beyond any midnight deadline limits.

b. Overdraft Protection Plan. Unless you notify us, we will provide an overdraft protection plan for you. We will honor drafts drawn on insufficient funds in any checking account by transferring the necessary funds from a deposit account, credit card loan or other loan account of yours, if applicable, to your share draft account. Unless otherwise directed, we will transfer funds to your overdrawn account, first from your loan account, then from your credit card account and then from your share 01 savings account, as applicable. Overdraft transfers will be in increments of \$100.00 to cover the overdraft when transferred from a savings account. Overdraft transfers will be in increments of \$25.00 from a loan or credit card account. The fee for overdraft transfers is set forth in the Rate and Fee Schedule. Transfers from a deposit account will be governed by this Agreement. Transfers from a credit card loan or other loan account will be governed by the applicable loan agreement.

c. Discretionary Overdraft Privilege Service. If you satisfy the eligibility requirements set forth in our Discretionary Overdraft Privilege Policy, we will provide our discretionary overdraft privilege service for your checking account transactions. Our discretionary overdraft privilege service is added to your new checking account after 30 days if you meet the eligibility requirements and automatically includes authorization and payment of overdrafts for checks and other transactions made using your checking account number, as well as automatic bill payments. In addition, you have the option to choose to have us pay ATM and every day Debit Card transactions. This option requires you to

affirmatively opt-in to the payment of these items. If you do not affirmatively opt-in, these items will not be authorized at the time of the transaction if there are not sufficient funds in your account to cover them. By utilizing our Discretionary Overdraft Privilege service, we will pay items that would overdraw your account up to your established overdraft privilege limit. (If you have an established overdraft protection plan, the overdraft privilege service will only apply after all available funds in the overdraft protection service(s) have been exhausted.) Your account will be assessed the Credit Union's usual non-sufficient funds fee for each item paid. WSECU may impose additional eligibility requirements at any time, and may terminate the service in its sole discretion even if you continue to satisfy the minimum eligibility requirements. The Credit Union will notify you at the time of termination if it terminates the service. If you have opted in to the payment of ATM and everyday debit card transactions, you have the right to revoke your consent at any time. If at any time you wish to change your overdraft choice, please contact the Credit Union.

15. Post-dated and Stale-dated Items. You authorize us to accept and pay any check, even if the check is presented for payment before its date, unless you notify the Credit Union of the post-dating. Your notice will be effective only if the Credit Union receives the notice in time for the Credit Union to notify its employees and reasonably act upon the notice and you accurately describe the check, including the number, date and amount. You understand that the exact information is necessary for the Credit Union's computer to identify the check. If you give the Credit Union an incorrect, incomplete or untimely notice, the Credit Union will not be responsible for paying the item before the date stated and the Credit Union may charge your account as of the date the Credit Union pays the item. You may make an oral notice which will lapse within fourteen (14) days unless continued in writing within that time. A written notice will be effective for six (6) months. A written notice may be renewed in writing from time to time. You also agree not to deposit checks, drafts or other items before they are properly payable. The Credit Union is under no obligation to you to pay a check or draft drawn on your account which is presented more than six (6) months after its date.

16. Stop Payment Orders

a. Stop Payment Request. You may ask the Credit Union to stop payment on any personal check drawn upon your checking account. You may request a stop payment by telephone, by mail or in person. The stop payment will be effective if the Credit Union receives the order in time for the Credit Union to act upon the order and you state the number of the account, date and number of the check and its exact amount. If you give the Credit Union incorrect or incomplete information, the Credit Union will not be responsible for failing to stop payment on the item. If the stop payment order is not received in time for the Credit Union to act upon the order, the Credit Union will not be liable to you or to any other party for payment of the item. If we re-credit your account after paying a check over a valid and timely stop payment order, you agree to sign a statement describing the dispute with the payee, to transfer all of your rights against the payee or other holders of the check to the Credit Union and to assist the Credit Union in legal action taken against the person.

b. Duration of Order. You may make an oral stop payment order which will lapse within fourteen (14) calendar days unless continued in writing within that time. A written stop payment order will be effective for six (6) months. A written stop payment order may be renewed in writing from time to time. The Credit Union is not obligated to notify you when a stop payment order expires. You may be charged a fee for each stop payment request.

c. Liability. The Credit Union may charge a fee for each stop payment order requested as set forth in the Rate and Fee Schedule. You may not stop payment on any certified check or draft, cashier's check or teller's check or any other check, draft, or payment guaranteed by the Credit Union. You should be aware that while payment of the item may be stopped, you may remain liable to any person, including the Credit Union, who is a holder of the item despite the stop payment order. You agree to indemnify and hold the Credit Union harmless

from all costs, including attorney fees, damages or claims related to the Credit Union's action in refusing payment of an item, including claims of any multiple party account owner, payee or endorsee in failing to stop payment of an item as a result of incorrect information provided by you.

17. Lost Items. The Credit Union, in receiving items from you for withdrawal or deposit, acts only as your agent and reserves the right to reverse the credit for any deposited items or to charge your account for the items should they become lost in the collection process.

18. Credit Union's Liability for Errors. If the Credit Union does not properly complete a transaction according to this Agreement, the Credit Union will be liable for your losses or damages not to exceed the amount of the transaction, except as otherwise provided by law. The Credit Union will not be liable if: (a) through no fault of the Credit Union, your account does not contain enough money to make the transaction; (b) circumstances beyond the Credit Union's control prevents the transaction; (c) your loss is caused by your negligence or the negligence of another financial institution; or (d) the money in your account is subject to legal process or other claim. The Credit Union will not be liable for consequential damages except liability for wrongful dishonor. The Credit Union's actions will constitute the exercise of ordinary care if such actions or non-actions are consistent with applicable state law, Federal Reserve regulations and operating letters, clearing house rules and general banking practices followed in the area serviced by the Credit Union. You grant the Credit Union the right in making payments of deposited funds to rely exclusively on the form of the account and the terms of this Account Agreement. Any conflict between oral representations by you or Credit Union employees and any written form will be resolved by reference to this Agreement and applicable written form.

19. Credit Union Lien and Security Interest. To the extent you owe the Credit Union money as a borrower, guarantor, endorser or otherwise, the Credit Union has a lien on any or all of the funds in any account in which you have an ownership interest at the Credit Union. The Credit Union may apply these funds in any order to pay off your indebtedness. If the Credit Union chooses not to enforce its lien, the Credit Union does not waive its right to enforce the lien at a later time. In addition, you grant the Credit Union a consensual security interest in your accounts and agree the Credit Union may use the funds from your accounts to pay any debt or amount owed the Credit Union, except obligations secured by your dwelling, unless prohibited by applicable law. All accounts are non-assignable and non-transferable to third parties.

20. Legal Process. If any legal action, such as a levy, garnishment, or attachment is brought against your account, the Credit Union may refuse to pay out any money from your account until the dispute is resolved. If the Credit Union incurs any expenses or attorney fees in responding to legal process, such expenses may be charged against your account without prior notice to you, unless prohibited by law. Any legal process against your account is subject to the Credit Union's lien and security interest.

21. Account Information. Upon your request, the Credit Union will inform you of the name and address of each credit reporting agency from which the Credit Union obtains a credit report in connection with your account. The Credit Union agrees not to disclose information to third parties about your account regarding any transaction or balances except when: (1) it is necessary to complete the transaction; (2) the third party seeks to verify the existence or condition of your account in accordance with the Fair Credit Reporting Act or other applicable laws and regulations; (3) such disclosure is in compliance with the law, government agencies, or court orders; or (4) you give us your written permission.

22. Notices

a. Name or Address Changes. It is your responsibility to notify the Credit Union upon a change of address or change of name. The Credit Union is required to attempt to communicate with you only at the most recent address you have provided to the Credit Union. The Credit Union may accept oral notices of a

change in address and may require any other notice from you to the Credit Union be provided in writing to a branch manager or officer of the Credit Union. If the Credit Union attempts to locate you, the Credit Union may impose a service fee as set forth in the Rate and Fee Schedule.

b. Notice of Amendments. Except as otherwise prohibited by applicable law, the terms of this Agreement are subject to change at any time. The Credit Union will notify you of any changes in account terms, rates or fees as required by law. Changes in account ownership such as adding or removing a joint account owner must be evidenced by a new Account Card signed by all owners which upon execution will be incorporated herein by this reference. The Credit Union reserves the right to waive any term in this Agreement. Any such waiver shall not affect the Credit Union's right to enforce any right in the future. If you have elected to receive electronic communications from us, we will notify you electronically as permitted by applicable law.

c. Effect of Notice. Any written notice you give to the Credit Union is effective when it is actually received by the Credit Union. Any written notice the Credit Union gives to you is effective when it is deposited in the U.S. mail, postage pre-paid and addressed to you at your statement mailing address. Notice to any one account owner is considered notice to all owners of the account. You may use e-mail at wsecu.org to send messages to us. E-mail may not, however, be used to initiate transactions on your account. The Credit Union may not immediately receive e-mail communications that you send, and the Credit Union will not take action based on e-mail requests until the Credit Union actually receives your message and has a reasonable opportunity to act.

d. Notice of Negative Information. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

23. Taxpayer Identification Numbers (TIN)/Employer Identification Numbers (EIN) and Backup Withholding. WSECU requires a TIN or EIN to open your account. If your account is or becomes subject to backup withholding, the Credit Union is required by law to withhold and pay to the Internal Revenue Service (IRS) a required percentage of payments of interest, dividends and certain other payments under certain conditions. Your failure to furnish a correct TIN or meet other applicable requirements may result in backup withholding as well as civil or criminal penalties. If you refuse to provide your TIN or EIN, the Credit Union may suspend all dividends paid to your account or refuse the opening of your account.

24. Statements

a. Contents. You will receive a periodic statement of all transactions and activity on your account during the statement period. If a periodic statement is provided, you agree that only one statement is necessary for a multiple party account. For checking accounts, you understand that when paid, your original check becomes property of the Credit Union and may not be returned to you. Copies will be retained by the Credit Union or a payable through financial institution and made available upon your request. You understand statements and checks are made available to you on the date the statement is mailed to you.

b. Electronic Statements (e-statements). If your statement is provided electronically, statements will be: (1) electronically mailed to you as an attachment; or (2) you will be sent a notice via e-mail that will direct you to a site we maintain or cause to be maintained where you may access, review, print and otherwise copy/download your periodic statements using procedures we authorize. E-mails from us will be sent to the e-mail address provided by the account owner.

c. Examination. You are responsible for examining each statement and reporting any irregularities to the Credit Union. The Credit Union will not be responsible for any forged, altered or unauthorized item drawn on your account if: (1) you fail to notify the Credit Union within thirty (30) days of the mailing date of the earliest statement and availability of checks containing any forgery, alteration, or unauthorized signature on the item; or (2) if any items are forged or altered in a manner not detectable by a reasonable person including the unauthorized use of a facsimile signature machine.

d. Notice to Credit Union. You agree that the Credit Union's retention of drafts does not alter or waive your responsibility to examine your statements and draft copies or the time limit for notifying the Credit Union of any errors. The statement will be considered correct for all purposes and the Credit Union will not be liable for any payment made or charge to your account unless you notify the Credit Union in writing within the above time limit after the statement and checks are made available to you.

25. Inactive and Abandoned Accounts. If you have an account and have not made a withdrawal from, deposit to, or transfer involving your account for more than one (1) year and the Credit Union has been unable to contact you by regular mail during that period, the Credit Union may classify your account as an inactive account and may charge an inactive account service fee as allowed by applicable law as set forth in the Rate and Fee Schedule. Thereafter, dividends will be paid on the account unless the balance falls below any minimum balance requirement. Accounts will continue to incur any applicable monthly maintenance fee until closed by the member. You authorize us to transfer funds from an available account of yours to cover the monthly maintenance fee, if necessary. The Credit Union will notify you at your last known address prior to imposing any fee as required by law. If a deposit or withdrawal has not been made on the account and the Credit Union has had no other contact with you for three (3) years as required by the Uniform Unclaimed Property Act, the account will be presumed to be abandoned. Funds in abandoned accounts will be remitted in accordance with state law. Once funds have been turned over to the state, the Credit Union has no further liability to you for such funds and if you choose to reclaim such funds, you must apply to the appropriate state agency.

26. Death of Account Owner. The Credit Union may require the survivor or other claimant to the account to produce certain documents before releasing the funds in the account. The Credit Union may continue to honor all transfers, withdrawals, deposits and other transactions on the account until the Credit Union learns of an account owner's death. Once the Credit Union learns of a member's death, the Credit Union may pay checks or honor other payments or transfer orders authorized by the deceased member for a period of ten (10) days unless the Credit Union receives instructions from any person claiming an interest in the account. The Credit Union can require that anyone who claims funds in your account after your death to indemnify the Credit Union for any losses resulting from honoring that claim.

27. Account Restrictions. The Credit Union may restrict services on your account at any time without notice to you if such restrictions are in the best interest of the Credit Union or to protect you from loss.

28. Termination of Account. The Credit Union may terminate your account at any time without notice to you or may require you to close your account and apply for a new account if: (1) there is a change in owners or authorized signers; (2) there has been a forgery or fraud reported or committed involving your account; (3) there is a dispute as to the ownership of the funds in the account; (4) any account checks are lost or stolen; (5) if there are excessive returned unpaid items not covered by an overdraft protection plan; (6) if there has been misrepresentation or other abuse of your account(s); (7) if we have reason to believe that there has been an unauthorized use of any card, Personal Identification Code (PIC), or Personal Identification Number (PIN) issued to you; or (8) we reasonably deem it necessary in order to prevent a loss to the Credit Union. You may terminate your account at any time by notifying the Credit Union by oral direction or in writing. The Credit Union is not responsible for payment of any check, withdrawal or other item once your account is terminated; however, if the Credit Union pays a check after termination, you agree to reimburse the Credit Union for payment.

29. Termination of Membership. You may terminate your membership at the Credit Union after giving written notice of your intent to withdraw from membership. The Credit Union may terminate your membership and expel you for cause as governed by the Credit Union's Bylaws. The Credit Union will notify persons of their expulsion and the reasons on which it is based.

30. Special Account Instructions. You may request the Credit Union to facilitate certain trust, will or court-ordered account arrangements. However, because the Credit Union does not give legal advice, we cannot counsel you as to which account arrangement most appropriately meets the specific requirements of your trust, will or court order. You and any surviving owner or beneficiary agree to indemnify and hold the Credit Union harmless from any claim or liability asserted against the Credit Union as a result of the disposition of funds in reliance on this Agreement and any account designations you make. If you ask the Credit Union to follow instructions that the Credit Union believes might expose it to claims, suits, lawsuits, expenses, liabilities, or damages whether directly or indirectly, the Credit Union may refuse to follow your instructions or may require you to post a bond to indemnify the Credit Union. Any item presented with a full payment legend must be presented in person to a Credit Union officer; otherwise, payment is accepted with full reservation of rights. Account changes requested by you or any account owner, such as adding or closing an account or service, must be evidenced by a signed Account Card and accepted by the Credit Union. The Credit Union will not recognize the authority of someone to whom you have given power of attorney without written authorization and a copy of the Power of Attorney.

31. Severability. In the event that any paragraph of this Agreement or any portion thereof is held by a court to be invalid or unenforceable for any reason, the other paragraphs and portions of this Agreement shall not be invalid or unenforceable and will continue in full force and effect.

32. Enforcement. You agree to be liable to the Credit Union for any liability, loss or expense as provided in this Agreement that the Credit Union incurs as a result of any dispute involving your accounts or services. You authorize the Credit Union to deduct any such liability, loss or expense from your account without prior notice to you. In the event either party brings legal action to enforce the Agreement or collect any overdrawn funds on accounts accessed under this Agreement, the prevailing party shall be entitled, subject to applicable law, to payment by the other party of its reasonable attorney's fees and costs, including fees on any appeal, bankruptcy proceedings and any post-judgment collection actions.

33. Governing Law. This Agreement is governed by the Bylaws of the Credit Union, federal laws and regulations, the laws and regulations of the State of Washington, and local clearinghouse rules, as amended from time to time. Any disputes regarding this Agreement shall be subject to the jurisdiction of the court of the county in which the Credit Union is located.

II. FUNDS AVAILABILITY POLICY

1. General Policy. For savings accounts, we reserve the right to place reasonable holds on deposits to the extent permitted by law.

For checking accounts, our policy is to make funds from your deposits available to you on the first business day that we receive your deposit, subject to the following terms and conditions. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and 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 before 5:30 pm at a branch office or noon at Credit Union ATMs on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 5:30 pm at a branch office or noon at Credit Union ATMs or on a day we are not open, we will consider the deposit was made on the next business day we are open.

2. Reservation of Right to Hold. In some cases, we will not make all of the funds that you deposit by check available to you on the first business day that 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 date of your deposit. However, the first \$200.00 of your total day's deposit will be available on the first business day. 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 by the day after we receive your deposit.

3. Holds on Other Funds. If we cash a check for you that is drawn on another financial institution, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it. If we accept for deposit a check drawn on another financial institution, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described above for the type of check that you deposited.

4. When Longer Delays May Apply. We may delay your ability to withdraw funds deposited by check into your account an additional number of days for these reasons:

- a. We believe a check you deposit will not be paid.
- b. Your check deposit totals more than \$5,000.00 on any one day.
- c. You deposit a check that has been returned unpaid.
- d. You have overdrawn your account repeatedly in the last six months.
- e. There is an emergency, such as failure of communications or computer equipment.
- f. During the first thirty (30) days of membership or a new checking account.

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 seven (7) business days after the day of your deposit.

5. Special Rules for New Accounts. If you are a new member or if you open a new checking account, the following special rules will apply during the first thirty (30) days your account is open. Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$5,000.00 of a day's total deposits of cashier's, certified, teller's, travelers and federal, state, and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you. The excess over \$5,000.00 will be available nine (9) business days after the day of your deposit. If your deposit of these checks, other than a U.S. Treasury check, is not made in person to one of our employees, the first \$5,000.00 will not be available until two (2) business days after the day of your deposit. Funds from all other check deposits will be available nine (9) business days after the day of your deposit.

6. Deposits at Automated Teller Machines (ATMs). Funds from any deposits made at an ATM we do not own or operate may be subject to hold until five (5) business days after the day of your deposit. Credit Union ATMs are identified as our machines and are located at various locations.

7. Substitute Checks and Your Rights. 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 checks. The front of the 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 of the checks that you receive back from us, such as returned deposit items, may be substitute checks. When you receive a substitute check from us, it will be accompanied by a notice describing your rights.

III. ELECTRONIC FUNDS TRANSFERS

Electronic Fund Transfers (EFTs) are payments to or withdrawals from your

account which are started electronically. These types of transactions are sometimes called "paperless" transactions because they do not use checks or other paper instruments.

By signing the Account Card or using your ATM Card, Debit Card, Telephone Banking, Online Banking or by initiating electronic deposits or withdrawals to your account, you agree to the following terms governing your rights and responsibilities, and ours, concerning the electronic funds transfer services, as applicable. Terms and conditions set forth elsewhere in this Agreement shall also apply to your electronic funds transfer service. EFTs are electronically initiated transfers of money through direct deposits, ATMs and audio response transactions involving your deposit accounts at the Credit Union.

1. Services

a. *ATMs.* You may use your card and PIN in ATMs of the Credit Union, point-of-sale (POS) terminals, and such other machines or facilities as the Credit Union may designate. At the present time, you may use your card to:

- Make deposits to your savings or checking accounts.
- Withdraw cash from your savings and checking accounts.
- Transfer funds between your savings and checking accounts.
- Obtain balance information for your savings and checking accounts.
- Pay for purchases from merchants who have agreed to receive the card at POS terminals.

b. *Debit Card.* You may use your Debit Card to purchase goods and services anywhere Visa® Debit is accepted. Funds to cover your Debit Card purchases will be deducted from your checking account. If the balance in your account is not sufficient to pay the transaction amount, the Credit Union may treat the transaction as an overdraft request pursuant to the overdraft services plan on your account or may terminate all services under this Agreement.

c. *Direct Deposit.* Upon instruction of (i) your employer or (ii) the U.S. Treasury Department or (iii) other financial institutions, the Credit Union will accept direct deposits of your paycheck or of federal recurring payments, such as social security or VA benefits.

d. *Monthly Pre-Authorized Transfers to or From Your Account.* Pre-authorized transfers may be a part of your monthly payroll deduction, or they may be independent of your payroll deduction. Pre-authorized transfers which are part of your payroll deduction are limited to transfers between accounts in WSECU, and may not vary in amount from month to month.

e. *Electronic Check Transactions.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases; or (ii) pay bills. With that action, you then authorize us to honor any electronic check conversion transaction and re-presented check fee debit transactions you authorize (electronic check transactions). You agree that your authorization for an electronic check transaction occurs when you initiate such a transaction after receiving any notice regarding the merchant's right to process the transaction, including any written sign provided by the merchant at the time of your transaction. All terms governing electronic funds transfer services will apply to electronic check transactions, except the \$50.00 and \$500.00 limits of liability for unauthorized transactions in Section 4, Member Liability. You remain responsible for notifying us of any unauthorized electronic check transaction shown on your statement.

f. *Telephone Banking.* If we approve the Telephone Banking telephone access service for your accounts, a separate four (4) digit PIN will be assigned to you. You must use your PIN along with your account number to access your accounts via telephone.

At the present time you may use the Telephone Banking service to:

- Obtain balance, deposit, withdrawal, dividend, loan payoff and due date information on your accounts at the Credit Union.

- Transfer funds among your savings and checking accounts.
- Withdraw funds from your savings and loan accounts by check, made payable to you and mailed to you at your mailing address.
- Make loan payments or credit card payments from your savings or checking account to a loan account or credit card account of yours.
- Such other transactions as offered and permitted in the future.

g. Online Banking. By registering for Online Banking and optional services available through Online Banking, you agree to the terms of the Online Banking Agreement and optional service addenda, provided to you through the enrollment process. Upon approval, you may use your computer to access your accounts. You must use your username and password to access your accounts. The online banking service is accessible seven (7) days a week, twenty-four (24) hours a day. You will need a computer connection to the Internet and a web browser. The web address for Online Banking is wsecu.org. You are responsible for the installation, maintenance and operation of your computer. The Credit Union will not be responsible for any errors or failures involving any Internet connection or your computer. At the present time, you may use the Online Banking service to:

- Transfer funds between your savings, checking and loan accounts.
- Transfer funds between your account and another member's account with WSECU.
- Transfer funds between your WSECU savings and checking accounts, and your accounts with another financial institution.
- Review account balance, transaction history and tax information for your savings, checking and loan accounts.
- Review information on your loan including payoff amounts, due dates, finance charges, interest rate, and balance information.
- Make bill payments from your checking account through Bill Pay.
- Request that a withdrawal from any savings, checking or loan account, where applicable, be mailed to you in check form.
- Receive account alerts for specific types of transactions or notices as you designate.
- Communicate with the Credit Union using the "Messages" (e-mail) feature.

h. Online Banking Services are governed by the Online Banking Agreement. Optional service offerings through Online Banking include Mobile Banking, Bill Pay, Account Alerts and External Transfer Services. These optional services are governed by the Online Banking Agreement, the Mobile Banking Service Addendum, the Bill Pay Addendum, the Account Alerts Addendum and the External Account Transfers Addendum.

2. Service Limitations

a. ATMs.

- (1) **Withdrawals.** For Credit Union ATMs, (i) there is no limit on the number of withdrawals you may make; however, you may be charged a fee as set forth in the Rate and Fee Schedule; and (ii) you may withdraw up to \$505.00 per day if there are sufficient funds in your account. If you overdraw your account, you may be charged an Overdraft Fee as set forth in the Rate and Fee Schedule. Because of the servicing schedule, there may be limited occasions when the Credit Union's computer is unavailable and cannot provide an account balance and/or a lower limit may be in effect.
- (2) **Deposits.** You may make deposits at designated ATMs. Because of the servicing schedule and processing time required in ATM operations, there may be a delay between the time a deposit (either cash or check) is made and when it will be available for withdrawal. Deposits are subject to verification by the Credit Union. The first \$500.00 of an ATM deposit is available immediately; the remainder of the deposit is available one business day after the deposit. On an exception basis, longer holds may apply.
- (3) **Line of Credit Advances.** The amount of line of credit advances you may make is limited to your daily ATM withdrawal limit, POS limit and available credit.

Line of credit advances are governed by your previously executed Consumer Loan Agreement and Disclosure.

b. Point of Sale. Purchases at POS terminals can be made as often as you like from a checking account. You may purchase up to a maximum of \$2,500.00 of goods and services each day. This maximum amount is exclusive of the maximum withdrawals you may make at ATMs. Because of the servicing schedule there may be a limited occasion when the Credit Union computers are down and may limit you to \$505.00 per day.

c. Purchase Limitations. There is no limit on the number of purchase transactions you may make during a statement period. No purchase may exceed the available funds in your account. The Credit Union reserves the right to refuse any transaction which would draw upon insufficient funds, lower an account below a required balance, or otherwise require us to increase our required reserve on the account. The Credit Union may set other limits on the amount of any transaction, and you will be notified of those limits. The Credit Union may refuse to honor any transaction for which you do not have sufficient available verified funds. Because of the servicing schedule there may be a limited occasion when the Credit Union computers are down and may limit you \$1,000.00 per day. The Credit Union will place a hold on the funds in your account for your purchase authorizations. Holds will be for two (2) days from the date of purchase to allow for settlement or will be released when the transaction post to your account, whichever comes first.

d. Telephone Banking. Your accounts can be accessed under Telephone Banking via telephone. Telephone Banking service will be available for your convenience seven (7) days per week. This service may be interrupted for a short time each day for data processing. If you call during this time you will hear, "Unavailable at this time." While there is no limit to the number of inquiries or withdrawal requests you may make in any one day, there are certain limitations on transfers from savings and checking accounts. Transfers from a savings account will be limited to six (6) in any one month.

No transfer, withdrawal or loan payment may exceed the available funds in your account. The Credit Union reserves the right to refuse any transaction which would draw upon non-sufficient funds, exceed a credit limit, lower an account below a required balance or otherwise require us to increase our required reserve on the account. Transactions made after the close of normal business hours each day will be posted to your account on the next business day after the date of the transaction. All checks are payable to you as a primary member and will be mailed to your address of record. The Credit Union may set other limits on the amount of any transaction and you will be notified of those limits. The Credit Union may refuse to honor any transaction for which you do not have sufficient available verified funds. There is no limit on the number of transaction requests you may make during a single phone call. The system will time-out after thirty (30) seconds if no transaction is entered and after eight (8) minutes in all cases. If you wish to make any further transactions, you will have to call back. The system will also time out after three unsuccessful attempts to enter a transaction.

e. Online Banking Limitations. Your accounts can be accessed under online banking via a computer. Online Banking will be available for your convenience seven (7) days per week. This service may be interrupted for a short time each day for data processing. The account balance and transaction history information may be limited to recent account information involving your accounts. The Credit Union may not immediately receive electronic communications that you send and the Credit Union will not take action based on electronic requests until the Credit Union actually receives your message and has a reasonable opportunity to act. If you need to contact the Credit Union immediately regarding an unauthorized transaction or stop payment request, you may contact the Credit Union by telephone. Transactions involving your deposit accounts are subject to the terms of your Membership and Account Agreement, and transactions involving a line of credit account will be subject to your Loan Agreement and Disclosures, as applicable.

f. Bill Pay Limitations. You may authorize new payment instructions or edit previously authorized payment instructions for payments that are either variable (e.g., payments on merchant accounts that vary in amount) or fixed (e.g., fixed mortgage payments). When you transmit a payment instruction to us, you authorize us to transfer funds from your checking account to fulfill the payment transaction. The Credit Union will not process any payment transaction if we know the required transaction information is incomplete. In any event, the Credit Union will not be liable for any transaction that contains incorrect information that the Credit Union was not responsible for entering or knowing. If there are insufficient funds in your account to cover the payment transaction, we may refuse to make the payment and/or transfer funds from any overdraft protection account you have established or overdraw your account and charge an overdraft fee as set forth in the Rate and Fee Schedule. The Credit Union reserves the right to refuse to process payment transactions that reasonably appear to the Credit Union to be fraudulent or erroneous. The Credit Union will attempt to withdraw the designated funds from your account for the payment on the same date you schedule the payment for and process your payment transaction within one (1) business day. It is your responsibility to schedule your payments in such a manner that your obligations will be paid on time. You should schedule your payment transaction for a date that is at least five (5) business days before the bill is due. You are responsible for any late fees or finance charges that may be imposed as a result of your failure to schedule a timely bill payment transaction.

g. Foreign Transactions. Purchases and cash advances made in foreign countries and foreign currencies will be billed to you in U.S. currency. Transactions processed outside of the United States will be charged a foreign transaction fee in an amount to be determined by the Credit Union, regardless of whether there is a currency conversion associated with the transaction. The conversion exchange rate between the transaction currency and the billing currency used for processing international transactions to U.S. currency will be from a range of rates which may vary selected by Visa® USA from the wholesale currency market rate or the government mandated rate in effect for the applicable Central Processing Date (CPD), in each instance, plus or minus any adjustment determined by the Credit Union as a Visa Issuer. A Visa International Service Assessment (ISA) fee will be billed to you separately as the foreign currency conversion fee on all cross-border transactions. A foreign transaction is any transaction that you complete or a merchant completes on your card outside of the U.S., Puerto Rico or the U.S. Virgin Islands; this may include Internet transactions.

h. Illegal Use and Internet Gambling. You agree that all transactions that you initiate by use of your Visa Debit Card are legal in the jurisdiction where you live and/or where the transaction occurred. Internet gambling may be illegal in the jurisdiction in which you are located, including the United States. Your debit card may only be used for legal transactions. Display of a payment card logo by an online merchant does not mean that Internet gambling transactions are lawful in all jurisdictions in which you may be located. WSECU has restricted all online gambling transactions with the Visa Debit Card.

3. Conditions of EFT Use. The use of your account and EFT services are subject to the following conditions:

a. Ownership of Cards. Any card or other device which we supply to you is our property and must be returned to us or to any person whom we authorize to act as our agent or to any person who is authorized to honor the card immediately according to instructions. The card may be repossessed at any time in our sole discretion without demand or notice. You cannot transfer your card or account to another person.

b. Honoring the Card. Neither we nor merchants authorized to honor the card will be responsible for the failure or refusal to honor the card or any other device we supply to you. If a merchant agrees to give you a refund or adjustment, you agree to accept a credit to your account in lieu of a cash refund. You may not use your card or account for any transaction that is unlawful or illegal. We may decline to authorize any transaction that we believe may be unlawful or illegal.

c. Non-Visa Debit Transactions: WSECU enables non-Visa debit transaction processing and does not require that all such transactions be authenticated by a PIN. A non-Visa debit transaction may occur on your WSECU debit card. Below are examples to distinguish between a Visa debit and non-Visa debit transaction:

- To initiate a Visa debit transaction at the point of sale, the cardholder signs a receipt, provides a card number (e.g., in e-commerce or mail/telephone order environments) or swipes the card through a point-of-sale terminal.
- To initiate a non-Visa debit transaction, the cardholder enters a PIN at the point-of-sale terminal or, for certain bill payment transactions, provides the account number for an e-commerce or mail/telephone order transaction after clearly indicating a preference to route it as a non-Visa transaction.

A non-Visa debit transaction will not provide the zero liability protection benefit, and if a Rewards program is present, a non-Visa debit transaction may not be an eligible Rewards transaction.

d. Security of Personal Identification Number (PIN). The ATM PIN and Telephone Banking PIN issued to you are for your security. The numbers are confidential and should not be disclosed to third parties or recorded on or with the card. You are responsible for safekeeping your PIN. You agree not to disclose or otherwise make your PIN available to anyone not authorized to sign on your accounts. If you authorize anyone to use your PIN, that authority shall continue until you specifically revoke such authority by notifying the Credit Union. If you fail to maintain the security of these PINs and the Credit Union suffers a loss, we may terminate your ATM and account services immediately. The ATM/debit PIN are unique to each individual card. The PIN may change with each ATM/debit card reissue.

4. Member Liability. You are responsible for all transfers you authorize using your EFT services under this Agreement. If you permit other persons to use an EFT service, card or PIN, you are responsible for any transactions they authorize or conduct on any of your accounts. However, tell us at once if you believe anyone has used your account, card or PIN and accessed your accounts without your authority. Telephoning is the best way of keeping your possible losses down. For debit card purchase transactions, if you notify us of your lost or stolen card within two (2) business days of discovery, you may not be liable for any losses. If you notify us of your lost or stolen card after two (2) business days of your discovery, your maximum liability for losses to your account may be up to \$50.00. These liability limits will apply, provided you were not grossly negligent or fraudulent in handling your debit card and you provide us with a written statement regarding your unauthorized debit card claim, otherwise the liability limits set forth below may apply for all other EFT transactions, including your ATM card. If you notify us within two (2) business days of discovery of your loss or theft, you can lose no more than \$50.00 if someone used your card and/or PIN without your permission, provided you were not grossly negligent or fraudulent in handling your ATM card or account. If you do not tell us within two (2) business days after you learn of the unauthorized use of your account or EFT service and we can prove that we could have stopped someone from accessing your account without your permission if you had told us, you could lose as much as \$500.00.

Also, if your statement shows EFT transfers that you did not make, tell us at once. If you do not tell us within sixty (60) days after the statement was mailed to you, you may be liable for the following amounts if we can prove that we could have stopped someone from making transfers if you had told us in time: (i) for unauthorized debit card purchase transactions up to the limits set forth above, and (ii) for all other unauthorized EFT transactions up to the full amount of the loss. If a good reason (such as a hospital stay) kept you from telling us, we will extend the time period.

Tell us at once if you believe your card and/or PIN has been lost or stolen or if you believe that an electronic funds transfer has been made without your permission using information from your check, by immediately calling 800.562.0999 during business hours, 866.861.5416 after hours or write to the following address:

WSECU
PO BOX WSECU
OLYMPIA, WA 98507

5. Business Days. Our business days are Monday through Friday; holidays are not included.

6. Fees and Charges. There are certain charges for electronic fund transfer services as set forth in the Rate and Fee Schedule. From time to time, the charges may be changed. We will notify you of any changes as required by law. If you use an ATM that is not operated by us, you may be charged an ATM surcharge by the ATM operator or an ATM network utilized for such transaction. The ATM surcharge will be debited from your account if you elect to complete the transaction.

7. Right to Receive Documentation Transfers

a. Periodic Statements. Transfers and withdrawals transacted through an ATM, POS terminal, your debit card, or Telephone Banking or online banking system will be recorded on your periodic statement.

b. Direct Deposits. If you have arranged to have direct deposit made to your account at least once every sixty (60) days from the same source and you do not receive a receipt (such as a pay stub), you can find out whether or not the deposit has been made by calling 800.562.0999. This does not apply to transactions occurring outside the United States.

c. Terminal Receipt. You will get a receipt at the time you make any transaction greater than \$15.00 involving your account using an ATM, POS terminal or your debit card.

8. Account Information Disclosure. We will disclose information to third parties about your account or the transfers you make:

- As necessary to complete transfers.
- To verify the existence of sufficient funds to cover specific transactions upon the request of a third party, such as a credit bureau or merchant.
- To comply with government agency or court orders.
- If you give us your written permission.

9. Credit Union Liability for Failure to Make Transfers. If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable:

- If, through no fault of ours, you do not have enough money in your account to make the transfer, your account is inactive or the transfer would go over the credit limit on your line of credit.
- If you used the wrong ATM PIN, Telephone Banking PIN or you used an ATM PIN or Telephone Banking PIN or card in an incorrect manner.
- If the card has expired or is damaged and cannot be used.
- If the ATM where you are making the transaction does not have enough cash.
- If the ATM was not working properly and you knew about the problem when you started the transaction.
- If circumstances beyond our control (such as fire, flood or power failure) prevent the transaction.
- If the money in your account is subject to legal process or other claim.
- If your account is frozen because of a delinquent loan.
- If there are other exceptions as established by the Credit Union.
- The ATM or POS terminal may retain your card in certain instances, in which event you may contact the Credit Union about its replacement.
- If the error was caused by a system beyond the Credit Union's control such as your Internet service provider.
- If you have not given the Credit Union complete, correct and current instructions so the Credit Union can make a transfer or bill payment.
- If the accounts to which you request a bill payment transfer to be made have been closed or the vendor will not accept such payments.
- If you have bill payment services, the Credit Union can only confirm the amount, the participating merchant and date of the bill payment transfer made by the Credit Union. For any other error or question you have

involving the billing statement of the participating merchant, you must contact the merchant directly. The Credit Union is not responsible for investigating such errors.

10. Pre-authorized Electronic Fund Transfers / Affidavits

a. Stop Payment Rights. If you have arranged in advance to make regular electronic fund transfers out of your account(s) for money you owe others, you may stop payment of pre-authorized transfers from your account. You must notify the Credit Union orally or in writing at the telephone number and address stated above any time up to three (3) business days before the scheduled date of the transfer. The Credit Union may require written confirmation of the stop payment order to be made within fourteen (14) days of any oral notification. Affidavits will be required to be signed by you when requesting re-credit for ACH debit entries that you claim are unauthorized or for which authorization has been revoked, or in the case of re-presented check entries which you claim were improperly originated. If we do require the written confirmation, the oral stop payment order shall cease to be binding fourteen (14) days after it has been made. You may be charged a fee for each stop payment request.

b. Notice of Varying Amounts. If these regular payments vary in amount, the company you are going to pay will tell you, ten (10) days before each payment, when it will be made and how much it will be.

c. Liability for Failure to Stop Payment of Pre-authorized Transfers. If you order us 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.

11. Notices. The Credit Union reserves the right to change the terms and conditions upon which this service is offered. The Credit Union will mail notice to you at least twenty-one (21) days before the effective date of any change, as required by law. Use of this service is subject to existing regulations governing the Credit Union account and any future changes to those regulations.

12. Billing Errors. In case of errors or questions about your electronic transfers, telephone us at the phone numbers or write us at the address set forth above as soon as you can. We must hear from you no later than sixty (60) days after we sent the first statement on which the problem appears.

- Tell us your name and account number (if any).
- Describe the error or transaction you are questioning and explain as clearly as you can why you believe it is an error or why you need more information.
- 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 ten (10) business days.

We will tell you the results of our investigation within ten (10) business days after we hear from you and will correct any error promptly. For errors related to transactions occurring within thirty (30) days after the first deposit to the account (new accounts), we will tell you the results of our investigation within twenty (20) business days. If we need more time, however, we may take up to forty-five (45) calendar days to investigate your complaint or question; ninety (90) calendar days for POS transaction errors, new account transaction errors, or errors involving transactions initiated outside the United States. If we decide to do this, we will re-credit your account within ten (10) business days (five (5) business days for debit purchase transactions) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not re-credit your account.

If we decide after our investigation that an error did not occur, we will deliver or mail to you an explanation of our findings within three (3) business days after the conclusion of our investigation. If you request, we will provide you copies of documents (to the extent possible without violating other members' rights to privacy) relied upon to conclude that the error did not occur.

EXHIBIT 2

WSECU provides a discretionary Overdraft Privilege service to members maintaining checking accounts, in accordance with the following policy. These services are in addition to our standard overdraft protection options such as your savings account, credit card or other line of credit account.

ELIGIBILITY

In our effort to provide excellent service, we will, as a discretionary service and not as a right or obligation guaranteed to you, approve your reasonable overdrafts when your account is in good standing based on your account activity.

Good standing will include, but are not limited to the following:

- How long your account has been open with us.
- The number and amount of deposits to your account received over the last 30 days.
- You are not in default on any loan or other obligation to us.

WSECU may impose additional eligibility requirements at any time, and may terminate the service at its sole discretion even if you continue to satisfy the eligibility requirements. **WSECU RESERVES THE RIGHT TO REVOKE THE DISCRETIONARY OVERDRAFT PRIVILEGE FOR YOUR ACCOUNT AT ANY TIME.** The credit union will notify you at the time of termination if it revokes the service on your account.

HOW THE SERVICE WORKS

Each time you access your Overdraft Privilege limit, you will receive a notice indicating the access. It covers outstanding checks, in-person withdrawals, return deposit items and electronic transactions up to your established limit, although special arrangements or circumstances may change this limit. You may elect to also cover ATM and everyday debit card transactions. To do so, you must affirmatively opt in to the payment of these services. Your account will be assessed the credit union's usual non-sufficient funds fee for each item paid. Fees charged for covering overdrafts, as well as the amount of the overdraft item, will be subtracted from your available overdraft privilege limit. When we notify you that you have accessed your Overdraft Privilege limit, it is done with the expectation that you will make a deposit immediately to clear the overdraft. Any discretionary payment of any NSF item(s) does not obligate us to pay any additional NSF item(s) or to provide prior written notice of our decision to refuse to pay any additional NSF item(s).

Checks are cleared against your account from smallest dollar amount to largest dollar amount each business day. Electronic transactions clearing through the Automated Clearinghouse are processed on the effective date of the file received from the Federal Reserve. Each file is processed posting credit (deposit) transactions first and then debit (withdrawal) transactions. WSECU may receive and process multiple files on each business day. ATM and one-time or re-occurring debit transactions are posted in the order in which we receive them. The order in which transactions are received and processed can affect the total amount of overdraft fees that you incur. There is no limit on the total fees WSECU can charge for overdrawing your account up to your established Overdraft Privilege limit. All other fees and charges (as set forth in the Rate and Fee Schedule) will apply to your account. Each member and joint owner will be liable for payment of any overdraft, irrespective of who created the overdraft.

WSECU's Membership and Account Agreements, as amended from time to time, governs your accounts and member relationship with the credit union. To the extent there is inconsistency between this policy and the terms of the Membership and Account Agreement, the Membership and Account Agreement will control. A copy of the current Membership and Account Agreement for consumer and/or business accounts is available to you upon request. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected on your credit report.

At this time, account types not eligible for the discretionary Overdraft Privilege service include Representative Payee, Organizational, Trust, Estate and Minor accounts.

You may choose to make changes to the payment of overdrafts under the Overdraft Privilege service at any time. Please note there are other ways to manage your account with respect to insufficient funds. If you have questions regarding the discretionary Overdraft Privilege service and your options for payment of overdrafts using this service or other overdraft options or wish to exercise your opt in or opt out rights, call our Contact Center at 800.562.0999, weekdays from 7:00 am-7:00 pm and Saturdays from 9:00 am-2:00 pm.

OVERDRAFT SERVICES DISCLOSURE

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. At WSECU's discretion, the overdraft may be paid. There are several different ways that overdrafts are paid:

1. WSECU has a standard discretionary Overdraft Privilege service that is included as a benefit on your checking account if you meet specific criteria as outlined on the back of this form.
2. Overdraft protection from your savings account is automatically established when you open a checking account.
3. WSECU offers additional overdraft protection options such as a transfer from one of your WSECU accounts, a personal line of credit or your WSECU Visa® credit card. These may be less expensive than Overdraft Privilege. To learn more, ask about these options.

WHAT IS DISCRETIONARY OVERDRAFT PRIVILEGE?

With Overdraft Privilege, WSECU currently authorizes and pays overdrafts for the following types of transactions:

- Checks and other transactions made against your checking account
- Recurring automatic bill payments authorized against your debit card

WSECU will not authorize and pay overdrafts for the following types of transactions unless you notify us that you wish to opt in to the payment of these items:

- ATM transactions
- Everyday debit card transactions

WSECU pays 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.

WHAT FEES WILL I BE CHARGED IF WSECU PAYS MY OVERDRAFT WITH OVERDRAFT PRIVILEGE?

- We will charge you a fee of \$27 each time we pay an overdraft.
- There is no limit on the total fees we can charge you for overdrawing your account up to your established Overdraft Privilege limit.

WHAT DO I NEED TO DO TO HAVE WSECU AUTHORIZE AND PAY OVERDRAFTS ON MY ATM AND EVERYDAY DEBIT CARD TRANSACTIONS?

If you want us to authorize and pay overdrafts on ATM and everyday debit card transactions, you must opt in. You can opt in by:

- Completing the information below and returning it to WSECU
- Online banking at wsecu.org
- Calling 800.562.0999

I do not want WSECU to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I want WSECU to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: _____

Daytime Phone Number: _____

Last Four Digits of Account Number: _____