

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DENNIS WALSH, individually, and on
behalf of all other similarly situated,

Plaintiff,

v.

RANDOLPH BROOKS FEDERAL CREDIT
UNION,

Defendant.

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CIVIL ACTION No. 5:17-cv-00010

**RANDOLPH-BROOKS FEDERAL CREDIT UNION’S
NOTICE OF REMOVAL**

COMES NOW Randolph-Brooks Federal Credit Union (“**RBFCU**”), and pursuant to 28 U.S.C. § 1446(a), files this Notice of Removal of said cause (the “**Notice**”) to the United States District Court for the Western District of Texas, San Antonio Division, and in support thereof respectfully shows the Court as follows:

**I.
INTRODUCTION**

On October 21, 2016, Plaintiff filed his Original Petition and Jury Demand (“**Original Petition**”) in the 25th Judicial District Court, Guadalupe County, Texas, docketed as Cause No. 16-2339-CV. A true and correct copy of the Original Petition is attached as Exhibit A (Original Petition). RBFCU was served with Plaintiff’s Original Petition on December 15, 2016. See Exhibit B (Affidavit of Service). A copy of the state court docket sheet and case summary are attached as Exhibit C (Register of Actions and Case Summary), the Civil Case Information Sheet is attached as Exhibit D (Civil Case Information Sheet), and the Civil Citation is attached as Exhibit E (Civil Citation).

II.
THIS NOTICE IS TIMELY FILED

This Notice is timely filed pursuant to 28 U.S.C. § 1446(b). RBFCU files this Notice within 30 days of receipt of Plaintiff's Original Petition, which was served on December 15, 2016. *See* Exhibit B (Affidavit of Service). Upon filing this Notice, RBFCU will provide written notification to Plaintiff and will file a copy of this Notice with the District Clerk for the 25th Judicial District Court for Guadalupe County, Texas.

III.
FEDERAL QUESTION

This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331, including because Plaintiff has asserted a cause of action arising under the laws of the United States, specifically the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E issued pursuant to the Electronic Fund Transfer Act, 29 C.F.R. § 1005 *et seq.*, which may be removed to this Court by RBFCU pursuant to 28 U.S.C. § 1441. *See, e.g.*, Exhibit A (Original Petition) at ¶¶77-85 (asserting a Cause of Action for “Violation of Electronic Fund Transfer Act (Regulation E) C.F.R. § 1005 *et seq.* (authority derived from 15 U.S.C. § 1693 *et seq.*)” and alleging, among other things, that “[b]y charging overdraft fees on ATM and nonrecurring transactions, RBFCU violated Regulation E (12 C.F.R. §§1005 *et seq.*), whose ‘primary objective’ is ‘the protection of consumers’ (§1005.1(b)) and which ‘carries out the purposes of the [Electronic Fund Transfer Act (15 U.S.C. §§1693 *et seq.*), the ‘EFTA’] (§1005.1(b)), whose express ‘primary objective’ is also ‘the provision of individual consumer rights’ (15 U.S.C. §1693(b)); *see Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 689-90 (2006) (stating that a cause of action “arises under” federal law within the meaning of 28 U.S.C. § 1331 if the complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal

law); *see also* 15 U.S.C. § 1693m (2011) (setting forth civil liability provisions for an action under the Electronic Fund Transfer Act).

Plaintiff also expressly seeks actual and statutory damages, as well as attorneys' fees and costs of suit, pursuant to the Electronic Fund Transfer Act, specifically 15 U.S.C. § 1693m. *See* Exhibit A (Original Petition) at ¶85 and Plaintiff's Prayer.

Furthermore, all other claims asserted in Plaintiff's Original Petition, specifically Plaintiff's first through fourth causes of action, form part of the same case or controversy between the parties. Exhibit A (Original Petition), at ¶¶54-76. Accordingly, pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over all of Plaintiff's pendent claims (*i.e.*, Plaintiff's first through fourth cause of action, Exhibit A (Original Petition), at ¶¶54-76). 28 U.S.C. § 1367.

**IV.
VENUE**

Venue is proper in the San Antonio Division of the Western District of Texas under 28 U.S.C. § 1441(a), because the state court where the action has been pending (25th Judicial District Court, Guadalupe County, Texas) is located in this district and division.

**V.
JURY DEMAND**

Plaintiff demanded a jury in the state court action. *See* Exhibit A (Original Petition), following Plaintiff's Prayer.

**VI.
PRAYER**

WHEREFORE, Defendant RBFCU prays that the entire action now pending in the 25th Judicial District Court for Guadalupe County, Texas, as described herein, be removed for all

purposes to the United States District Court for the Western District of Texas, San Antonio Division.

Dated: December 9, 2017

NORTON ROSE FULBRIGHT US LLP

/s/ Jeffrey A. Webb

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ATTORNEYS FOR DEFENDANT RANDOLPH
BROOKS FEDERAL CREDIT UNION

CERTIFICATE OF SERVICE

I hereby certify that this pleading, Randolph-Brooks Federal Credit Union's Notice of Removal, was served on counsel of record in compliance with the Federal Rules of Civil Procedure on January 9, 2017 as follows:

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/s/ Jeffrey A. Webb
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EXHIBIT A

CAUSE No. 16-2339-CV

DENNIS WALSH, individually, and on behalf of all others similarly situated, § IN THE DISTRICT COURT

Plaintiff, §

§ GUADALUPE COUNTY, TEXAS

v. §

§ CLASS ACTION

RANDOLPH BROOKS FEDERAL CREDIT UNION, §

Defendants. §

§ 25TH JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE COURT:

Plaintiff Dennis Walsh (“Plaintiff”), by his attorneys, hereby brings this class and representative action against Randolph Brooks Federal Credit Union (“RBFCU” or “Defendant”), and for his causes of action respectfully pleads as follows:

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, the plaintiff intends for discovery to be conducted under Level 3, as provided by Rule 190.3.

NATURE OF THE ACTION

2. All allegations herein are based upon information and belief except those allegations which pertain to Plaintiff or his counsel. Allegations pertaining to Plaintiff or his counsel are based upon, inter alia, Plaintiff or his counsel’s personal knowledge, as well as Plaintiff or his counsel’s own investigation. Furthermore, each allegation alleged herein either has evidentiary support or is likely to have evidentiary support, after a reasonable opportunity for additional investigation or discovery.

3. This is a class and representative action brought by Plaintiff to assert claims in his own right, and in his capacity as the class representative of all others persons similarly situated, and in his capacity as a private attorney general on behalf of the members of the general public. RBFCU wrongfully charged Plaintiff and the class member overdraft fees.

4. This class action seeks monetary damages, restitution, and injunctive relief due to RBFCU's policy and practice of assessing an overdraft fee on transactions when there was enough money in the checking account to cover (pay for) the transactions presented for payment. The charging for such overdraft fees breaches RBFCU's contract with its customers, who include Plaintiff and the members of the Class.

5. The charging for such overdraft fees also violates federal law. Because RBFCU failed to describe its actual overdraft service in its Opt-In Agreement (because the language in its opt-in notice describes an overdraft service that assesses overdraft fees based on the ledger-balance method as opposed to the available-balance method actually used by RBFCU), Regulation E (12 C.F.R. §§1005.17 *et seq.*) of the Electronic Fund Transfer Act (15 U.S.C.A. §§ 1693 *et seq.*) prohibited RBFCU from assessing overdraft fees for automated teller machine (ATM) and non-recurring debit card transactions (12 C.F.R. §1005.17(b)(1)(i)), but RBFCU did so anyway.

PARTIES

6. Plaintiff is a resident of Guadalupe County, Texas, and was a member of RBFCU at all times relevant to the class action allegations.

7. Based on information and belief, Defendant RBFCU is a federally chartered credit union with branch offices located throughout the San Antonio, Texas area, including at least two branch offices in Guadalupe County, Texas. Based on information and belief, RBFCU also has branch offices in Illinois. RBFCU is a "financial institution" within the meaning of Regulation E (12 C.F.R. § 1005.2(i)). Defendant may be served with citation through its registered agent: Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th St., Suite 620, Austin, Texas 78701-3218.

ACTS OF AGENTS

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

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

VENUE AND JURISDICTION

10. The amount in controversy herein, exclusive of costs and interests, exceeds the minimal jurisdictional limits of this court.

11. Venue is proper in this District pursuant to § 15.002(a)(1) of the Texas Civil Practice and Remedies Code because a substantial part of the events and/or omissions giving rise to the claims asserted herein occurred in this District.

FACTUAL ALLEGATIONS

A. RBFCU's Unlawful Charges of Overdraft Fees

12. RBFCU is a credit union with over fifty branch offices throughout the San Antonio and Austin, Texas areas, holding approximately \$7.1 billion in assets. RBFCU offers its consumer banking customers a checking account. One of the features of a RBFCU checking account is a debit card, which can be used for a variety of transactions including the purchasing of goods and services. In addition to receiving a debit card, other features of a RBFCU checking account include: the ability to write checks; withdraw money from ATMs; schedule Automated Clearing House (ACH) transactions (certain recurring payments); and other types of transactions that debit from a checking account.

13. In connection with its processing of debit transactions (debit card, ATM, check, ACH, and other similar transactions), RBFCU assesses overdraft fees to customer accounts when it determines that a customer's account has been overdrawn.

14. Overdraft fees constitute the primary fee generators for banks and credit unions. In 2009 alone, banks generated an estimated \$37 billion from overdraft fees on debit purchases and ATM transactions. While credit unions portray themselves to customers as more overdraft and fee friendly than banks, a 2015 study conducted by Moebs Services confirmed that the median overdraft fees charged by credit unions are not statistically significantly less than the median overdraft fees charged by banks. For credit unions such as RBFCU, overdraft fees are a major source of revenue and a profit center. According to a 2010 report by Georgetown University Law Professor Adam Levitin, overdraft fees comprise 6 to 7% of the gross revenue of credit unions. (Filene Research Institute Report, *Overdraft Regulation A Silver Lining In The Clouds?* Filene Research Institute 2010).

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

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

17. As a result of banks and credit unions taking advantage of millions of customers through the unfair practice of charging overdraft fees through methodologies that maximize the

possible number of expensive overdraft fees to be charged, there has been a substantial amount of litigation over the past few years. The outcome of these cases has predominantly fallen in favor of plaintiffs with the banks and credit unions repaying their customers over one billion dollars for the unlawfully assessed overdraft fees by way of jury verdicts and settlements.¹

18. The federal government has also stepped in to provide additional protections to customers with respect to abusive overdraft policies. In 2010, the Federal Reserve Board enacted regulations giving financial institutions the authority to charge overdraft fees on ATM and one-time debit card transactions only if the institution first obtained the affirmative consent of the customer to do so. (12 C.F.R. § 1005.17 (Regulation E's "Opt-In Rule")).

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

- The customer must be provided the overdraft policy, including the dollar amount of any fees that will be charged for an overdraft, and the maximum number of fees that may be charged per day;
- The opt-in consent must be obtained separately from other consents and acknowledgements;
- The consent cannot serve any purpose other than opting into the overdraft program;
- The consent cannot be a pre-selected checked box;
- The financial institution may not provide different terms for the account depending on whether the customer opted in to the overdraft program.
- The financial institution must explain that a line of credit or other service that transfers funds from another account to cover the overdrafts is available as an alternative to the financial institution's own payment of

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http://files.consumerfinance.gov/f/documents/CFPB_Arbitration_Agreements_Notice_of_Proposed_Rulemaking.pdf, at p. 74-75.

overdrafts, if the financial institution in fact offers that alternative.

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

20. At all relevant times, RBFCU has had an overdraft program in place for assessing overdraft fees which is: (1) contrary to the express terms of its contracts with members; (2) contrary to RBFCU's representations about its overdraft program to its members; and (3) contrary to its members' expectations regarding the assessment of overdraft fees.

21. Under RBFCU's contracts with its members, RBFCU has promised that it will only assess an overdraft fee against an account when RBFCU pays a transaction that results in a negative balance for that account.

22. RBFCU entered into a written contract with Plaintiff and its other customers titled "About Your Credit Union Deposit Accounts" (hereinafter referred to as the "Account Agreement"). Under the Account Agreement, RBFCU is entitled to assess an overdraft fee only when there are insufficient funds in a customer's account to pay for a transaction, and RBFCU advances its funds to complete the transaction.

23. RBFCU entered into a second agreement with Plaintiff and the class members (the opt-in agreement required by Regulation E that RBFCU provided to Plaintiff and the class members), which governs the terms under which RBFCU may assess Plaintiff and the class members overdraft fees for ATM and non-recurring debit card transactions, and provides them with several means to accept those terms, and which is referred to herein as the Opt-In Agreement, attached hereto as Exhibit 1. Because the Opt-In Agreement does not describe RBFCU's actual overdraft service, the Opt-In Agreement fails to comply with the requirements of Regulation E. The Opt-In Agreement nonetheless contains promises to which RBFCU is contractually bound. In the Opt-In Agreement, RBFCU promised that: "An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway." This promise meant that RBFCU is not authorized to assess an overdraft fee—because

an overdraft has not occurred—unless there is not enough money in the customer’s account to cover the transaction.

24. As used herein, the Account Agreement and the Opt-In Agreement are hereinafter collectively referred to as the “Customer Agreements.” RBFCU’s contractual promise in its Customer Agreements to assess overdraft fees only when there is not enough money in the account to cover the item was also repeated to customers in other disclosures and marketing materials. RBFCU also promises in the Customer Agreements and marketing materials that it will not assess overdraft fees on ATM and non-recurring debit card transactions against any customer who does not “opt-in” to the overdraft service.

25. However, directly contrary to this promise, RBFCU’s policy and practice is to ignore whether there is money in the account or a negative balance. Instead, RBFCU’s policy and practice is, and at all times relevant herein has been, to assess overdraft fees based on an artificial internal calculation called the available-balance method rather than the ledger-balance method.

26. The available balance is not the customer’s actual balance (ledger balance). Rather, it is the actual balance of a customer’s account (ledger balance) *minus* anticipated future debits (debits that may or may not occur) and *minus* credit holds. Not only is the practice of using the available-balance method rather than the ledger-balance method to determine whether a transaction results in an overdraft and thus is subject to an overdraft fee directly contrary to RBFCU’s Opt-In Agreement, but such practices have resulted in RBFCU improperly charging, and continuing to charge its members, including Plaintiff and the members of the Class, unlawful overdraft fees. Whether a financial institution uses the ledger-balance method versus the available-balance method is a primary concern for the Consumer Financial Protection Bureau (“Bureau”) due to the substantial harm it causes to customers. As the Bureau concluded from its studies of actual financial institutions in its Supervisory Highlights, Winter 2015, at p.8²:

² http://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf

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

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

27. RBFCU's practice of charging overdraft fees, even when there is money in the account to cover a transaction presented for payment, is inconsistent with how RBFCU expressly describes the circumstances under which overdraft fees are assessed in its Customer Agreements. Further, RBFCU has failed to inform its customers, including Plaintiff and the members of the Class, of the conditions under which overdraft fees will be assessed in the Customer Agreements.

28. RBFCU has violated Regulation E by charging Plaintiff and the class members overdraft fees. Because the Opt-in Agreement states that overdraft fees will be assessed only when there is not enough money in the account to cover the transaction at issue, it does not describe RBFCU's actual overdraft service. Consequently, RBFCU was not authorized to charge Plaintiff and the class members overdraft fees on ATM and non-recurring debit card transactions because they do not provide an accurate "brief description of the financial institution's overdraft services" as required by Regulation E's Opt In Rule.

29. Alternatively, RBFCU has also violated Regulation E by failing to provide its customers with a separate opt-in disclosure as required by Regulation E, and by failing to provide its customers with the opportunity to actually opt-in or opt-out of the overdraft program for ATM and non-recurring debit card purchases. RBFCU has opted-in Plaintiff and the class members without obtaining their consent to do so as required by Regulation E.

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

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

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

33. Further, based on information and belief, it is the balance used by RBFCU to report its deposits to regulators, shareholders and the public. It is the deposit balance provided to regulators in call reports and reserve reports. It is the balance used in financial reports to shareholders and the balance used for internal financial reporting. It is the balance used by credit reporting agencies in providing credit ratings of RBFCU.

34. When RBFCU refers to balance or funds or money in the account, it is reasonable to interpret and understand that as referring to the official balance in the account—which is the ledger balance. In its study, the Bureau concluded that when a financial institution creates the

³ http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf

“overall impression” that it would determine overdraft transactions and fees based on the ledger balance and not the available balance, then the “disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer’s decision-making and actions, examiners found the practice to be deceptive.” The Bureau further found that “consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures).” (Supervisory Highlights, Winter 2015, at p.9.)

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

B. Unlawful Overdraft Fees Assessed to Plaintiff

36. Plaintiff was harmed by Defendant’s policy and practice of charging overdraft fees when there was money in his account to cover the transaction. Plaintiff entered into two agreements with RBFCU, herein identified as the Customer Agreements, wherein RBFCU contracted to charge overdraft fees on certain transactions only if his account did not have money to cover the transaction. By nonetheless charging Plaintiff overdraft fees, RBFCU breached its contracts with Plaintiff and violated Regulation E. It will be necessary to obtain Defendant’s records to determine each instance of such a wrongful overdraft fee. However, to give one example, on January 7, 2016, Plaintiff had a positive balance of \$29.13 in his checking account when he made a point of sale debit card payment of \$10.81, leaving him with a positive balance of \$18.32. Despite the fact that Plaintiff had sufficient funds in his account to cover the transaction, RBFCU assessed a \$24.00 overdraft fee against his account. Plaintiff has a reasonable belief that a complete review of Plaintiff’s and RBFCU’s records will show multiple instances in which RBFCU improperly charged Plaintiff overdraft fees for transactions despite the fact that Plaintiff had enough money in his account to cover the transactions.

37. Moreover, the assessment and unilateral taking of improper overdraft fees further reduces the balance and amount of funds in the account, resulting in and aggressively causing subsequent, otherwise non-overdraft transactions to be improperly treated as transactions for which RBFCU assesses further overdraft fees. For instance, Plaintiff’s January 7, 2016 overdraft

fee resulted in two additional \$24 overdraft fees that would not otherwise have taken place, as a result of subsequent charges of \$5.08 and \$8.00. This practice was deemed to be deceptive and substantially harmful to customers by the Consumer Finance Protection Bureau, which made the following conclusions in its studies:

Examiners also observed at one or more institutions the following sequence of events after the institutions switched balance-calculation methods: a financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

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

38. Additionally, because the Opt-In Agreement did not describe RBFCU's actual overdraft service, RBFCU violated Regulation E by charging overdraft fees on ATM and non-recurring debit card transactions. Because it failed to provide the full and accurate disclosures to

Plaintiff required by Regulation E, RBFCU failed to obtain Plaintiff's fully informed consent as required by Regulation E in order for RBFCU to be authorized to charge such overdraft fees. Because RBFCU was not legally authorized to enroll Plaintiff into the Courtesy Payment program for non-recurring debit card and ATM transactions, RBFCU violated Regulation E when it assessed *any* overdraft fees against Plaintiff for non-recurring debit card and ATM transactions.

39. Plaintiff was harmed by this practice when he was assessed overdraft fees for nonrecurring debit card and ATM transactions. As noted, Plaintiff's records indicate that on January 7, 2016, Defendant assessed a \$24 overdraft fee against Plaintiff due to a point of sale nonrecurring debit card transaction. A complete evaluation of RBFCU's records is necessary to determine the full extent of Plaintiff's harm from this practice as well.

CLASS ACTION ALLEGATIONS

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

41. Plaintiff brings this case, and each of his respective causes of action, as a class action pursuant to Rule 42 of the Texas Rules of Civil Procedure on behalf of the following class.

42. The "Class" is composed of two classes:

The Positive Balance Class:

All Texas residents who have or have had accounts with RBFCU who incurred an overdraft fee or overdraft fees when the ledger balance in the checking account was sufficient to cover the transaction or transactions at issue during the period which begins four years preceding the filing of this Complaint and ends on the date this Class is certified.

The No Opt-In Class:

All Texas residents who have or have had accounts with RBFCU who incurred an overdraft fee or overdraft fees for ATM or non-recurring debit

card transactions during the period which begins on August 15, 2010 and ends on the date this Class is certified.

43. Excluded from the Class is: (1) any entity in which Defendant has a controlling interest; (2) officers or directors of Defendant; (3) this Court and any of its employees assigned to work on the case; and (4) all employees of the law firms representing Plaintiff and the Class members.

44. This action has been brought and may be properly maintained on behalf of each member of the Class under Texas Rule of Civil Procedure 42.

45. **Numerosity of the Class** – The members of the Class are so numerous that a joinder of all members would be impracticable. While the exact number of Class members is presently unknown to Plaintiff, and can only be determined through appropriate discovery, Plaintiff believes that the Class is likely to include thousands of members based on the fact that RBFCU has approximately \$7.1 billion in assets and operates over fifty branches throughout the state of Texas.

46. Upon information and belief, Defendants have databases, and/or other documentation, of its customers' transactions and account enrollment. These databases and/or documents can be analyzed by an expert to ascertain which of RBFCU's customers have been harmed by its practices and thus qualify as Class members. Further, the Class definitions identify groups of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover. Other than by direct notice by mail or email, alternatively proper and sufficient notice of this action may be provided to the Class members through notice published in newspapers or other publications.

47. **Commonality** – This action involves common questions of law and fact. The questions of law and fact common to both Plaintiff and the Class members include, but are not limited to, the following:

- a. Whether, pursuant to the Customer Agreements, Defendant

promised to Plaintiff and the Class members that it would not charge an overdraft fee if there was enough money in the account to cover the transaction.;

b. Whether Defendant breached the Customer Agreements by assessing overdraft fees for transactions when customers' checking accounts contained enough money to cover the transactions;

c. Whether the language in the Opt-In Agreement— "An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway."—described Defendant's overdraft service pursuant to which Defendant assessed overdraft fees using an available-balance method instead of a ledger-balance method;

d. Whether Defendant adopted a policy or system whereby customers were not provided an opportunity to opt-in or opt-out of the overdraft program for non-recurring debit card and ATM transactions;

e. Whether Defendant is liable under claims of breach of the covenant of good faith and fair dealing, unjust enrichment and money had and received; and

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

48. **Typicality** – Plaintiff's claims are typical of all of the members of the Class. The evidence and the legal theories regarding Defendant's alleged wrongful conduct committed against Plaintiff and all of the Class members are substantially the same because all of the relevant agreements between Defendant and its customers, including the Customer Agreements, were identical as to all relevant terms, and also because the challenged practices of charging customers for overdraft fees when there were sufficient funds in the accounts to pay for the transactions at issue, are uniform for Plaintiff and all Class members. Accordingly, in pursuing his own self-interest in litigating his claims, Plaintiff will also serve the interests of the other Class members.

49. **Adequacy** – Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained competent counsel experienced in class action litigation to ensure such protection. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate. Plaintiff and his counsel intend to prosecute this action vigorously.

50. **Risk of Inconsistent Adjudications** – The matter is properly maintained as a class action under Rule 42(b)(1) of the Texas Rules of Civil Procedure because the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; and

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Interpreting the Customer Agreements in a single case could create binding precedent as to that interpretation in subsequent cases, impairing non-parties' ability to pursue their own claims. Alternatively, multiple competing litigations could result in contrasting interpretations of the Customer Agreements, leading to uncertainty. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and comprehensive adjudication by a single court.

51. **Superiority and Predominance of Class Issues** – The matter is also properly maintained as a class action under Rule 42(b)(3) because the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The primary issues in this case arise from the interpretation of the Customer Agreements, which can be accomplished on a class-wide basis, and from Defendant's implementation of policies for charging overdraft fees and enrolling its members in its overdraft fee programs, all of which are issues that are common to the class members. Those issues

predominate over any individual issues that may arise. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Plaintiff and the Class members will continue to suffer losses, thereby allowing Defendant's violations of law to proceed without remedy and allowing Defendant to retain the proceeds of their ill-gotten gains.

52. Plaintiff is not aware of any separate litigation instituted by any of the class members against Defendant. Plaintiff does not believe that any other Class members' interest in individually controlling a separate action is significant, in that Plaintiff has demonstrated above that his claims are typical of the other Class members and that he will adequately represent the Class. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. This particular forum is a desirable forum for this litigation because Plaintiff resides in Guadalupe County, Texas, Defendant operates branch offices in Guadalupe County, Texas, and the claims arose from activities which occurred in Guadalupe County, Texas.

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

FIRST CAUSE OF ACTION

(Breach of Contract)

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

55. Plaintiff and each of the Class members entered into two contracts with Defendant covering the subject of overdraft transactions, which have been identified herein as the Customer Agreements. Each of the Customer Agreements was drafted by and is binding upon Defendant.

56. In the Customer Agreements, Defendant promised that RBFCU would assess

overdraft fees only when there was not enough money in the account to cover the transaction.

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

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

59. Defendant breached the express terms of the Customer Agreements by, inter alia, assessing overdraft fees when there was money in the account to cover the transaction or transactions at issue.

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

SECOND CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

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

62. Plaintiff and each of the Class members entered into two contracts with Defendant covering the subject of overdraft transactions, which have been identified herein as the Customer Agreements. Each of the customer agreements was drafted by and is binding upon Defendant.

63. In the Customer Agreements, Defendant promised that RBFCU would assess overdraft fees for ATM and debit card transactions only when there was not enough money in the account to cover the transaction.

64. The contracts incorporated by reference all applicable laws regarding their subject matter, including 12 C.F.R. § 1005.17, which mandates that the opt-in agreement for assessing overdraft fees for ATM and non-recurring debit card transactions be separate from the account agreement and accurately describe the overdraft fee practice.

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

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

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

68. Defendant breached the implied covenant of good faith and fair dealing based on its practices of assessing fees when there was enough money in the account to cover the transaction, failing to provide an accurate statement of its overdraft program for non-recurring debit and ATM transactions, and failing to permit its customers to choose whether to opt-in to the overdraft program for non-recurring debit and ATM transactions. In so doing, Defendant executed a contractual obligation in bad faith, depriving Plaintiff and the Class members of the

full benefit of the contract.

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

THIRD CAUSE OF ACTION

(Unjust Enrichment/Restitution)

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

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

72. The Consumer Finance Protection Bureau has concluded that inadequate disclosure of the type of balance-calculation used to determine overdraft transactions and their resultant fees that create additional overdraft fee harm constitutes an Unfair, Deceptive, or Abusive Acts or Practices. (CFPB Bulletin 2013-07⁴, at p. 2 (defining Unfair, Deceptive, or Abusive Acts or Practices based on the FTC balancing test: "1) It causes or is likely to cause substantial injury to consumers; 2) The injury is not reasonably avoidable by consumers; and 3) The injury is not outweighed by countervailing benefits to consumers or to competition"); CFPB Supervisory Highlights, Winter 2015, at p. 9 ("Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.").)

⁴ http://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf

73. Because Plaintiff and the Class members paid the erroneous overdraft fees assessed by Defendant, Plaintiff and the Class members have conferred a benefit on Defendant, albeit undeservingly. Defendant has knowledge of this benefit, as well as the wrongful circumstances under which it was conveyed, and yet has voluntarily accepted and retained the benefit conferred. Should it be allowed to retain such funds, Defendant would be unjustly enriched. Therefore, Plaintiff and the Class members seek relief as set forth in the Prayer below.

FOURTH CAUSE OF ACTION

(Money Had and Received)

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

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

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

FIFTH CAUSE OF ACTION

(Violation of Electronic Fund Transfers Act (Regulation E))

C.F.R. § 1005 et seq. (authority derived from 15 U.S.C. § 1693 et seq.)

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

78. By charging overdraft fees on ATM and nonrecurring transactions, RBFCU violated Regulation E (12 C.F.R. §§1005 *et seq.*), whose “primary objective” is “the protection of consumers” (§1005.1(b)) and which “carries out the purposes of the [Electronic Fund Transfer Act (15 U.S.C. §§1693 *et seq.*), the “EFTA”] (§1005.1(b)), whose express “primary objective” is also “the provision of individual consumer rights” (15 U.S.C. §1693(b)).

79. Specifically, the charges violated what is known as the “Opt In Rule” of Reg E. (12 C.F.R. §1005.17.) The Opt In Rule states: “a financial institution ... *shall not assess a fee or charge ... pursuant to the institution’s overdraft service, unless the institution: (i) [p]rovides the consumer with a notice in writing [the opt-in notice]... describing the institution’s overdraft service*” and (ii) “[p]rovides a reasonable opportunity for the consumer to *affirmatively consent*” to enter into the overdraft program. (*Id.*) The notice “shall be clear and readily understandable.” (12 C.F.R. §205.4(a)(1).) To comply with the affirmative consent requirement, a financial institution must provide a segregated writing of its overdraft practices that is accurate, non-misleading and truthful and that conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide a reasonable opportunity to opt-in. The affirmative consent must be provided in a way mandated by 12 C.F.R. § 1005.17, and the financial institution must provide confirmation of the opt-in in a manner that conforms to 12 C.F.R. § 1005.17.

80. The intent and purpose of this opt-in agreement is to “assist customers in understanding how overdraft services provided by their institutions operate ... by explaining the institution’s overdraft service ... in a clear and readily understandable way”—as stated in the Official Staff Commentary (74 Fed. Reg. 59033, 59035, 59037, 5940, 5948), which is “the CFPB’s official interpretation of its own regulation,” “warrants deference from the courts unless ‘demonstrably irrational,’” and should therefore be treated as “a definitive interpretation” of Reg E (*Strubel v. Capital One Bank (USA)*, 2016 U.S. Dist. LEXIS 41487, *11 (S.D. N.Y. 2016) (quoting *Chase Bank USA v. McCoy*, 562 U.S. 195, 211 (2011)) (so holding for the CFPB’s Official Staff Commentary for the Truth In Lending Act’s Reg Z).)

81. The description of RBFCU’s overdraft service in its opt-in agreement did not describe its actual overdraft service as required by Reg E. The description states that an overdraft occurs “when you do not have enough money in your account to cover a transaction.” This language, simply copy-and-pasted from Reg E’s Model Form A-9, describes an overdraft service where overdrafts are based on the ledger-balance method (i.e., the actual balance) as opposed to the available-balance method actually used by RBFCU.

82. RBFCU failed to comply with Regulation E, 12 C.F.R. § 1005.17, which requires affirmative consent before a financial institution is permitted to assess overdraft fees against customers' accounts through an overdraft program for ATM and non-recurring debit card transactions. RBFCU has failed to comply with the 12 C.F.R. § 1005.17 opt-in requirements, including misstating its overdraft practices in the overdraft notice by stating that it would assess an overdraft fee only when there is not enough money in the account to cover the transaction, when in actual practice, Defendant assesses overdraft fees even when there is money in the account to cover the transaction.

83. Furthermore, upon information and belief, Defendant failed to meet some or all of the other requirements of 12 C.F.R. § 1005.17 in obtaining opt-ins from its customers to enter the overdraft fee program, including failing to provide its customers with a separate opt-in disclosure, and opting its customers into the overdraft program for ATM and nonrecurring debit card transactions without obtaining their consent whatsoever.

84. As a result of violating Regulation E's prohibition against assessing overdraft fees on ATM and non-recurring debit card transactions, RBFCU has harmed Plaintiff and the Class.

85. Due to RBFCU's violation of Regulation E (12 C.F.R. § 1005.17), Plaintiff and members of the Class are entitled to actual and statutory damages, as well as attorneys' fees and costs of suit pursuant to 15 U.S.C.A. § 1693m.

PRAYER

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

1. For an order certifying this action as a class action;
2. For compensatory damages on all applicable claims and in an amount to be proven at trial which, under Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff estimates to exceed \$1,000,000;
3. For an order requiring Defendant to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;
4. For an order enjoining the wrongful conduct alleged herein;

5. For costs;
6. For pre-judgment and post-judgment interest as provided by law;
7. For attorneys' fees under the Electronic Fund Transfer Act, the common fund doctrine, and all other applicable law; and
8. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Dated: October 21, 2016

Respectfully submitted,

/s/ Dean Gresham

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bruce@stecklerlaw.com

Dean Gresham, Texas Bar No. 24027215
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THE KICK LAW FIRM, APC

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Telephone: (310) 395-2988
Facsimile: (310) 395-2088

**Pro Hac Vice* applications to be submitted.

**Attorneys for Plaintiff Dennis Walsh
and the Putative Class**

EXHIBIT B



CORPORATION SERVICE COMPANY*

Notice of Service of Process

Transmittal Number: 15999042
Date Processed: 12/16/2016

null / ALL

Primary Contact: Brenda Moos
Randolph-Brooks Federal Credit Union
One Randolph Brooks Parkway
Live Oak, TX 78233

Entity:	Randolph-Brooks Federal Credit Union Entity ID Number 3281603
Entity Served:	Randolph Brooks Federal Credit Union
Title of Action:	Dennis Walsh vs. Randolph Brooks Federal Credit Union
Document(s) Type:	Citation/Petition
Nature of Action:	Class Action
Court/Agency:	Guadalupe County District Court, Texas
Case/Reference No:	16-2339-CV
Jurisdiction Served:	Texas
Date Served on CSC:	12/15/2016
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Dean Gresham 972-387-4040

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscglobal.com

16-2339-CV
DENNIS WALSH VS. RANDOLPH BROOKS FEDERAL CREDIT UNION
Issued: 10/24/2016

RETURN OF SERVICE
25TH JUDICIAL DISTRICT COURT OF GUADALUPE COUNTY, TEXAS
BROOKS FEDERAL CREDIT UNION

Executed when copy is delivered:
This is a true copy of the original citation, was delivered to Defendant _____, on the ___ day of _____, 20____.

Officer

County, Texas
By: _____
Deputy

ADDRESS FOR SERVICE:
RANDOLPH BROOKS FEDERAL CREDIT UNION
REGISTERED AGENT: CORPORATION SERVICE COMPANY D/B/A CSC- LAWYERS INCORPORATING SERVICE COMPANY
211 E 7TH ST, SUITE 620
AUSTIN, TX 78701-3218

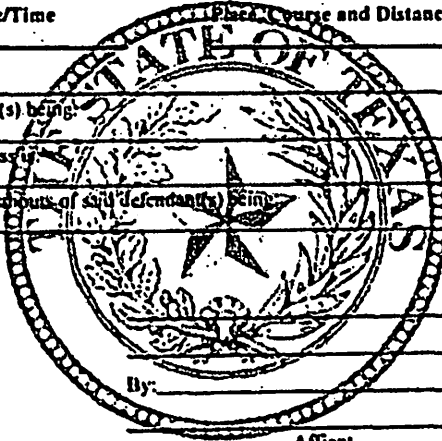
OFFICER'S RETURN

Came to hand on the _____ day of _____, 20____, at _____ o'clock _____, m., and executed in _____ County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND at the following times and places, to-wit:

Name _____ Date/Time _____ Place, Course and Distance from Courthouse _____

And not executed as to the defendant(s), _____
The diligence used in finding said defendant(s) being _____
and the cause or failure to execute this process being _____
and the information received as to the whereabouts of said defendant(s) being _____

FEES:
Serving Process and Copy \$ _____
Total \$ _____



Officer

County, Texas
By: _____
Deputy

Affiant

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The signature is required to be verified. If the return is signed by a person other than a sheriff, constable of the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

My name is _____, my date of birth is _____, and my
(First, Middle, Last)
address is _____
(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in _____ County, State of _____ on the _____ day of _____

Declarant/Authorized Process Server

(Id # & Expiration of Certification)

SHERIFFS SERVICE FEE NOT
REACHED BY DIST. CLERKS OFFICE

DEFENDENT'S COPY

EXHIBIT C

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)

Location : Guadalupe [Help](#)

REGISTER OF ACTIONS
CASE No. 16-2339-CV

PARTY INFORMATION

Defendant	RANDOLPH BROOKS FEDERAL CREDIT UNION	Attorneys
Plaintiff	WALSH, DENNIS	DEAN GRESHAM <i>Retained</i> 972-387-4040(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

10/21/2016	Docket Sheet	
10/21/2016	Original Petition (OCA)	
10/21/2016	Civil Case Information Sheet	
10/24/2016	Copy(s)	
10/24/2016	Citation	
	RANDOLPH BROOKS FEDERAL CREDIT UNION	Unerved
12/21/2016	Request	

FINANCIAL INFORMATION

	Defendant RANDOLPH BROOKS FEDERAL CREDIT UNION		
	Total Financial Assessment		28.00
	Total Payments and Credits		28.00
	Balance Due as of 12/21/2016		0.00
12/21/2016	Transaction Assessment		28.00
12/21/2016	TexFile Payment	Receipt # DC-207387	(28.00)
		RANDOLPH BROOKS FEDERAL CREDIT UNION	
	Plaintiff WALSH, DENNIS		
	Total Financial Assessment		349.00
	Total Payments and Credits		349.00
	Balance Due as of 12/21/2016		0.00
10/21/2016	Transaction Assessment		349.00
10/21/2016	TexFile Payment	Receipt # DC-204555	(349.00)
		WALSH, DENNIS	

25th District Court
Case Summary
Case No. 16-2339-CV

DENNIS WALSH VS. RANDOLPH
BROOKS FEDERAL CREDIT UNION

Location: **25th District Court**
Judicial Officer: **William D Old III**
Filed on: **10/21/2016**
Other:

Case Information
Case Type: Civil Case - Other

EXHIBIT D

CIVIL CASE INFORMATION SHEET

16-2339-CV

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED Dennis Walsh v. Randolph Brooks Federal Credit Union

Kaley Younger, Deputy

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: Dean Gresham	Email: dgresham@greshampc.com	Plaintiff(s)/Petitioner(s): Dennis Walsh	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address: 12720 Hillcrest Rd., Suite 1045	Telephone: (972) 387-4040	Defendant(s)/Respondent(s): Randolph Brooks Federal Credit Union	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
City/State/Zip: Dallas, TX 75230	Fax: (972) 387-4041		
Signature: /s/ Dean Gresham	State Bar No: 24027215		
[Attach additional page as necessary to list all parties]			

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil		Family Law		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input checked="" type="checkbox"/> Other Debt/Contract: Banking Contract <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input checked="" type="checkbox"/>	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input checked="" type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax <input checked="" type="checkbox"/>	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input checked="" type="checkbox"/> Other: _____	

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input checked="" type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
--	---	---

4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
 Less than \$100,000 and non-monetary relief
 Over \$100,000 but not more than \$200,000
 Over \$200,000 but not more than \$1,000,000
 Over \$1,000,000

EXHIBIT E

RECEIVED

DEC 15 2016
11:45 AM

Cause No. 16-2339-CV
CIVIL CITATION

THE STATE OF TEXAS

TO: RANDOLPH BROOKS FEDERAL CREDIT UNION
REGISTERED AGENT: CORPORATION SERVICE COMPANY D/B/A CSC- LAWYERS
INCORPORATING SERVICE COMPANY
211 E 7TH ST, SUITE 620
AUSTIN, TX 78701-3218

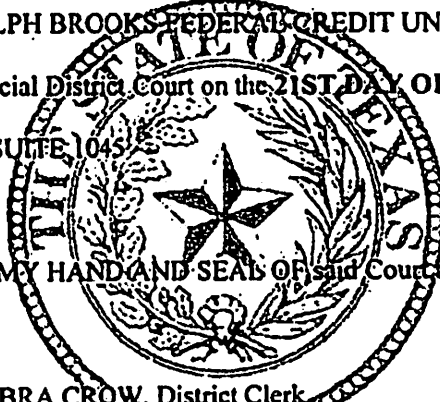
Defendant, in the hereinafter styled and number cause:

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND, a default judgment may be taken against you." In the above numbered cause, styled,

DENNIS WALSH VS. RANDOLPH BROOKS FEDERAL CREDIT UNION

Said petition filed in the 25th Judicial District Court on the 21ST DAY OF OCTOBER 2016

BY: DEAN GRESHAM
12720 HILLCREST RD SUITE 1045
DALLAS TX 75230



ISSUED AND GIVEN UNDER MY HAND AND SEALS OF said Court at office, on this the 24th day of October, 2016



DEBRA CROW, District Clerk
GUADALUPE COUNTY JUSTICE CENTER
211 WEST COURT STREET
SEGUIN, TEXAS 78155

BY: [Handwritten Signature] Deputy

DELIVERED:
ON: 12/15/16
BY: JK SCH 3012
@: 12:40 am (pm)

SHERIFFS SERVICE FEE NOT
COLLECTED BY DIST. CLERKS OFFICE

RESPONDENT'S COPY