UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michael E. Calcutt and Sandra L. Calcutt,

Plaintiffs,

vs. Civil Case No.__________________

Affinity Plus Federal Credit Union,
a federal credit union,

Defendant.

COMPLAINT

Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt (collectively, the "Calcutts"), by their attorneys, Anastasi & Associates, P.A., as and for their Complaint against Defendant, Affinity Plus Federal Credit Union, a federal credit union ("Affinity"), and its subsidiaries, allege as follows:

INTRODUCTION

The Calcutts bring this action for the violation by Affinity of its legal obligations pursuant to federal, state, and common law, including: (i) the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, et seq.; (ii) the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693, et seq., and regulations promulgated pursuant thereto including, but not limited to, Regulation E, 62 FR 19669, and Regulation J (collectively, "Regulation E"); (iii) the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq.; (iv) the Uniform Commercial Code ("UCC"), Minnesota Statutes § 336.4A-101, et seq.; (v) breach of contract; (vi) breach of fiduciary duty; (vii) breach of the covenant of good faith and fair dealing; (viii) unjust enrichment; (ix) negligence; (x) promissory and equitable estoppel; and (xi) intentional infliction of emotional distress.

JURISDICTION AND VENUE

1. Jurisdiction of this Court arises under 15 U.S.C. §§ 1601, 1681; 1693, 28 U.S.C. §§ 1331, 2201, and 2202.

2. Venue exists in this District pursuant to 28 U.S.C. § 1391(a) and (c) based on upon the Calcutts residence in the State of Minnesota and the presence of Affinity's branches located in the State of Minnesota, and in particular, a branch located at 175 West Lafayette Road, St. Paul, Minnesota 55107, where all or a substantial part of the events or omissions giving rise to the claims alleged herein occurred.

PARTIES

3. The Calcutts are husband and wife, each of whom are citizens of the United States of America and residents of the State of Minnesota, maintaining a residence located at 10713 Cambridge Court, Burnsville, Minnesota 55337.

4. Affinity is a federal credit union, organized and existing under the laws of the United States of America, which conducts business in the State of Minnesota, specifically at a branch located at 175 West Lafayette Road, St. Paul, Minnesota 55107.

FACTS

5. Michael E. Calcutt has maintained a savings account at Affinity for approximately seven (7) years ("Savings Account"), in which he maintained an average balance for the previous twelve (12) months of approximately Five Hundred Forty Dollars ($540.00).

6. On or about February 4, 2009, the Calcutts entered into that certain open-end home equity credit agreement and truth in lending disclosure with Affinity, in the maximum principal amount of up to Two Hundred Thousand Dollars ($200,000.00) ("HELOC").

7. The Calcutts entered into the HELOC with Affinity because of the special trust and confidence that Michael E. Calcutt developed over the years in his consumer relationship with Affinity

8. Pursuant to the terms of the HELOC, the Calcutts, at their sole discretion, could request the advance of funds from Affinity in the maximum amount of Two Hundred Thousand Dollars ($200,000.00).

9. The Calcutts, at all relevant times, utilized the HELOC and any advances thereunder solely for their personal consumer use.

10. On or about February 20, 2010, an unknown third party, without the knowledge or authorization of the Calcutts, created and activated a "phone profile" with Affinity, which linked all of the Calcutts' accounts, including the HELOC and the Savings Account.

11. On or about February 20, 2010, an unknown third party, without the knowledge or authorization of the Calcutts, also changed the phone number associated with the "phone profile," through the third party's contact with Affinity.

12. On or about February 24, 2010, an unknown third party, without the knowledge or authorization of the Calcutts, caused Affinity to make three (3) internal account transfers, each in the amount of Nine Thousand Nine Hundred Ninety Nine Dollars ($9,999.00), and one (1) internal transfer in the amount of Nine Thousand Six Hundred Dollars ($9,600.00), advancing funds from the HELOC and transferring the funds to the Savings Account (collectively, "First Transfers").

13. On or about February 24, 2010, an unknown third party, without the knowledge or authorization of the Calcutts, a person identified as "Jeremy Erving" faxed a request to Affinity ("First Wire Request"), requesting that the First Transfers, in the aggregate amount of Thirty

Nine Thousand Five Hundred Ninety Seven Dollars ($39,597.00), be wired from the Savings Account to an account at Bank of America held in the name of "Nicole Peeples" ("Peeples Account").

14. Affinity took no measures to verify whether or not the First Wire Request was known and authorized by the Calcutts.

15. On or about February 24, 2010, without the knowledge or authorization of the Calcutts, Affinity wired Thirty Nine Thousand Five Hundred Ninety Seven Dollars ($39,597.00), as requested in the First Wire Request, to the Peeples Account.

16. On or about February 26, 2010, an unknown third party, without the knowledge or authorization of the Calcutts, caused Affinity to make four (4) additional internal transfers, each in the amount of Nine Thousand Nine Hundred Ninety Nine Dollars ($9,999.00), and one (1) internal transfer in the amount of Nine Thousand Dollars ($9,000.00), advancing funds from the HELOC and transferring the funds to the Savings Account (collectively, "Second Transfers").

17. On or about February 26, 2010, an unknown third party, without the knowledge or authorization of the Calcutts, a person identified as "Jeremy Erving" faxed a request to Affinity ("Second Wire Request"), requesting that the First Transfers, in the aggregate amount of Forty Eight Thousand Nine Hundred Ninety Six Dollars ($48,996.00), be wired from the Savings Account the Peeples Account.

18. Affinity took no measures to verify the Second Wire Request was known and authorized by the Calcutts.

19. On or about February 26, 2010, without the knowledge or authorization of the Calcutts, Affinity wired Forty Eight Thousand Nine Hundred Ninety Six Dollars ($48,996.00), as requested in the Second Wire Request, to the Peeples Account.

20. The Calcutts did not have knowledge of nor authorize the First Transfers, First Wire Request, Second Transfers, or Second Wire Request (collectively, "Fraudulent Transfers").

21. On or about March 16, 2010, upon his regular receipt of monthly account statements from Affinity, for the HELOC and Savings Account, for the first time Michael E. Calcutt discovered the Fraudulent Transfers and immediately reported the same to Affinity.

22. On or about March 17, 2010, Michael E. Calcutt filed a police report with the St. Paul Police Department, which was assigned Case No. 10053653.

23. Despite numerous requests from the Calcutts, Affinity did not respond to the report made by Michael E. Calcutt until <u>six (6) months later</u>, on August 18, 2010.

24. On August 18, 2010, Affinity directed correspondence to Michael E. Calcutt, wherein Affinity claimed to have conducted an internal investigation into the Fraudulent Transfers and Affinity notified Michael E. Calcutt that Affinity was denying his claims and further informing Calcutt that he would be liable for the Eighty Eight Thousand Five Hundred Ninety Three Dollars ($88,593.00), wrongfully drawn from the HELOC, transferred to the Savings Account, and then wired to the Peeples Account.

25. Affinity also informed Michael E. Calcutt that if he failed repay Affinity for the amounts wrongfully drawn from the HELOC, transferred to the Savings Account, and then wired to the Peeples Account, that Affinity would report "late payments" to the respective credit reporting agencies, causing further harm to the Calcutts.

26. In response to Affinity's threats, on or about November 8, 2010, Michael E. Calcutt contacted John Simonsen, an officer of Affinity, via electronic mail, asking if Affinity would, despite knowing of the Fraudulent Transfers, report the "late payments" to the respective credit reporting agencies.

27. On or about November 9, 2010, John Simonson, on behalf of Affinity, responded back to Michael E. Calcutt via electronic mail stating, “I apologize for the [August 18, 2010] letter and this will not affect your credit.”

28. Despite the assurances from Affinity, Affinity subsequently reported a late payment to the respective credit reporting agencies, which caused significant harm to the credit rating of each of the Calcutts.

29. The Calcutts complied with and followed all of Affinity’s instructions and procedures for reporting the Fraudulent Transfers, disputing the same, and requesting that Affinity investigate the same.

30. Affinity has failed and refused, and continues to fail and refuse, to reimburse the Calcutts for the Fraudulent Transfers.

31. Affinity has further failed and refused, and continues to fail and refuse, to remedy its reporting to the respective credit reporting agencies of the alleged “late payments” by the Calcutts, which Affinity knew to be false and which arise out of the Fraudulent Transfers.

32. The Calcutts have been forced to dispute the credit reporting by Affinity with the respective credit reporting agencies.

33. Upon information and belief, the Fraudulent Transfers were accomplished through the Automated Clearing House (“ACH”), Network, FedWire, and/or other electronic means.

34. The Fraudulent Transfers were facilitated by Affinity's negligent, fraudulent, reckless, and/or intentional failure to maintain and/or exercise adequate security and monitoring procedures with respect to the HELOC and Savings Account, and Affinity’s negligent,

fraudulent, reckless, and/or intentional failure to abide by its contractual, statutory, common law, and/or fiduciary obligations to the Calcutts.

35. Upon Affinity's receipt, via facsimile, of the fraudulent, forged, and unauthorized First Wire Request and Second Wire Request to electronically transfer money to the Peeples Account, Affinity failed:

a. to abide by its own policies and procedures, or to adopt and implement commercially reasonable and commercially accepted security procedures to alert the Calcutts about the Fraudulent Transfers;

b. to abide by its own policies and procedures, or to adopt and implement commercially reasonable and commercially accepted security procedures to obtain the verified approval of the Calcutts, prior to Affinity's facilitation of the Fraudulent Transfers; and

c. to abide by its own policies and procedures, or to adopt and implement commercially reasonable and commercially accepted security procedures to require that the Calcutts answer security questions or otherwise verify, authenticate, or confirm the Calcutts' identity, as well as verify, authenticate, or confirm that Calcutts had made and or authorized the Fraudulent Transfers.

36. Defendant knew or should have known that the First Wire Request and the Second Wire Request were unauthorized, suspicious, forged, fraudulent, wrongful, did not conform with Affinity's policies, regulations, and rules, or the commercially reasonable or commercially accepted security procedures of the banking industry, and did not conform with the longstanding pattern of the Calcutts' account activity, with respect to the HELOC and the Savings Account.

37. The Calcutts promptly notified Affinity that they did not authorize the Fraudulent Transfers and the Calcutts demanded that Affinity return any and all transferred funds to the Calcutts, as well as that Affinity compensate Calcutts fully for any and all incident transfer fees, interest, and other charges.

38. The Calcutts and their attorneys have, on numerous occasions, requested information and documents relating to the aforementioned Fraudulent Transfers from Affinity, yet Affinity and its attorneys have, in keeping with their pattern of behavior relating to this incident, refused to provide the requested information and documents relating to the Fraudulent Transfers or extending the Calcutts the courtesy of returning phone calls.

39. The Fraudulent Transfers were made without the Calcutts' knowledge or consent, and occurred as a proximate result of Affinity's misconduct, recklessness, negligence, fraud, unlawful actions, wrongful conduct, intentional conduct, breach of its fiduciary duties, and/or failure to comply with commercially reasonable and/or commercially accepted security procedures.

40. Affinity has failed to conduct a timely and reasonable investigation into the Fraudulent Transfers, has failed to reimburse the Calcutts for the Fraudulent Transfers, and has failed to remedy the inaccurate reporting by Affinity with the respective credit reporting agencies.

41. Affinity has forced the Calcutts to make payment to Affinity for the alleged amounts due under the HELOC, caused by the Fraudulent Transfers.

42. As a result of Affinity's conduct, the Calcutts have suffered actual damages, suffering serious financial and pecuniary harm arising from monetary losses relating from Affinity's unauthorized allowance of the Fraudulent Transfers, incurred out-of-pocket expenses including, but not limited to, making payments of principal and interest under protest to Affinity in an effort to protect their credit rating, as well as the real property encumbered by a mortgage securing the HELOC, and other related costs, all of which will continue into the future to the Calcutts' great detriment and loss.

COUNT I – VIOLATIONS OF TRUTH IN LENDING ACT

For Count I of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 42 above as though fully stated herein and further state and allege as follows:

43. Pursuant to 15 U.S.C. § 1640(a), Affinity is liable to the Calcutts for its violations of TILA.

44. Affinity is liable to the Calcutts for advising the Calcutts that they were responsible to pay the full amount of the Fraudulent Transfers from the Savings Account and billing the Calcutts for the same, in violation of 15 U.S.C. § 1643.

45. Affinity is liable to the Calcutts for demanding that the Calcutts make payments for the interest on the full amount of the Fraudulent Transfers from the Savings Account, in violation of 12 C.F.R. § 226(d)(1).

46. Affinity is liable to the Calcutts for attempting to collect from the Calcutts any portion, or interest thereon, of the funds that were fraudulently transferred from the Calcutts' accounts, in violation of 12 C.F.R. § 226(d)(1).

47. Affinity is liable to the Calcutts for failing to reasonably investigate and correct the Fraudulent Transfers from the Savings Account, in violation of 15 U.S.C. § 1666

48. Affinity is liable to the Calcutts for reporting the Calcutts to the respective credit reporting agencies as owing money and being delinquent in their payments on the HELOC when Affinity knew the Fraudulent Transfers were unauthorized and fraudulent and that the Calcutts had disputed the balance, in violation of 15 U.S.C. § 1666a and 12 C.F.R. § 226.13(d)(2).

49. Affinity is liable to the Calcutts for failing to remedy its wrongful reporting to the respective credit reporting agencies when Affinity knew that the Fraudulent Transfers were

unauthorized and fraudulent and that the Calcutts had disputed the balance, in violation of 15 U.S.C. § 1666a.

50. By reason of the foregoing violations of TILA, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT II – VIOLATIONS OF ELECTRONIC FUNDS TRANSFER ACT

For Count II of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 50 above as though fully stated herein and further state and allege as follows:

51. The Calcutts are both "consumers" as that term is used in 15 U.S.C. § 1693(a)(5).

52. Affinity is a "financial institution" as that term is used in 15 U.S.C. § 1693(a)(8).

53. The Savings Account is an "account" as that term is used in 15 U.S.C. § 1693(a)(2).

54. The aforesaid Fraudulent Transfers are "unauthorized electronic transfers" as that phrase is used and defined in 15 U.S.C. § 1693(a)(11).

55. Affinity violated its obligations under EFTA by failing to provide the Calcutts with the disclosures and notices required under that Act and under Regulation E.

56. Affinity violated its obligations under EFTA by failing to perform a good faith investigation into the Fraudulent Transfers, providing the Calcutts with the results of said investigation within ten (10) business days, in violation of 15 U.S.C. § 1693f(a).

57. Affinity violated its obligations under EFTA by failing to correct the account errors caused by the Fraudulent Transfers, in violation of 15 U.S.C. § 1693f(b)

58. Affinity unlawfully, recklessly, negligently, and/or willfully denied the Calcutts the protections set forth in Regulation E including, but not limited to, the limitations on consumer liability set forth in 12 C.F.R. § 205.6.

59. Pursuant to 15 U.S.C. § 1693g, the Calcutts' maximum liability for the Fraudulent Transfers is Fifty Dollars ($50.00).

60. Affinity has demanded payment from the Calcutts, as a result of the Fraudulent Transfers, in the amount of Eighty Eight Thousand Five Hundred Ninety Three Dollars ($88,593.00), which amount is well in excess of the Calcutts' maximum liability and which demand is in violation of 15 U.S.C. § 1693g.

61. Affinity has and continues to willfully violate the EFTA and Regulation E and Affinity is liable to the Calcutts for a declaratory judgment that Affinity's conduct violated the EFTA.

62. By reason of the foregoing violations of the EFTA, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT III – VIOLATIONS OF FAIR CREDIT REPORTING ACT

For Count III of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 62 above as though fully stated herein and further state and allege as follows:

63. At all times pertinent hereto, the Calcutts were each a "person" as that term is defined by U.S.C. § 1681a(b).

64. Affinity violated its obligations under the FCRA by willfully and negligently failing to conduct an investigation into the Fraudulent Transfers.

65. Affinity violated its obligations under the FCRA by willfully and negligently failing to review all relevant information concerning the HELOC and the Savings Account.

66. Affinity violated its obligations under the FCRA by willfully and negligently failing to report the findings of its investigation into the Fraudulent Transfers to any and all credit reporting agencies.

67. Affinity violated its obligations under the FCRA by willfully and negligently failing to provide any and all credit reporting agencies with the factual information and evidence that the Calcutts submitted to Affinity, which proved that the information contained in the Calcutts' credit reports was inaccurate.

68. Affinity violated its obligations under the FCRA by willfully and negligently continuing to disseminate inaccurate and derogatory credit, account, and other information concerning the Calcutts to any and all credit reporting agencies.

69. Affinity violated its obligations under the FCRA by willfully and negligently advising the Calcutts that Affinity would not report any alleged "late payments" to the any and all credit reporting agencies, when Affinity intended to and in fact did report derogatory credit, account, and other information concerning the Calcutts to any and all credit reporting agencies.

70. Affinity violated its obligations under the FCRA by willfully and negligently failing to comply with the requirements imposed on furnishers of information, pursuant to U.S.C. § 1681s-2(b).

71. Affinity informed Michael E. Calcutt that if he failed to pay for the funds wrongfully and fraudulently drawn from the HELOC and transferred from the Savings Account, Affinity would report “late payments” to the credit bureaus, causing further harm to Calcutts.

72. By reason of the foregoing violations of the FCRA, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys’ fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT IV – VIOLATIONS OF UNIFORM COMMERCIAL CODE ARTICLE 4A

For Count IV of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 72 above as though fully stated herein and further state and allege as follows:

73. Affinity failed to establish, implement, and/or apply, as required by the Uniform Commercial Code, as adopted in Minnesota (“UCC”), Article 4A, a security procedure that was a commercially reasonable and/or commercially acceptable method against unauthorized payment orders or unauthorized electronic transactions.

74. The Fraudulent Transfers were not authorized by the Calcutts, nor initiated by the Calcutts or their agent who had access to confidential security information, nor by a person who obtained that confidential security information from a source controlled by the Calcutts.

75. Affinity failed to take reasonable measures to prevent, preclude, and/or stop the Fraudulent Transfers even though Affinity was aware, prior to the Fraudulent Transfers, that suspicious activity had occurred on the HELOC and Savings Account, which did not conform to the normal pattern of activity on the HELOC and Savings Account.

76. Affinity accepted the unauthorized payment orders without verification pursuant to a commercially reasonable and/or commercially accepted security procedure and/or did not follow a commercially reasonable and/or commercially accepted security procedure when Affinity endorsed and fulfilled the Fraudulent Transfers.

77. Affinity did not have a written agreement with the Calcutts, pursuant to which Affinity was authorized to endorse and fulfill the Fraudulent Transfers.

78. Affinity failed to adopt and implement a security procedure to protect against wrongful, unauthorized, and/or fraudulent payment orders and electronic transactions, such as the Fraudulent Transfers.

79. Affinity failed to allow the Calcutts to choose alternative security procedures for approval of electronic transactions.

80. At no time did the Calcutts agree in writing to be bound by payment orders for electronic transactions from the HELOC and Savings Account via telephonic, FedWire, or other electronic means.

81. Affinity failed to adopt and implement and/or failed to comply with its agreed upon security procedures to protect against wrongful, unauthorized, and/or fraudulent payment orders and electronic payments.

82. Affinity failed to adopt and implement and/or failed to comply with commercially reasonable and/or commercially accepted security procedures when it endorsed and fulfilled the Fraudulent Transfers by, among other things:

a. failing to confirm the identity of the person who created and activated the “phone profile” linking the HELOC and the Savings Account;

b. failing to notify the Calcutts that a “phone profile” had been created, linking the HELOC and the Savings Account and that a “phone profile” had been activated;

c. failing to validate the new phone number on the HELOC and the Savings Account;

d. failing to call Michael E. Calcutt to confirm whether or not he placed either the First Transfers or the Second Transfers;

e. failing to confirm the identity of the individual who, in fact, caused the First Transfer and the Second Transfers;

f. failing to recognize suspicious behavior on the HELOC and the Savings Account only four (4) days after the “phone profile” was created and authorized by Affinity;

g. failing to require an original signature before approving the Fraudulent Transfers;

h. honoring the First Wire Request and the Second Wire Request, each of which were sent by facsimile from an individual identified as “Jeremy Erving”;

i. endorsing and fulfilling the Fraudulent Transfers, which did not comply with Affinity's internal procedures and rules, and which were not in the form that Affinity required;

j. failing to exercise reasonable care when approving the Fraudulent Transfers;

k. approving the Fraudulent Transfers in the aggregate amount of Eighty Eight Thousand Five Hundred Ninety Three Dollars ($88,593.00), under circumstances that are not commonly accepted in the industry; and

l. failing to properly investigate the wrongful and unauthorized Fraudulent Transfers.

83. By reason of the foregoing violations of UCC Article 4A, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys’ fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT V – BREACH OF CONTRACT

For Count V of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 83 above as though fully stated herein and further state and allege as follows:

84. Affinity has breached the terms and conditions of the HELOC and the Savings Account by, among other things, allowing the Fraudulent Transfers.

85. Affinity has also breached its agreement to not report the "late payments" allegedly due under the HELOC and the Savings Account, to the various credit reporting agencies.

86. The documents evidencing the HELOC and the Savings Account, as well as the agreement by Affinity to not report the "late payments" allegedly due under the HELOC and the Savings Account to the various credit reporting agencies, are established by clear, positive and convincing evidence.

87. The HELOC and the Savings Account, as well as the agreement by Affinity to not report the "late payments" allegedly due under the HELOC and the Savings Account, to the various credit reporting agencies are based on adequate consideration except that Affinity has failed to perform all of its duties and obligations thereunder.

88. The Calcutts have performed all of their respective duties and obligations under the HELOC and the Savings Account, as well as the agreement by Affinity to not report the "late payments" allegedly due under the HELOC and the Savings Account, to the various credit reporting agencies.

89. Affinity has breached the terms and conditions of the HELOC and the Savings Account, as well as the agreement by Affinity to not report the "late payments" allegedly due under the HELOC and the Savings Account to the various credit reporting agencies, which

breach has damaged the Calcutts and caused them to incur actual damages.

90. By reason of the foregoing breaches of the HELOC and the Savings Account, as well as the agreement by Affinity to not report the "late payments" allegedly due under the HELOC and the Savings Account to the various credit reporting agencies, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT VI – BREACH OF FIDUCIARY DUTY

For Count VI of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 90 above as though fully stated herein and further state and allege as follows:

91. The Calcutts placed their trust and confidence in Affinity based upon Affinity's expertise and experience in making their decision to become members of Affinity and to open and maintain the HELOC and the Savings Account.

92. Affinity knew that the Calcutts were placing their trust and confidence in Affinity based upon Affinity's expertise and experience.

93. The Calcutts relied on Affinity to maintain and establish security protocols and procedures, as Affinity promised it would, to protect the safety and security of the Calcutts' accounts and information.

94. The Calcutts reliance upon Affinity caused the Calcutts to open and maintain the HELOC and the Savings Account.

95. The trust and confidence placed upon Affinity by the Calcutts, which trust and confidence Affinity was aware of, created a fiduciary relationship between Affinity and the Calcutts.

96. As a result of the fiduciary relationship between Affinity and the Calcutts, Affinity owed the Calcutts a fiduciary duty to maintain and protect the HELOC and the Savings Account.

97. Affinity breached its fiduciary duty to the Calcutts by its failure to establish and maintain commercially accepted security protocols and procedures, which failure allowed the Fraudulent Transfers.

98. Affinity breached its fiduciary duty to the Calcutts by refusing to reimburse the Calcutts for the amounts wrongfully and fraudulently taken from the HELOC and the Savings Account.

99. Affinity breached its fiduciary duty to the Calcutts by promising the Calcutts that Affinity would not report "late payments" to the respective credit reporting agencies, yet Affinity reported "late payments" to the respective credit reporting agencies, despite Affinity's specific knowledge of the Fraudulent Transfers.

100. Affinity breached its fiduciary duty to the Calcutts by failing to conduct an adequate investigation into the Fraudulent Transfers.

101. By reason of the foregoing breaches of the fiduciary duty owed by Affinity to the Calcutts, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages,

along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT VII – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

For Count VII of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 101 above as though fully stated herein and further state and allege as follows:

102. In every contract, such as the HELOC, the Savings Account, as well as the agreement by Affinity to not report the "late payments" allegedly due under the HELOC and the Savings Account to the various credit reporting agencies, there is a covenant of good faith and fair dealing.

103. Affinity owed the Calcutts the duty to act in good faith and deal fairly in its contractual relationship with the Calcutts.

104. Affinity breached its duty to act in good faith and deal fairly with the Calcutts by its failure to establish and maintain commercially accepted security protocols and procedures, which failure allowed the Fraudulent Transfers.

105. Affinity breached its duty to act in good faith and deal fairly with the Calcutts by refusing to reimburse the Calcutts for the amounts wrongfully and fraudulently taken from the HELOC and the Savings Account.

106. Affinity breached its duty to act in good faith and deal fairly with the Calcutts by promising the Calcutts that Affinity would not report "late payments" to the respective credit reporting agencies, yet Affinity intended to and did, in fact, report "late payments" to the respective credit reporting agencies, despite Affinity's specific knowledge of the Fraudulent Transfers.

107. Affinity breached its duty to act in good faith and deal fairly with the Calcutts by failing to conduct an adequate investigation into the Fraudulent Transfers.

108. By reason of the foregoing breaches of the duty of good faith and fair dealing owed by Affinity to the Calcutts, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT VIII – UNJUST ENRICHMENT

For Count VIII of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 108 above as though fully stated herein and further state and allege as follows:

109. Affinity has benefitted from the Calcutts' establishing and maintaining the HELOC and the Savings Account with Affinity.

110. Affinity has benefitted from the proceeds derived from the alleged obligations caused by Fraudulent Transfers by requiring that the Calcutts make payment to Affinity for the amounts wrongfully and fraudulently taken through the Fraudulent Transfers, including alleged principal, interest, and late payments.

111. Affinity has and will benefit from its demand upon the Calcutts for the alleged obligations caused by the Fraudulent Transfers.

112. Affinity has failed and refused, and continues to fail and refuse, to acknowledge that the Calcutts have no liability to Affinity for the amounts wrongfully and fraudulently taken through the Fraudulent Transfers.

113. Affinity should not benefit from the aforementioned proceeds derived from the alleged obligations caused by the Fraudulent Transfers.

114. Affinity will continue to benefit through the alleged obligations caused by the Fraudulent Transfers, which presents circumstances which would make it unjust to permit Affinity to benefit from the alleged obligations caused by Fraudulent Transfers.

115. Affinity has been unjustly enriched and injustice can only be avoided by ordering payment for damages by Affinity to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT IX – NEGLIGENCE

For Count IX of its Complaint herein, Plaintiffs restate and reallege Paragraphs 1 through 115 above as though fully stated herein and further state and allege as follows:

116. The Calcutts entered into the account relationships with Affinity, pursuant to the terms of the HELOC and the Savings Account.

117. Affinity accepted rights, responsibilities, and duties, pursuant to the terms of the HELOC and the Savings Account.

118. Among other things, Affinity accepted payments from the Calcutts, accrued interest on the balances in the HELOC and the Savings Account, and otherwise benefitted from its account relationship with the Calcutts.

119. Based upon the promises and agreement of Affinity, the Calcutts entered into the HELOC and the Savings Account.

120. Affinity's actions were improper and negligent because, among other things, Affinity failed to establish and maintain commercially accepted security protocols and

procedures, which failure allowed the Fraudulent Transfers.

121. Affinity negligently performed its duties under the terms of the HELOC and the Savings Account, which negligence has caused the Calcutts to be damaged as a result of their reasonable reliance upon Affinity's performance under the HELOC and the Savings Account.

122. Affinity knew that the Calcutts would be relying upon Affinity's performance under the HELOC and the Savings Account.

123. By reason of the foregoing negligence of Affinity, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT X – PROMISSORY/EQUITABLE ESTOPPEL

For Count X of its Complaint herein, Lender restates and realleges Paragraphs 1 through 123 above as though fully stated herein and further states and alleges as follows:

124. Affinity made numerous promises and representations to the Calcutts including, without limitation, that Affinity would abide by the terms and conditions of the HELOC, the Savings Account, and other documents related thereto. These promises and representations were made with the full knowledge that the Calcutts would rely thereon by entering into the HELOC and the Savings Account.

125. Affinity knew, or should have known, that such promises and representations would induce action or forbearance of a definite and substantial character on the Calcutts' behalf.

126. The Calcutts did reasonably rely upon the promises and representations of Affinity by entering into the HELOC, the Savings Account, and other documents related thereto.

127. Injustice can only be avoided by estopping Affinity from denying the aforementioned promises and representations and that the Calcutts be entitled to judgment against Affinity for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

COUNT XI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

For Count XI of its Complaint herein, Lender restates and realleges Paragraphs 1 through 127 above as though fully stated herein and further states and alleges as follows:

128. The conduct of Affinity described herein was so extreme and outrageous that it passed the boundaries of decency and is utterly intolerable to the civilized community.

129. The conduct of Affinity described herein was intentional or reckless.

130. The conduct of Affinity described herein caused emotional distress to the Calcutts.

131. The distress caused by the conduct of Affinity described herein was so severe that no reasonable person could be expected to endure it.

132. By reason of the foregoing intentional infliction of emotional distress by Affinity, the conduct of Affinity was the direct and proximate cause in bringing about the serious injuries, actual damages, and harm to the Calcutts that are outlined more fully above and, as a result, Affinity is liable to the Calcutts for the full amount of statutory, and actual damages, along with the attorneys' fees and the costs of litigation, as well as such further relief, as may be permitted by law.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt, request that the Court enter judgment against Defendant, Affinity Plus Federal Credit Union, a federal credit union, as follows:

1. For the actual damages suffered by Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt in an amount of no less than Eighty Eight Thousand Five Hundred Ninety Three Dollars ($88,593.00), against Defendant, Affinity Plus Federal Credit Union.

2. For statutory damages, pursuant to 15 U.S.C. §§ 1601, 1681, 1693, and 28 U.S.C. §§ 1331, 2201, and 2202, in favor of Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt and against Defendant, Affinity Plus Federal Credit Union.

3. For punitive damages, in favor of Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt and against Defendant, Affinity Plus Federal Credit Union.

4. For costs and reasonable attorneys' fees incurred by Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt, pursuant to 15 U.S.C. §§ 1681n, 1681o, 1640, and 1693m.

5. For an order directing Defendant, Affinity Plus Federal Credit Union to immediately cease and desist from any and all attempts to collect the funds that were transferred from the accounts of Plaintiffs, Michael E. Calcutt and Sandra L. Calcutt, together with any accrued interest or other charges thereon.

6. For an order directing Defendant, Affinity Plus Federal Credit Union to immediately cease and desist from any and all inaccurate credit reporting regarding the HELOC or the Savings Account and to further order Defendant, Affinity Plus Federal Credit Union to correct any past inaccurate credit reporting regarding the same.

7. For such further and other relief as the Court deems just.

ANASTASI & ASSOCIATES, P.A.

Dated: December 23, 2010.

/s/ Garth G. Gavenda
Garth G. Gavenda, #310918
T. Chris Stewart, #152316
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ATTORNEYS FOR PLAINTIFFS

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant ____________
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

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

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury

PERSONAL INJURY
- ❒ 362 Personal Injury - Med. Malpractice
- ❒ 365 Personal Injury - Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 444 Welfare
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 440 Other Civil Rights

PRISONER PETITIONS
- ❒ 510 Motions to Vacate Sentence

Habeas Corpus:
- ❒ 530 General
- ❒ 535 Death Penalty
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition

FORFEITURE/PENALTY
- ❒ 610 Agriculture
- ❒ 620 Other Food & Drug
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 630 Liquor Laws
- ❒ 640 R.R. & Truck
- ❒ 650 Airline Regs.
- ❒ 660 Occupational Safety/Health
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Mgmt. Relations
- ❒ 730 Labor/Mgmt.Reporting & Disclosure Act
- ❒ 740 Railway Labor Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 463 Habeas Corpus - Alien Detainee
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 810 Selective Service
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 875 Customer Challenge 12 USC 3410
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 892 Economic Stabilization Act
- ❒ 893 Environmental Matters
- ❒ 894 Energy Allocation Act
- ❒ 895 Freedom of Information Act
- ❒ 900Appeal of Fee Determination Under Equal Access to Justice
- ❒ 950 Constitutionality of State Statutes

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

❒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district (specify) ❒ 6 Multidistrict Litigation ❒ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ❒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____________ DOCKET NUMBER ____________

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # ________ AMOUNT ________ APPLYING IFP ________ JUDGE ________ MAG. JUDGE ________

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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