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*Attorneys for Plaintiffs,*  
Roger Stanionis; and, Lee E. Stanionis

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**ROGER STANIONIS; AND,  
LEE E. STANIONIS,  
INDIVIDUALLY AND ON  
BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

Plaintiffs,

v.

**BANK OF AMERICA,  
NATIONAL ASSOCIATION,**

Defendant.

**Case No.:**

**CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:**

- 1. BREACH OF CONTRACT  
AND COVENANT**
- 2. UNCONSCIONABLE  
OVERDRAFT POLICIES**
- 3. CONVERSION OF FUNDS**
- 4. UNJUST ENRICHMENT**
- 5. THE ELECTRONIC FUNDS  
TRANSFER ACT**
- 6. CALIFORNIA BUSINESS AND  
PROFESSIONS CODE**

**JURY TRIAL DEMANDED**

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1 Plaintiffs ROGER STANIONIS (“Mr. Stanionis” or “Plaintiffs”); and, LEE  
2 E. STANIONIS (“Mrs. Stanionis” or “Plaintiffs”) on behalf of themselves and all  
3 persons similarly situated submits this Class Action Complaint and allege the  
4 following based on personal knowledge as to allegations regarding Plaintiffs and  
5 based on information and belief as to other allegations.

6 **I. INTRODUCTION**

- 7 1. This is a civil action seeking monetary damages, restitution, and declaratory  
8 relief as to Plaintiff’s claims against Defendant BANK OF AMERICA,  
9 NATIONAL ASSOCIATION (“Defendant”). Plaintiffs’ claims arise from  
10 Defendant’s assessment and collection of improper and excessive overdraft  
11 fees.
- 12 2. In addition, Plaintiffs, and the Class Members, also suffered from Defendant’s  
13 improper practice of reordering of debit card transactions from highest amount  
14 to lowest amount and the resulting assessment of overdraft fees even when  
15 sufficient funds were present in customer accounts. This case is brought to  
16 remedy Defendant’s illegal practices and to recover for these victims.
- 17 3. Plaintiffs are customers of Defendant’s, an international bank worth tens of  
18 billions of dollars. Defendant provides a broad suite of financial services to its  
19 membership, which it advertises as being low or no-fee.
- 20 4. Moreover, Defendant’s overdraft fees on debit card transactions that were  
21 assessed after August of 2010 were also improper based on another reason.  
22 Starting in August of that year, the Federal Reserve implemented Regulation E  
23 (12 C.F.R. § 205.17) (“Reg E”) under the Electronic Funds Transfer Act, and  
24 banks were obligated to obtain customers’ affirmative consent before assessing  
25 overdraft fees on debit card transactions. Defendant did not comply with Reg E  
26 and has continued to assess overdraft fees on debit card transactions in violation  
27 of federal law.
- 28

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1 5. As such, Plaintiffs seek to represent a class of all current and former Defendant  
2 customers that were improperly assessed overdraft fees due to the reordering of  
3 debit card transactions.

4 **II. OVERDRAFT FEES**

5 6. In the era of electronic banking and the ubiquitous use of debit cards, the  
6 assessment of overdraft fees has become a major profit center for United States  
7 banks and credit unions, including Defendant. For years, banks covered  
8 customers who occasionally bounced checks and even did so for a time for  
9 customers using debit cards, without charging said customers. Since the early  
10 1990's, however, banks have devised methods to provide overdraft "protection"  
11 for customers and charge them in each instance. An FDIC report estimated that  
12 overdraft fees represent 74 percent of the total service charges that are imposed  
13 on deposit accounts in the United States. A 2008 FDIC study reports that  
14 overdraft fees for debit cards can carry an effective annualized interest rate that  
15 exceeds 3,500 percent. In June 2013, the Consumer Finance Protection Bureau  
16 released the most recent study examining overdraft fees. The study results  
17 echoed CFPB Director Richard Cordray's fear that "what is often marketed as  
18 overdraft protection may be putting consumers at greater risk of harm." It  
19 found that banks spend just 14.4% of the income gained from overdraft fees on  
20 the actual overdrafts, and that overdraft fees make up a whopping 27.5% of  
21 smaller banks' income.

22 7. Overdraft charges are a multi billion-dollar industry for banking institutions. In  
23 2007, banks collected more than \$17 billion in overdraft fees. That number  
24 nearly doubled in 2008, as more and more consumers struggled to maintain  
25 positive checking account balances. In 2013, banks brought in \$31.9 billion in  
26 overdraft charges alone. With \$18.4 billion in assets, Defendant, through  
27 multiple offices throughout the nation, and a strong online presence, provided  
28 commercial and retail banking services to a substantial number of customers.

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Thus, Defendant has been a notable beneficiary of these staggering overdraft charges.

8. Almost by definition, these fees disproportionately affect the poor, who are most likely to maintain low balances. Moebs Services, a research company that has conducted studies for the government as well as banks, estimates that 90 percent of overdraft fees are paid by the poorest 10 percent of banks’ customer base. Moreover, these fees have the tendency to create a domino effect because the imposition of a fee on an account with a negative balance will make it less likely that the account holder’s balance will reach positive territory, resulting in more fees.

9. Before debit cards existed, banks occasionally extended the courtesy of honoring paper checks written on overdrawn or otherwise deficient accounts for customers who were typically in good standing. Banks extended this courtesy largely because the third party involved in a sales transaction allowed the customer to pay by check, expecting the funds to be available and the check to clear. For example, if a customer wrote a check to purchase groceries, the grocery store would only know whether the check cleared after the groceries had been purchased.

10. However, the same considerations are not present when customers use debit cards. Banks could simply decline to honor debit or point of sale transactions where accounts lack sufficient funds to execute the transactions. Retail and service transactions could still be executed if consumers presented an alternative form of payment. Automated teller machine (“ATM”) transactions could still proceed if banks provided a warning that an overdraft fee would be assessed, and customers chose to proceed nevertheless. In fact, until a few years ago, most banks simply declined debit transactions that would overdraw an account.

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1 11. In response to the rampant abuse of overdraft charges by banks, the Board of  
2 Governors of the Federal Reserve System implemented Reg E (12 C.F.R. §  
3 205.17) to amend the Electronic Funds Transfer Act to include notice  
4 requirements for banks concerning overdraft charges.

5 12. Pursuant to Reg E, a financial institution may not assess a fee or charge on a  
6 consumer's account for paying an ATM or one-time debit card transaction  
7 pursuant to the financial institution's overdraft program unless the financial  
8 institution provides the customer with written notice, separate from all other  
9 information, that describes the institution's overdraft program, and obtains the  
10 customer's affirmative consent to the institution's payment of ATM or one-time  
11 debit card transactions that would incur an overdraft fee, and provides written  
12 confirmation of the consumer's consent along with a statement of informing the  
13 consumer of the right to revoke this consent. [*See* 12 C.F.R. § 205.17(b)(1)].

14 13. For consumers with an account at a financial institution prior to July 1, 2010,  
15 the institution cannot assess any fees on a consumer's account on or after  
16 August 15, 2010 for paying an ATM or one-time debit card transaction pursuant  
17 to the overdraft service unless the institution has complied with 12 C.F.R. §  
18 205.17(b)(1). [*See* 12 C.F.R. § 205.17(c)(1)].

19 14. For accounts opened on or after July 1, 2010, the financial institution cannot  
20 assess any fees on a consumer's account for paying an ATM or one-time debit  
21 card transaction pursuant to the overdraft service unless the institution has  
22 complied with 12 C.F.R. § 205.17(b)(1). [*See* 12 C.F.R. § 205.17(c)(2)].

23 15. The debit card transactions and point of sale transactions described herein  
24 qualify as an "electronic funds transfer" under the Electronic Funds Transfer  
25 Act.

26 16. Defendant qualifies as a financial institution that provides an overdraft service  
27 as contemplated by the Electronic Funds Transfer Act.  
28

1 17. Instead of simply declining debit transactions when there are insufficient funds,  
2 or warning customers that an overdraft fee will be assessed if they proceed with  
3 the transaction, Defendant has routinely processed such transactions and then  
4 charged their customers an overdraft fees of \$35 as a “courtesy pay fee,” even  
5 when the transaction is for only a few dollars. Thus, Defendant’s automatic,  
6 fee-based overdraft scheme was and is intentionally designed to maximize  
7 overdraft fee revenue.

8 18. Additionally, as part of Defendant’s inequitable motive to generate obscene  
9 profits gained through the imposition of unconscionable overdraft fees,  
10 Defendant failed to adequately notify customers of Defendant’s true overdraft  
11 practices and/or their legal rights to opt out of overdraft protection.

12 19. In many instances, these overdraft fees cost Defendant’s account holders  
13 hundreds of dollars in a matter of days, or even hours, when they may have  
14 been overdrawn by only a few dollars. Even more egregious, customer  
15 accounts may not actually be overdrawn at the time the overdraft fees are  
16 charged, or at the time of the debit transaction.

### 17 **III. JURISDICTION AND VENUE**

18 20. This Court has original jurisdiction of this action under the Class Action  
19 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court  
20 has original jurisdiction because the aggregate claims of the putative Class  
21 members exceed \$5 million, exclusive of interest and costs, there are at least  
22 100 members of the putative Class, and at least one of the members of each of  
23 the proposed Classes is a citizen of a different state than Defendant. This Court  
24 also has original jurisdiction of this action under 28 U.S.C. §§ 1331 and 1337  
25 because the claims arise under the laws of the United States, including the  
26 Electronic Funds Transfer Act, 15 U.S.C. §§ 1693, et seq.

27 21. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant  
28 is subject to personal jurisdiction here, regularly conducts substantial business

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1 in California, and because a substantial part of the events or omissions giving  
2 rise to the claims asserted herein occurred and continue to occur in this district  
3 since Plaintiffs are residents of San Bernardino County which is within this  
4 district.

5 **IV. PLAINTIFFS**

6 22.Plaintiffs are current customers of Defendant and are citizens of the County of  
7 San Bernardino, State of California.

8 **V. CLASS ALLEGATIONS**

9 23.Plaintiffs bring this action on behalf of themselves and all others similarly  
10 situated pursuant to Federal Rule of Civil Procedure 23. This action satisfies  
11 the numerosity, commonality, typicality, adequacy, predominance, and  
12 superiority requirements of Rule 23.

13 24.Plaintiffs propose two classes, defined as:

- 14 a. All customers of Defendant who, within the applicable statute of limitations,  
15 incurred an overdraft fee as a result of Defendant’s practices of re-  
16 sequencing debit card transactions from highest to lowest, debiting items for  
17 which no time-stamp exists before debit card transactions for which a time-  
18 stamp exists, or assessing overdraft fees even when a customer has sufficient  
19 funds in their account to cover all merchant requests for payment  
20 (hereinafter referred to as “the Re-Sequencing Class”).
- 21 b. All customers of Defendant who were assessed an overdraft fee for an ATM  
22 or debit card transaction after July 1, 2010, if the account was opened on or  
23 after July 1, 2010, or August 15, 2010, if the account was opened prior to  
24 July 1, 2010, even though Defendant failed to comply with the Electronic  
25 Funds Transfer Act (hereinafter referred to as “the EFTA Class”).

26 25.Plaintiffs reserve the right to modify or amend the definitions of the proposed  
27 Classes before the Court determines whether certification is appropriate and as  
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1 the Court may otherwise allow. Modifications will almost certainly be needed  
2 due to information obtained during discovery. Based on the current knowledge  
3 of Plaintiff, other elements that may be appropriate to include in the definition  
4 of the Classes, the definition of an additional class or classes, or as part of  
5 individual state subclasses, include Defendant's violations of state statutory  
6 protections.

7 26.Excluded from the Classes are Defendant, its parents, subsidiaries, affiliates,  
8 officers, and directors, any entity in which Defendant has a controlling interest,  
9 all customers who make a timely election to be excluded, governmental entities,  
10 and all judges assigned to hear any aspect of this litigation, as well as their  
11 immediate family members.

12 27.The members of the Classes are so numerous that joinder is impractical. The  
13 Classes each consist of thousands of members and the identity of those persons  
14 is within the knowledge of and can be ascertained only by resort to Defendant's  
15 records.

16 28.The claims of the representative Plaintiffs are typical of the claims of the  
17 Classes. With respect to the Re-Sequencing Class, Plaintiffs, like all other  
18 members, was charged overdraft fees by Defendant as a result of their improper  
19 practices, to include the re-sequencing of debit card transactions from highest to  
20 lowest, and the withdrawal of funds based on transactions for which no time-  
21 stamp exists before debit card transactions for which a time-stamp does exist.

22 29.With respect to the EFTA Class, Plaintiffs and all other members were charged  
23 overdraft fees on ATM or debit card transactions in violation of EFTA and the  
24 regulations based thereupon. The representative Plaintiffs, like all members of  
25 the Classes, have been damaged by Defendant's misconduct in that Plaintiffs  
26 have been assessed unfair and unconscionable overdraft charges. Furthermore,  
27 the factual basis of Defendant's misconduct is common to members of the  
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1 Classes, and represents a common thread of unfair and unconscionable conduct  
2 resulting in injury to all members of the Classes.

3 30. There are numerous questions of law and fact common to the Classes and those  
4 common questions predominate over any questions affecting only individual  
5 Class members.

6 31. Among the questions of law and fact common to the Re-sequencing Class are  
7 whether Defendant:

- 8 a. Did not clearly disclose and/or refused to allow customers to opt out of  
9 the “overdraft protection” programs;
- 10 b. Did not obtain affirmative consent from customers prior to processing  
11 transactions that would result in overdraft fees;
- 12 c. Did not alert customers that a debit card transaction, including a cash  
13 transaction at an ATM owned by Defendant, would trigger an overdraft  
14 fee, and did not provide customers with an opportunity to cancel such  
15 transactions;
- 16 d. Manipulated and reordered transactions so as to increase the number of  
17 overdraft fees imposed;
- 18 e. Manipulated and reordered debits from highest to lowest in order to  
19 maximize the number of overdrafts and, consequently, the amount of  
20 overdraft fees;
- 21 f. Affirmatively misrepresented to customers that transactions would be  
22 posted in the order received;
- 23 g. Failed to provide customers with accurate balance information;
- 24 h. Delayed posting of transactions by customers using debit cards so that  
25 customers were charged overdraft fees on transactions, even though the  
26 customers had sufficient funds in their accounts to cover the transactions  
27 upon execution;
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- 1 i. Breached contractual provisions and/or the covenant of good faith and
- 2 fair dealing through their overdraft policies and practices;
- 3 j. Required customers to enter into standardized account agreements which
- 4 included unconscionable provisions;
- 5 k. Converted money belonging to Plaintiff and other members of the
- 6 Classes through its overdraft policies and practices; and
- 7 l. Was unjustly enriched through its overdraft policies and practices.

8 32. Among the questions of law and fact common the EFTA Class are whether  
9 Defendant:

- 10 a. Provided customers with a notice describing its overdraft services that
- 11 complied with 12 C.F.R. §§ 205.17(b)(1)(i), (d);
- 12 b. Provided customers with a reasonable opportunity to affirmatively
- 13 consent, or opt in, to overdraft services in accordance with 12 C.F.R. §
- 14 205.17(b)(1)(ii);
- 15 c. Obtained customers' affirmative consent, or opt-in, to overdraft services
- 16 in accordance with 12 C.F.R. § 205.17(b)(1)(iii);
- 17 d. Provided customers with confirmation of their consent in accordance
- 18 with 12 C.F.R. § 205.17(b)(1)(iv); and
- 19 e. Assessed overdraft fees in violation of EFTA.

20 33. Other questions of law and fact common to the Classes include:

- 21 a. The proper method or methods by which to measure damages; and
- 22 b. The declaratory relief to which the Classes are entitled.

23 34. Plaintiffs' claims are typical of the claims of other members of the Re-  
24 sequencing and EFTA Classes, in that they arise out of the same wrongful  
25 overdraft policies and practices and the same or substantially similar  
26 unconscionable provisions of Defendant's account agreements and other related  
27 documents.

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1 35.Plaintiffs’ claims are typical of the claims of other members of the EFTA Class,  
2 in that they are based on EFTA and arise from the same wrongful overdraft  
3 policies and practices. Plaintiffs have suffered the harm alleged and have no  
4 interests antagonistic to the interests of any other member of the Class.

5 36.Plaintiffs are committed to the vigorous prosecution of this action and have  
6 retained competent counsel experienced in the prosecution of class actions.  
7 Plaintiffs are adequate representatives and will fairly and adequately protect the  
8 interests of the Classes.

9 37.A class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy. Since the amount of each individual Class  
11 member’s claim is small relative to the complexity of the litigation, and due to  
12 the financial resources of Defendant, no Class member could afford to seek  
13 legal redress individually for the claims alleged herein. Therefore, absent a  
14 class action, the Class members will continue to suffer losses and Defendant’s  
15 misconduct will proceed without remedy.

16 38.Even if Class members themselves could afford such individual litigation, the  
17 court system could not. Given the complex legal and factual issues involved,  
18 individualized litigation would significantly increase the delay and expense to  
19 all parties and to the Court. Individualized litigation would also create the  
20 potential for inconsistent or contradictory rulings. By contrast, a class action  
21 presents far fewer management difficulties, allows claims to be heard which  
22 might otherwise go unheard because of the relative expense of bringing  
23 individual lawsuits, and provides the benefits of adjudication, economies of  
24 scale, and comprehensive supervision by a single court.

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**VI. COMMON FACTUAL ALLEGATIONS**

**A. DEFENDANT**

39. Defendant is global bank worth tens of billions of dollars.

40. Defendant is in the business of providing customers with a variety of banking products and services. Customers who open a checking account are provided with a debit card, also known as a check card or ATM card. Through such debit cards, customers can engage in transactions using funds which are withdrawn from their accounts by engaging in “debit” or “point of sale” (“POS”) transactions, or may withdraw money from their accounts at ATMs. Whether the card is used to execute POS transactions or to withdraw cash from ATMs, the transaction is processed electronically. As a result, Defendant is notified instantaneously when the card is swiped, and has the option to accept or decline transactions at such time.

41. Defendant employs sophisticated software to automate its overdraft systems. These programs maximize the number of overdrafts, and thus, the amount of overdraft fees charged per customer. Defendant utilizes this software system to generate overdraft fees. Customers at all of Defendant’s branches and online suffered from the same policies and systems in regard to overdraft fees.

42. As a result of Defendant’s manipulation and alteration of customers’ transactions records, funds in a customer’s account are depleted more rapidly and more overdraft fees are likely to be charged for multiple smaller transactions. Indeed, overdraft charges are likely to occur at times when, but for the manipulation and alteration, there would be funds in the account and no overdraft would occur. For example, if a customer, whose account had a \$50 balance at the time several transactions posted, made four transactions of \$10 and then one subsequent transaction of \$100, Defendant would reorder the debits from largest to smallest, imposing four overdraft fees on the customer. Conversely, if the \$100 transaction were debited last – consistent with the

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1 actual order of transactions – only one overdraft fee would be assessed. [*See*  
 2 FDIC Study of Bank Overdraft Programs, November 2008, available at  
 3 [www.fdic.gov/bank/analytical/overdraft/](http://www.fdic.gov/bank/analytical/overdraft/) at 11, n.12].

4 **B. DEFENDANT’S RELEVANT CUSTOMER DOCUMENTS REGARDING**  
 5 **OVERDRAFTS**

6 43. Plaintiffs and all members of the Classes maintain or maintained a checking  
 7 account with Defendants. The terms of the checking accounts are contained in  
 8 standardized account holder agreements, presented to customers on a “take it or  
 9 leave it” basis, drafted and imposed by Defendant, which has vastly superior  
 10 bargaining strength, and thus constitute agreements of adhesion. Defendant’s  
 11 standardized account documents were revised periodically during the relevant  
 12 time period. Depending on the version of the contracts, a variety of other  
 13 documents were referenced therein and these documents are purported to also  
 14 bind customers.

15 **C. DEFENDANT’S REORDERING OF CHECKING ACCOUNT TRANSACTIONS**

16 44. To maximize overdraft revenue, Defendant has manipulated and reordered  
 17 debits from highest to lowest during given periods of time. It has reordered  
 18 debit card transactions for no reason other than to increase the number of  
 19 exorbitant overdraft fees. This practice violates the parties’ contracts and the  
 20 covenant of good faith and fair dealing.

21 45. Transactions involving debit cards, including the withdrawal of cash from  
 22 ATMs and POS transactions with vendors, are processed electronically. As a  
 23 result, Defendant is notified instantaneously when the customer’s debit card is  
 24 swiped, and has the option to accept or decline these transactions.

25 46. Notwithstanding the instantaneous nature of these electronic debit  
 26 card transactions, under Defendant’s posting system, charges are not posted in  
 27 the order in which they are assessed or received. Defendant developed a policy  
 28 and employs a practice whereby debits are posted to customer accounts out of

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1 chronological order for the sole purpose of maximizing the number of overdraft  
2 transactions and, therefore, the amount of overdraft fees charged to customers.

3 47. Instead of processing such transactions in chronological order, Defendant  
4 processes them starting with the largest debit and ending with the smallest  
5 debit, so as to generate the largest possible number of overdrafts and the  
6 greatest possible amount of overdraft fees.

7 48. Defendant would have no higher expenses and would face no greater risk if it  
8 were to order transactions chronologically or from smallest to largest.

9 49. Defendant often posts debit card transactions that have accumulated over  
10 multiple days on a single date. When the group of charges is eventually posted  
11 to the customer's account, they are posted in order of largest to smallest – not in  
12 the order in which they were received or in the order in which they were  
13 charged. This delayed posting results in the imposition of multiple overdraft  
14 fees that would not otherwise be imposed. The delayed posting also prevents  
15 customers from ascertaining the accurate balances in their accounts.

16 50. Defendant enforces this policy whereby charges assessed are posted to  
17 customers' accounts in a non-chronological order, from highest to lowest, and  
18 are held for multiple days and then batched together, to maximize the number  
19 of overdraft transactions and fees. These processing practices substantially  
20 increase the likelihood that customers' smaller charges will result in multiple  
21 overdraft fees. The practices provide Defendant with substantially higher  
22 service fee revenues than it would otherwise achieve absent these practices.

23 51. As a result of these and other practices, Plaintiffs and members of the Re-  
24 sequencing Class have been assessed overdraft fees for transactions, which  
25 occurred when they actually had sufficient funds in their accounts to cover  
26 those transactions.

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**D. DEFENDANT’S FAILURE TO NOTIFY CUSTOMERS OF OVERDRAFTS OR  
ADVISE CUSTOMERS OF THEIR RIGHT TO OPT OUT**

52. At the time debit cards are used in POS transactions or at ATMs, Defendant is able to determine instantaneously whether there are sufficient funds in a customer’s account to cover that particular transaction. Defendant has the technological capability to decline transactions, or notify customers at that very moment that the particular debit card transaction would result in an overdraft. Prior to the effective date of the opt in/opt out requirements of the EFTA (the “Effective Date”), Defendant could have given customers the option to decline the transaction to avoid incurring overdraft fees, but failed to do so because it sought to maximize the amount of revenue generated through the assessment of overdraft fees.

53. Notwithstanding its technological capabilities and actual knowledge, Defendant failed to provide notice to Plaintiffs and the Class that a particular debit card transaction would result in an overdraft and, hence, an overdraft fee.

54. Defendant also failed to make Plaintiffs and the Class members aware that they could opt out of their overdraft scheme upon request, thereby avoiding any overdraft fees from being charged.

**E. DEFENDANT’S OVERDRAFT POLICIES AND PRACTICES ARE CONTRARY TO  
BEST PRACTICES**

55. By engaging in the conduct described herein, Defendant has failed to follow the list of “best practices” for overdraft programs set forth in the “Joint Guidance on Overdraft Protection Programs” (“Joint Guidance”) issued by the United States Department of the Treasury, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively the “Agencies”). These “best practice” recommendations include: “Provide election or opt-out of service. Obtain affirmative consent of

1 consumers to receive overdraft protection. Alternatively, where overdraft  
2 protection is automatically provided, permit consumers to ‘opt-out’ of the  
3 overdraft program and provide a clear consumer disclosure of this option.” [See  
4 70 F.R. 9127-01, 9132].

5 56. According to rules proposed by the Agencies: “Injury [caused by overdraft  
6 charges] is not outweighed by countervailing benefits... This is particularly the  
7 case for ATM withdrawals and POS debit card transactions where, but for the  
8 overdraft service, the transaction would typically be denied and the consumer  
9 would be given the opportunity to provide other forms of payment without  
10 incurring any fee.” [See 73 F.R. 28904-01, 28929 (May 19, 2008)].

11 57. The Joint Guidance also advises banks to “[a]lert customers before a transaction  
12 triggers any fees. When consumers attempt to withdraw or transfer funds made  
13 available through an overdraft protection program, Defendant should provide a  
14 specific consumer notice, where feasible, that completing the withdrawal may  
15 trigger the overdraft fees.” [70 F.R. 9127, 9132]. The Joint Guidance further  
16 advises that “[t]his notice should be presented in a manner that permits  
17 consumers to cancel the attempted withdrawal or transfer after receiving the  
18 notice.” [*Id.*].

19 58. Similarly, the list of “best practices” recommended in “Overdraft Protection: A  
20 Guide for Bankers,” issued by the American Bankers Association, includes  
21 offering customers the option of “opting out” of any overdraft programs, and  
22 informing customers, before they access funds, that a particular point of sale or  
23 ATM transaction will cause them to incur an overdraft fee.

24 59. Defendant’s overdraft policies make it difficult for customers to avoid injury  
25 even if they carefully track the balance in their account. In fact, the Agencies  
26 have stated that injury resulting from such policies “is not reasonably  
27 avoidable” by the consumer. [73 F.R. 28904-01, 28929]. “It appears that  
28 consumers cannot reasonably avoid this injury if they are automatically enrolled

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1 in an institution’s overdraft service without having an opportunity to opt out.  
2 Although consumers can reduce the risk of overdrawing their accounts by  
3 carefully tracking their credits and debits, consumers often lack sufficient  
4 information about key aspects of their account. For example, a consumer  
5 cannot know with any degree of certainty when funds from a deposit or a credit  
6 for a returned purchase will be made available.”

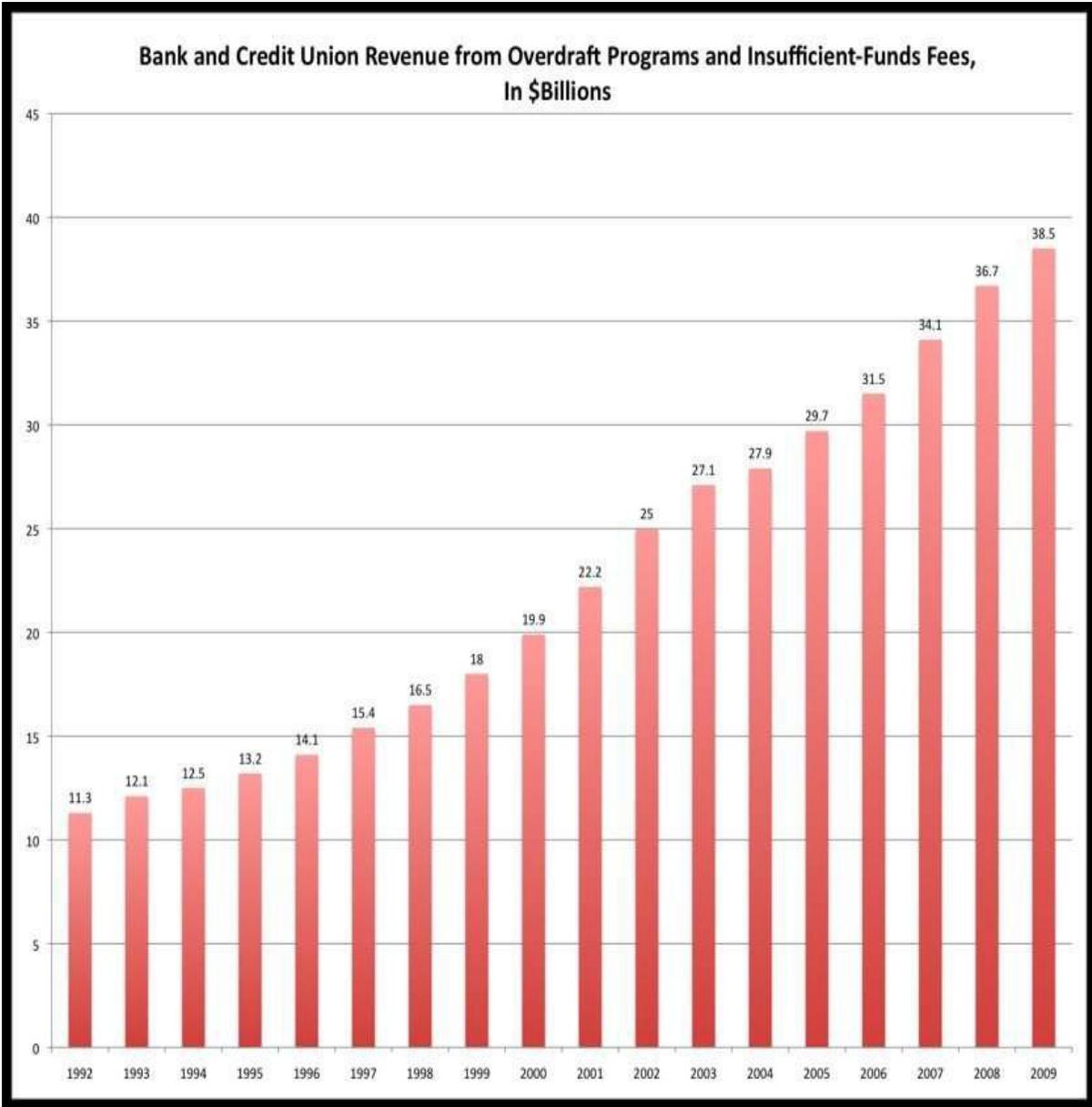
7 60. On October 6, 2009, the Center for Responsible Lending issued a report entitled  
8 “Overdraft Explosion: Bank Fees for Overdrafts Increase 35% in Two Years.”  
9 The report found that it is now “standard procedure to automatically enroll  
10 checking account customers in their most expensive overdraft loan program.”  
11 The report finds that debit card transactions account for more overdraft fees  
12 than traditional checks or any other type of transaction, even though “debit card  
13 transactions and ATM withdrawals . . . could easily be denied for no fee.” The  
14 report also finds that overdraft fees increased 35 percent from 2006 to 2008,  
15 and that over 50 million Americans overdrew their accounts in a 12-month  
16 period, with 27 million accounts incurring five or more overdraft fees.

17 61. A chart from the research company Moebs Services shows that in every year  
18 from 1992 to 2009, banks gained increased revenues from overdraft fees:

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**F. DEFENDANT’S UNCONSCIONABLE PROVISIONS AND POLICIES**

62. Defendant’s overdraft policies and practices are unconscionable in the following respects, among others:

- a. Defendant did not disclose or reasonably disclose to customers that they had the option to “opt out” of their overdraft scheme;
- b. Defendant did not obtain affirmative consent from checking account customers prior to processing a transaction that would overdraw the account and result in an overdraft fee;

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- 1 c. Defendant did not alert their customers that a debit card transaction
- 2 would trigger an overdraft, and did not provide the customer the
- 3 opportunity to cancel that transaction, before assessing an overdraft fee;
- 4 d. Defendant used unduly discretionary power to assess fees even at times
- 5 when no economic argument could be made for such fees;
- 6 e. The account agreements and related documents are contracts of adhesion
- 7 in that they are standardized forms, imposed and drafted by Defendant,
- 8 which had vastly superior bargaining strength, and only allow customers
- 9 the opportunity to adhere to them or reject them entirely; and
- 10 f. The account agreements provided to customers were ineffective,
- 11 ambiguous, deceptive, unfair, and misleading to any extent they allowed
- 12 Defendant to perpetrate the grossly improper acts described herein.

13 **G. DEFENDANT’S OVERDRAFT PRACTICES HARMED PLAINTIFFS AND THE**  
14 **DEFENDANT CLASS**

15 63. Defendant’s wrongful overdraft policies and practices described above harmed  
16 Plaintiff and members of the Classes.

17 64. Plaintiffs have had Plaintiffs’ debit card transactions manipulated and reordered  
18 by Defendant. If Defendant had not done so, Plaintiffs would not have been  
19 assessed as many overdraft fees. Plaintiffs paid multiple overdrafts only  
20 because of this improper practice.

21 65. Plaintiffs have been assessed overdrafts in violation of the plain terms of EFTA.  
22 Similarly, if Defendant had not violated EFTA, Plaintiffs would not have been  
23 assessed as many overdraft fees. Plaintiffs paid multiple overdraft fees which  
24 EFTA prohibited Defendant from charging.

25 66. In this lawsuit, Plaintiffs do not challenge all of the overdraft fees Plaintiffs  
26 were assessed. Rather, Plaintiffs challenge only those that occurred as a direct  
27 result of improper practices of Defendant, such as the practice of posting debit  
28 card transactions in high to low order.

1 67. Defendant never notified Plaintiffs at the time it executed the purported  
2 insufficient funds transactions that Plaintiffs' checking accounts were  
3 overdrawn or that Plaintiffs would be charged an overdraft fee as a result of the  
4 transactions. Furthermore, Defendant paid, rather than returned, each debit card  
5 transactions described above even though Plaintiffs' accounts purportedly  
6 lacked sufficient funds to cover the transactions.

7 68. The overdraft fees assessed Plaintiffs are representative of millions of dollars of  
8 overdraft fees that Defendant wrongfully assessed and deducted from customer  
9 accounts. These wrongful takings are especially egregious considering the fact  
10 that Defendant approved each transaction and knew at the time of approval  
11 whether there were sufficient funds in the account to cover the transaction.

#### 12 **H. THE DAMAGES SUSTAINED BY PLAINTIFFS AND THE CLASSES**

13 69. Defendant's overdraft policies make it difficult for a customer to avoid injury  
14 even if the customer keeps close track of the balance in his or her account. In  
15 fact, the Agencies have stated that "injury" resulting from such policies "is not  
16 reasonably avoidable" by consumers. [73 F.R. 28904-01, 28929]. "It appears  
17 that consumers cannot reasonably avoid this injury if they are automatically  
18 enrolled in an institution's overdraft service without having an opportunity to  
19 opt out. Although consumers can reduce the risk of overdrawing their accounts  
20 by carefully tracking their credits and debits, consumers often lack sufficient  
21 information about key aspects of their account. For example, a consumer  
22 cannot know with any degree of certainty when funds from a deposit or a credit  
23 for a returned purchase will be made available." [*Id.*].

24 70. Thus, as a consequence of Defendant's overdraft policies and practices,  
25 Plaintiffs and the Re-sequencing Class have been wrongfully forced to pay  
26 overdraft fees. Defendant has improperly deprived Plaintiffs and the Classes of  
27 significant funds, causing ascertainable monetary losses and damages.  
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1 71.As a consequence of Defendant’s improper overdraft fees, Plaintiffs and the  
2 Classes have been wrongfully deprived of funds to which Defendant had no  
3 legitimate claim.

4 **I. DEFENDANT VIOLATES THE EFTA**

5 72.Under the EFTA, financial institutions such as Defendant – as of July 1, 2010 if  
6 an account was opened on or after July 1, 2010, or August 15, 2010 if an  
7 account was opened prior to July 1, 2010 – may not assess an overdraft fee to a  
8 consumer customer for paying an ATM or one-time debit card transaction  
9 unless the institution first (i) provided the customer with notice of the overdraft  
10 “services,” (ii) provided the customer with an opportunity to opt-in to such  
11 service, (iii) obtained the customer’s affirmative consent to opt-in, and (iv)  
12 provided confirmation of the customer’s consent and a statement informing the  
13 customer of the right to revoke such consent. [*See, e.g.*, 12 C.F.R. §  
14 205.17(b)(1)(i)-(iv)].

15 73.Defendant failed to comply with these and other EFTA requirements. [*See* 15  
16 U.S.C. §§ 1693b, 1693c, 12 C.F.R. § 205.17]. Nonetheless, after the Effective  
17 Dates, Defendant, in direct violation of EFTA, and to the detriment of Plaintiff  
18 and the EFTA Class, continued to assess overdraft on ATM and one-time debit  
19 card transactions.

20 74.All conditions precedent to the relief sought herein have either occurred or have  
21 been performed or waived.

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**VII. CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

***Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing<sup>1</sup>***

75.Plaintiffs repeat, re-allege and incorporate herein by reference all paragraphs above.

76.Plaintiffs and Defendant have contracted for bank account deposit, checking, ATM, and debit card services. As described above, the actions taken by Defendant have violated the specific terms of the account agreements with customers, including other documents referenced therein. Defendant is liable for the losses of Plaintiffs and the Classes that have resulted from Defendant’s breaches of the parties’ contractual agreements.

77.Under the laws of the states where Defendant does business, 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. Put differently, 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.

78.Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be

<sup>1</sup> Certain states recognize a claim for breach of the covenant of good faith and fair dealing as a separate and independent claim from breach of contract. Other states treat breach of the covenant of good faith and fair dealing as a species of breach of contract. For the sake of convenience, these claims are brought in a single count.

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1 overt or may consist of inaction, and fair dealing may require more than  
2 honesty. Examples of violations of good faith and fair dealing are evasion of  
3 the spirit of the bargain, willful rendering of imperfect performance, abuse of a  
4 power to specify terms, and interference with or failure to cooperate in the other  
5 party's performance.

6 79. Defendant has breached the covenant of good faith and fair dealing through its  
7 overdraft policies and practices as alleged herein.

8 80. Plaintiffs and the Classes have performed all, or substantially all, of the  
9 obligations imposed on them under the account agreements.

10 81. Plaintiffs and members of the Classes have sustained damages as a result of  
11 Defendant's breaches of the account agreements, as well as the further breaches  
12 of the account agreements as modified by the covenant of good faith and fair  
13 dealing.

14 **SECOND CAUSE OF ACTION**

15 ***Unconscionability***

16 82. Plaintiffs repeat, re-allege and incorporate herein by reference all of the  
17 paragraphs above.

18 83. Defendant's overdraft policies and practices are substantively and procedurally  
19 unconscionable in the following respects, among others:

- 20 a. Prior to the Effective Date, Defendant did not disclose or reasonably  
21 disclose to customers that they had the option to "opt out" of the  
22 overdraft scheme;
- 23 b. Prior to the Effective Date, Defendant did not obtain affirmative consent  
24 from checking account customers prior to processing a transaction that  
25 would overdraw the account and result in an overdraft fee;
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- 1 c. Defendant did not alert customers that a debit card transaction would
- 2 trigger an overdraft, and did not provide the customer the opportunity to
- 3 cancel that transaction, before incurring an overdraft fee;
- 4 d. The account agreements are contracts of adhesion in that they are
- 5 standardized forms, imposed and drafted by Defendant, which are parties
- 6 of vastly superior bargaining strength, and only allows the customer the
- 7 opportunity to adhere to them or reject them entirely;
- 8 e. The account agreements provided to customers are ineffective,
- 9 ambiguous, deceptive, unfair, and misleading in that they do not reveal
- 10 the improper methods utilized by Defendant to generate excessive
- 11 overdraft fees; and,
- 12 f. The account agreements authorize Defendant to take nearly any action,
- 13 including wholly changing the contract, assessing overdraft fees,
- 14 manipulating customer transactions, and otherwise taking grossly unfair
- 15 action to harm customers.

16 84. Considering the great business acumen and experience of Defendant in relation  
17 to Plaintiff and the members of the Classes, the great disparity in the parties'  
18 relative bargaining power, the inconspicuousness and incomprehensibility of  
19 the contract language at issue, the oppressiveness of the terms, the commercial  
20 unreasonableness of the contract terms, the purpose and effect of the terms, the  
21 allocation of the risks between the parties, and similar public policy concerns,  
22 these provisions are unconscionable and, therefore, unenforceable as a matter of  
23 law.

24 85. The imposition of overdraft charges that exceed the amount overdrawn (e.g.,  
25 the imposition of a \$35 charge on a transaction of less than \$10) is itself  
26 unconscionable. Such charges are not reasonably related to Defendant's cost of  
27 covering the overdraft and/or their risk of nonpayment (where Defendant pays  
28 the overdraft), or to the cost of returning the item unpaid (where Defendant

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1 does not pay the overdraft). This is particularly true when the balance of actual  
2 funds has not even fallen below zero.

3 86.Plaintiffs and members of the Classes have sustained damages as a result of  
4 Defendant’s unconscionable policies and practices as alleged herein.

5 **THIRD CAUSE OF ACTION**

6 ***Conversion***

7 87.Plaintiffs repeat, re-allege and incorporate herein by reference all of the above  
8 paragraphs.

9 88.Defendant had, and continues to have, a duty to maintain and preserve  
10 customers’ checking accounts and to prevent their diminishment through its  
11 own wrongful acts.

12 89.Defendant has wrongfully collected overdraft fees from Plaintiffs and the  
13 members of the Re-sequencing Class, and has taken specific and readily  
14 identifiable funds from their accounts in payment of these fees in order to  
15 satisfy them.

16 90.Defendant has, without proper authorization, assumed and exercised the right of  
17 ownership over these funds, in hostility to the rights of Plaintiffs and the  
18 members of the Class, without legal justification.

19 91.Defendant continues to retain these funds unlawfully without the consent of  
20 Plaintiffs or members of the Class.

21 92.Defendant intends to permanently deprive Plaintiffs and the members of the  
22 Class of these funds.

23 93.These funds are properly owned by Plaintiffs and the members of the Class, not  
24 Defendants, which now claims that they are entitled to their ownership, contrary  
25 to the rights of Plaintiffs and the members of the Class.

26 94.Plaintiffs and the members of the Class are entitled to the immediate possession  
27 of these funds.  
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1 95. Defendant has wrongfully converted these specific and readily identifiable  
2 funds.

3 96. Defendant's wrongful conduct is continuing.

4 97. As a direct and proximate result of this wrongful conversion, Plaintiff and the  
5 members of the Class have suffered and continue to suffer damages.

6 98. By reason of the foregoing, Plaintiff and the members of the Class are entitled  
7 to recover from Defendant all damages and costs permitted by law, including  
8 all amounts that Defendant has wrongfully converted.

9 **FOURTH CAUSE OF ACTION**

10 ***Unjust Enrichment***

11 99. Plaintiffs repeat, re-allege and incorporate herein by reference all of the above  
12 paragraphs.

13 100. Plaintiffs, on behalf of themselves and the Re-sequencing Class, assert a  
14 common law claim for unjust enrichment. This claim is brought solely in the  
15 alternative and Plaintiffs concede that this claim cannot survive if his  
16 contractual claims succeed. If, however, the parties' contracts are deemed  
17 unconscionable or otherwise unenforceable for any reason, unjust enrichment  
18 will dictate that Defendant disgorge all improperly assessed overdraft fees.

19 101. By means of Defendant's wrongful conduct alleged herein, Defendant  
20 knowingly provided banking services to Plaintiffs and members of the Class  
21 that are unfair, unconscionable, and oppressive.

22 102. Defendant knowingly received and retained wrongful benefits and funds  
23 from Plaintiffs and members of the Class. In so doing, Defendant acted with  
24 conscious disregard for the rights of Plaintiffs and members of the Class.

25 103. As a result of Defendant's wrongful conduct as alleged herein, it has been  
26 unjustly enriched at the expense of, and to the detriment of, Plaintiffs and  
27 members of the Class.  
28

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1 104. Defendant’s unjust enrichment is traceable to, and resulted directly and  
2 proximately from, the conduct alleged herein.

3 105. Under the common law doctrine of unjust enrichment, it is inequitable for  
4 Defendant to be permitted to retain the benefits it received, and is still  
5 receiving, without justification, from the imposition of overdraft fees on  
6 Plaintiffs and members of the Classes in an unfair, unconscionable, and  
7 oppressive manner. Defendant’s retention of such funds under circumstances  
8 making it inequitable to do so constitutes unjust enrichment.

9 106. The financial benefits derived by Defendant rightfully belong to Plaintiffs  
10 and members of the Class. Defendant should be compelled to disgorge in a  
11 common fund for the benefit of Plaintiffs and members of the Class all  
12 wrongful or inequitable proceeds received by them. A constructive trust should  
13 be imposed upon all wrongful or inequitable sums received by Defendant  
14 traceable to Plaintiff and the members of the Class.

15 107. Plaintiffs and members of the Class have no adequate remedy at law.

16 **FIFTH CAUSE OF ACTION**

17 ***Violations of the Electronic Funds Transfer Act and Regulations Such as §15***  
18 ***U.S.C. §1693 and 12 C.F.C. §205***

19 108. Plaintiffs repeat, re-allege and incorporate herein by reference all of the  
20 paragraphs above.

21 109. Plaintiffs allege this claim on behalf of themselves and the EFTA Class  
22 members who have been assessed one or more overdraft fees or charges based  
23 on ATM or debit card transactions.

24 110. Plaintiffs, on behalf of themselves and the EFTA Class, asserts that  
25 Defendant failed to:

- 26 a. Provide customers with a notice describing their overdraft services that  
27 complies with 12 C.F.R. §§ 205.17(b)(1)(i), (d);  
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1 b. Provide customers with a reasonable opportunity to affirmatively  
2 consent, or opt in, to overdraft services in accordance with 12 C.F.R. §  
3 205.17(b)(1)(ii);

4 c. Obtain customers’ affirmative consent, or opt-in, to overdraft services in  
5 accordance with 12 C.F.R. § 205.17(b)(1)(iii); or

6 d. Provide customers with confirmation of their consent in accordance with  
7 12 C.F.R. § 205.17(b)(1)(iv).

8 111. Nonetheless, Defendant imposed overdraft fees on them based on ATM or  
9 debit card transactions in violation of 12 C.F.R. §§ 205.17(b), (c).

10 112. As a result of Defendant’s violations of EFTA, Defendant is liable to  
11 Plaintiffs and the EFTA Class for actual and statutory damages pursuant to 15  
12 U.S.C. § 1693m.

13 113. As a result of Defendant’s violations of the EFTA, Defendant is liable to  
14 Plaintiffs and the EFTA Class for actual and statutory damages and Plaintiffs  
15 and the Class are entitled to recover costs of suit and their reasonable attorneys’  
16 fees.

17 **SIXTH CAUSE OF ACTION**

18 ***Violations of California Business and Professions Code §17200, et. seq.***

19 120. Plaintiffs repeat, re-allege and incorporate herein by reference the above  
20 allegations as if fully stated herein.

21 121. “Unfair competition” is defined in Business and Professions Code Section §  
22 17200 as encompassing any one of the five types of business “wrongs,” three of  
23 which are at issue here: (1) an “unlawful” business act or practice; (2) an “unfair”  
24 business act or practice; and (3) a “fraudulent” business act or practice. The  
25 definitions in § 17200 are disjunctive, meaning that each of these five “wrongs”  
26 (Plaintiffs allege three of them here) operates independently from the others.  
27

28 122. Plaintiffs and Defendant are both “person[s]” as defined by California

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1 Business & Professions Code § 17201. Section 17204 authorizes a private right  
2 of action on both an individual and representative basis.

3 a. “Unlawful” Prong

4 123. Because Defendant has violated the EFTA, Defendant has violated  
5 California’s Unfair Competition Law, Business & Professions Code §§ 17200 et  
6 seq., which provides a cause of action for an “unlawful” business act or practice  
7 perpetrated on members of the California public.

8 124. There were reasonably available alternatives to further Defendant’s  
9 legitimate business interest, other than the conduct described herein.

10 125. Plaintiffs and the putative class reserve the right to allege other violations of  
11 law, which constitute other unlawful business practices or acts, as such conduct is  
12 ongoing and continues to this date.

13 b. “Unfair” Prong

14 126. Defendant’s actions and representations constitute an “unfair” business act  
15 or practice under § 17200, in that Defendant’s conduct is substantially injurious to  
16 consumers, offends public policy, and is immoral, unethical, oppressive, and  
17 unscrupulous as the gravity of the conduct outweighs any alleged benefits  
18 attributable to such conduct. Without limitation, it is an unfair business act or  
19 practice for Defendant to knowingly and negligently misrepresent to the  
20 consuming public, including Plaintiffs, that transactions are posted in the order  
21 received when they are actually re-ordered to generate overdraft fees, as it is to re-  
22 order these transactions to generate obscene profits for Defendant at the expense  
23 of consumers, and to fail to make required disclosures to Plaintiffs and Consumers  
24 about overdraft protection in violation of the EFTA. Defendant's business  
25 practices, and each of them, are "unfair" because they offend established public  
26 policy and/or are in moral, unethical, oppressive, unscrupulous and/or  
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1 substantially injurious to consumers, who are misled as to the features of their  
2 accounts and accordingly make transactions that result in multiple, expensive,  
3 overdraft fees.

4 127. At a date presently unknown to Plaintiffs, but at least four years prior to the  
5 filing of this action, and as set forth above, Defendant has committed acts of  
6 unfair competition as defined by Business & Professions Code §§ 17200 et seq. as  
7 described herein.

8 128. Plaintiffs and other members of the class could not reasonably have avoided  
9 the injury suffered by each of them. Plaintiffs reserve the right to allege further  
10 conduct that constitutes other unfair business acts or practices. Such conduct is  
11 ongoing and continues to this date.

12 129. Defendant could have and should have furthered its legitimate business  
13 interests by expressly revealing to Plaintiffs and the members of the Classes the  
14 true features and effects of overdraft “protection.” It would not have been  
15 unreasonably difficult for Defendant to have done so.

16  
17 c. “Fraudulent” Prong

18 130. Defendant’s claims and statements pertaining to the features of its accounts  
19 were false, misleading and/or likely to deceive the consuming public within the  
20 meaning of § 17200. Without limitation, it is a fraudulent act or business act or  
21 practice for Defendant to knowingly or negligently represent to Plaintiffs, whether  
22 by conduct, orally or in writing by intentionally failing to offer a meaningful  
23 opportunity to opt out of overdraft protection, to misrepresent that charges are  
24 processed in the order received, and to re-order transactions to generate the  
25 maximum amount of overdraft fees attributable to Plaintiffs and the Class  
26 Members.

27 131. Plaintiffs reserve the right to allege further conduct that constitutes other  
28

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1 fraudulent business acts or practices. Such conduct is ongoing and continues to  
2 this date.

3 132. The fraudulent, unlawful and unfair business practices and false and  
4 misleading representations of Defendant, as described above, presents a  
5 continuing threat to consumers in that they will continue to be misled into  
6 incurring overdraft fees.

7 133. As a direct and proximate result of the aforementioned acts and  
8 representations of Defendant, Defendant received and continues to hold monies  
9 rightfully belonging to Plaintiffs and other similarly situated consumers who were  
10 led to do business with Defendant due to the unlawful acts of Defendant.

11 134. Defendant has engaged in unlawful, unfair and fraudulent business acts or  
12 practices, entitling Plaintiffs to judgment and equitable relief against Defendant,  
13 as set forth in the Prayer for Relief. Pursuant to Business & Professions Code §  
14 17203, as result of each and every violation of the UCL, which are continuing,  
15 Plaintiffs are entitled to restitution from against Defendant, as set forth in the  
16 Prayer for Relief.

17 135. Plaintiffs and members of the classes have suffered injury in fact and have  
18 lost money as a result of Defendant's unfair competition. Plaintiffs and members  
19 of the classes have been injured because they incurred overdraft fees pertaining to  
20 their accounts with Defendant.

21 136. Defendant, through its acts of unfair competition, has unfairly acquired  
22 money from Plaintiff and members of the classes. It is impossible for the Plaintiffs  
23 to determine the exact amount of money that Defendant has obtained without a  
24 detailed review of the Defendant's books and records. Plaintiffs request that this  
25 Court restore this money and enjoin Defendant from continuing to violate  
26 California Business & Professions Code § 17200 et seq., as discussed above.  
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1 137. Plaintiffs further seek an Order requiring Defendant to make full restitution  
2 of all moneys wrongfully obtained and disgorge all ill-gotten revenues and/or  
3 profits, together with interest thereupon.

4 138. Plaintiffs also seek attorneys’ fees and costs pursuant to, inter alia,  
5 California Civil Code section 1021.5.

6 **VIII. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs and the Classes demand a jury trial on all claims so  
8 triable and judgment as follows:  
9

- 10 • Declaring Defendant’s overdraft fee policies and practices to be wrongful,  
11 unfair, unconscionable, and in violation of the EFTA;
- 12 • Awarding restitution of all overdraft fees at issue paid to Defendant by  
13 Plaintiff and the Classes as a result of the wrongs alleged herein in an  
14 amount to be determined at trial;
- 15 • Compelling disgorgement of the ill-gotten gains derived by Defendant from  
16 its misconduct;
- 17 • Awarding actual damages in an amount according to proof;
- 18 • Awarding punitive and exemplary damages;
- 19 • Awarding statutory damages;
- 20 • Awarding pre-judgment interest at the maximum rate permitted by  
21 applicable law;
- 22 • Reimbursing all costs and disbursements accrued by Plaintiff in connection  
23 with this action, including reasonable attorneys’ fees pursuant to applicable  
24 law; and;

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- Awarding such other relief as this Court deems just and proper.

Dated: October 29, 2014

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By: /s/ Matthew M. Loker  
MATTHEW M. LOKER, ESQ.  
ATTORNEY FOR PLAINTIFFS

**[ADDITIONAL PLAINTIFF’S COUNSEL]**

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