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25 **UNITED STATES DISTRICT COURT**
26 **SOUTHERN DISTRICT OF CALIFORNIA**

27 REYNA MCGOVERN, an individual, on
28 behalf of herself and all others similarly
situated,

Plaintiff,

v.

U.S. BANK, N.A.,

Defendant.

Case No: '18CV1794 CAB JMA

CLASS ACTION COMPLAINT

- 1) Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing;
- 2) Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200

DEMAND FOR JURY TRIAL

1 Plaintiff Reyna McGovern (“Plaintiff” or “McGovern”), on behalf of herself and all
2 persons similarly situated, alleges the following based on personal knowledge as to
3 allegations regarding Plaintiff and on information and belief as to other allegations.

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of herself and classes of all similarly
6 situated consumers against Defendant US Bank, N.A. (“US Bank”), arising from its routine
7 practices of (a) assessing *two* out-of-network Automated Teller Machine (“ATM”) fees
8 (“OON Fees”) on out-of-network ATM withdrawals preceded by a balance inquiry; and
9 (b) assessing overdraft fees (“OD Fees”) on transactions that did not actually overdraw the
10 account.

11 2. Both practices violate the contractual agreement governing the relationship
12 between US Bank and its customers.

13 3. **First**, US Bank’s ATM Fee revenue has risen dramatically in recent years and
14 is one of the primary drivers of Bank fee income. This litigation concerns those fees
15 assessed on transactions made on “out-of-network” ATMs, *i.e.* ATMs not owned or
16 operated by US Bank or a partner of US Bank. Under specific circumstances set forth in
17 the US Bank Deposit Account Agreement, US Bank assesses OON Fees on its account-
18 holders who withdraw funds from ATMs not owned by US Bank.

19 4. This lawsuit does not challenge US Bank’s right to charge an OON Fee, but
20 instead challenges US Bank’s imposition of *two* OON Fees on the same transaction.
21 Specifically, when US Bank accountholders check their account balance prior to
22 withdrawing funds at an out-of-network ATM, US Bank charges its accountholders two
23 OON Fees—one for the balance inquiry and one for the withdrawal.

24 5. For a simple domestic out-of-network ATM withdrawal, for example,
25 McGovern paid a total of \$7.95 in fees. This \$7.95 was comprised of: (1) a \$2.95 fee to the
26 non-bank affiliated owner that operated the out-of-network ATM; (2) a \$2.50 fee to US
27 Bank for checking the balance, and (3) another \$2.50 fee to US Bank for the withdrawal.
28

1 6. US Bank’s uniform practice of charging two OON Fees per cash withdrawal
2 preceded by a balance inquiry is unfair and deceptive, violates representations in US
3 Bank’s account documents, and constitutes a breach of contract. Indeed, US Bank’s
4 account documents fail to provide notice of the possibility of being charged two fees by
5 US Bank during one transaction at an out of network ATM.

6 7. **Second**, at the moment debit card transactions are authorized on an account
7 with positive funds to cover the transaction, US Bank immediately makes an internal
8 notation deducting the amount from the account and purportedly setting aside the funds to
9 cover that specific transaction. As a result, and with limited exceptions, customers’
10 accounts *always* have sufficient available funds to cover these transactions throughout their
11 entire lifecycle.

12 8. However, US Bank still assesses \$36 OD Fees on many of these transactions,
13 in violation of its contractual promises not to do so.

14 9. Despite purporting to put aside sufficient available funds for debit card
15 transactions, US Bank charges OD Fees on those same transactions if they settle—days
16 later—against a negative balance (“Authorize Positive, Purportedly Settle Negative
17 Transactions” or “APPSN Transactions”). *By this manipulation, US Bank turns one*
18 *potential OD Fee into several.*

19 10. Here is how it works. US Bank maintains a running account balance in real
20 time, tracking funds consumers have for immediate use. This running account balance is
21 adjusted, in real-time, to account for debit card transactions at the precise instant they are
22 made. When a customer makes a purchase with a debit card, US Bank promises to
23 sequester the funds needed to pay the transaction, subtracting the dollar amount of the
24 transaction from the customer’s account balance. Such funds are not available for any
25 other use by the accountholder, and such funds are specifically associated with a given
26 debit card transaction.

27 11. Indeed, the entire purpose of the immediate debit and hold of funds is to
28 ensure there are enough funds in the account to pay the transaction when it settles, as

1 discussed in the Federal Register notice announcing revisions to certain provisions of the
2 Truth in Lending Act regulations:

3 When a consumer uses a debit card to make a purchase, a hold may be placed
4 on funds in the consumer's account to ensure that the consumer has sufficient
5 funds in the account when the transaction is presented for settlement. This is
6 commonly referred to as a "debit hold." During the time the debit hold
7 remains in place, which may be up to three days after authorization, those
8 funds may be unavailable for the consumer's use for other transactions.

9 Federal Reserve Board, Office of Thrift Supervision, and National Credit Union
10 Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 29, 2009).

11 12. That means when any *subsequent*, intervening transactions are initiated on a
12 checking account, they are compared against an account balance that has been reduced to
13 account for earlier debit card transactions. This means that subsequent transactions may
14 incur OD Fees due to the unavailability of the funds sequestered for those debit card
15 transactions.

16 13. Still, despite keeping those held funds off-limits for other transactions, US
17 Bank improperly charges OD Fees on APPSN Transactions even though, by their very
18 nature, such transactions always have sufficient available funds for payment because the
19 funds have been held and sequestered by US Bank.

20 14. The Consumer Financial Protection Bureau ("CFPB") has expressed concern
21 with this very issue, flatly calling the practice "deceptive" when:

22 a financial institution authorized an electronic transaction, which reduced a
23 customer's available balance but did not result in an overdraft at the time of
24 authorization; settlement of a subsequent unrelated transaction that further
25 lowered the customer's available balance and pushed the account into
26 overdraft status; and when the original electronic transaction was later
27 presented for settlement, because of the intervening transaction and overdraft
28 fee, the electronic transaction also posted as an overdraft and an additional
 overdraft fee was charged. Because such fees caused harm to consumers, one
 or more supervised entities were found to have acted unfairly when they
 charged fees in the manner described above. Consumers likely had no reason
 to anticipate this practice, which was not appropriately disclosed. They
 therefore could not reasonably avoid incurring the overdraft fees charged.

1 Consistent with the deception findings summarized above, examiners found
2 that the failure to properly disclose the practice of charging overdraft fees in
3 these circumstances was deceptive. At one or more institutions, examiners
4 found deceptive practices relating to the disclosure of overdraft processing
5 logic for electronic transactions. Examiners noted that these disclosures
6 created a misimpression that the institutions would not charge an overdraft fee
7 with respect to an electronic transaction if the authorization of the transaction
8 did not push the customer's available balance into overdraft status. But the
9 institutions assessed overdraft fees for electronic transactions in a manner
10 inconsistent with the overall net impression created by the disclosures.
11 Examiners therefore concluded that the disclosures were misleading or likely
12 to mislead, and because such misimpressions could be material to a reasonable
13 consumer's decision-making and actions, examiners found the practice to be
14 deceptive. Furthermore, because consumers were substantially injured or
likely to be so injured by overdraft fees assessed contrary to the overall net
impression created by the disclosures (in a manner not outweighed by
countervailing benefits to consumers or competition), and because consumers
could not reasonably avoid the fees (given the misimpressions created by the
disclosures), the practice of assessing the fees under these circumstances was
found to be unfair.

15 Consumer Financial Protection Bureau, Winter 2015 "Supervisory Highlights."

16 15. There is no justification for these practices, other than to maximize US Bank's
17 OD Fee revenue. APPSN Transactions only exist because intervening checking account
18 transactions supposedly reduce an account balance. But US Bank is free to protect its
19 interests and either reject those intervening transactions or charge OD Fees on those
20 intervening transactions—and it does the latter to the tune of millions of dollars each year.
21 But US Bank is not content with these millions in OD Fees. Instead, it seeks millions *more*
22 in OD Fees on APPSN Transactions.

23 16. In plain, clear, and simple language, the checking account contract documents
24 discussing OD Fees promise that US Bank will only charge OD Fees on transactions when
25 there are insufficient funds to pay a given transaction.

26 17. In short, US Bank is not authorized by contract to charge OD Fees on
27 transactions that have not overdrawn an account, but it has done so and continues to do so.
28

1 18. Plaintiff and other US Bank customers have been injured by US Bank's
2 improper practices to the tune of millions of dollars bilked from their accounts in clear
3 violation of their agreements with US Bank. On behalf of herself and the classes, Plaintiff
4 seeks damages, restitution and public injunctive relief for US Bank's breach of contract
5 and violations of California's consumer protection laws.

6 **JURISDICTION AND VENUE**

7 19. This Court has original jurisdiction of this action under the Class Action
8 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original
9 jurisdiction because the aggregate claims of the putative class members exceed \$5 million,
10 exclusive of interest and costs, and at least one of the members of the proposed classes is
11 a citizen of a different state than US Bank.

12 20. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because US Bank
13 is subject to personal jurisdiction here and regularly conducts business in this District, and
14 because Plaintiff was assessed OON Fees in this district.

15 **PARTIES**

16 21. Plaintiff McGovern is a citizen of California and a resident of San Diego, CA.

17 22. US Bank is a national bank with its headquarters and principal place of
18 business located in Cincinnati, OH. Among other things, US Bank is engaged in the
19 business of providing retail banking services to consumers, including McGovern and
20 members of the putative classes, which includes the issuance of debit cards for use by its
21 customers in conjunction with their checking accounts. US Bank operates banking centers,
22 and thus conducts business, throughout the State of California, including within this
23 District.

24 ///

25 ///

26 ///

27

28

1 30. Repeated exposure to such messages is partly responsible for building the
2 reasonable consumer understanding that a balance inquiry is a common lead-in to a
3 withdrawal, a mere first step to the real business at hand, an informational exercise offered
4 by the ATM to help inform the cash withdrawal.

5 31. Thus, in most circumstances, there is no warning at the ATM that a balance
6 inquiry preceded by a withdrawal will incur two fees from the consumer's home bank.

7 32. If a bank is going to charge such a conscience-shocking fee, it must fully and
8 fairly disclose such a fee in its account documentation. US Bank did the opposite—
9 providing express and implied indications that use of a non-US Bank ATM would result in
10 *one* fee of \$2.50.

11 **B. US Bank's Account Contract**

12 33. McGovern has a US Bank checking account, which is governed by US Bank's
13 standardized account agreement.

14 34. US Bank issues debit cards and ATM cards to its checking account customers,
15 including McGovern, which allow its customers to have electronic access to their checking
16 accounts for purchases, payments, and ATM withdrawals at both US Bank and non-US
17 Bank ATMs.

18 35. Against the backdrop of the reasonable consumer expectations described
19 *supra*, US Bank's disclosures deceive consumers and reinforce the understanding that no
20 fee will be assessed for a balance inquiry.

21 36. US Bank's disclosures also reinforce the common sense presumption that
22 there can be no balance inquiry fee when such an inquiry is made in conjunction with a
23 cash withdrawal at the same ATM.

24 37. Pursuant to US Bank's standard account agreement:

25 **FEES**

26 We will charge you fees for electronic fund transfers in accordance with the
27 information found in our Consumer Pricing Information brochure. (This
28 brochure can be obtained by contacting a U.S. Bank branch or calling

1 800.872.2657.) The fees may be changed at any time, subject to our giving
2 you any notice required by law.

3 ATM Surcharges. When you use an ATM that is not identified as ours with
4 the U.S. Bank name, you may be charged a fee by the ATM operator or any
5 network used to complete the transfer.

6 Deposit Account Agreement.

7 38. The separate Consumer Pricing Information document (“Fee Schedule”)
8 states:

9 U.S. Bank ATM Transaction	no charge
10 Non-U.S. Bank ATM Transaction ¹	\$2.50

11 ¹Non-U.S. Bank ATM owners will apply a surcharge fee unless they
12 participate in the MoneyPass® Network. To find MoneyPass ATM locations,
13 please visit www.moneypass.com.

14 Fee Schedule.

15 1. Moreover, US Bank’s two-page Simple Snapshot, which purportedly explains
16 “Common Checking Account Fees” says merely:

17 **ATM Fees**

18 Cash Withdrawal – U.S. Bank ATMs \$0

19 Cash Withdrawal – Non-U.S. Bank ATMs \$2.50

20 Simple Snapshot, attached as Ex. 1.

21 2. US Bank’s Simple Snapshot indicates US Bank only assesses ATM fees for
22 cash withdrawals at non-U.S. Bank ATMs and completely omits that US Bank will assess
23 ATM fees for other transactions at non-US Bank ATMs, including balance inquiries, and
24 that US Bank will charge *two fees* for checking a balance prior to withdrawing cash at an
25 out of network ATM.

26 3. In short, US Bank represents that (1) the ATM or the network owning or
27 operating the ATM may charge fees; and (2) US Bank will assess a *single* “Non-U.S. Bank
28 ATM Transaction” fee of \$2.50.

1 4. US Bank’s disclosures do nothing to disabuse consumers of the reasonable
2 understanding that a balance inquiry will not incur a separate fee when it precedes a cash
3 withdrawal at the same ATM, and never state outright that such a fee will be assessed.
4 Again, the Fee Schedule says nothing more than “\$2.50 per transaction,” and the Simple
5 Snapshot merely says \$2.50 per cash withdrawal.

6 5. When a cash withdrawal is made at the same time as a balance inquiry at an
7 out-of-network ATM, US Bank’s account documents do not disclose to consumers that
8 those functions count as multiple transactions triggering multiple separate fees of \$2.50,
9 rather than a single “transaction” triggering a single OON Fee assessment of \$2.50.

10 6. Reasonable consumers like McGovern do not understand that a balance
11 inquiry which precedes a withdrawal could result in two OON Fees.

12 7. Because consumers do not reasonably expect to be charged a separate, second
13 fee when they check their balance in connection with a withdrawal, US Bank and its
14 customers, including McGovern, contractually agree that should the customer, including
15 McGovern, make a balance inquiry and a cash withdrawal, the customer, including
16 McGovern, will pay a fee of no more than \$2.50.

17 8. McGovern and other customers never contractually agreed to pay a separate
18 fee if the customer, including McGovern, makes a balance inquiry in conjunction with a
19 withdrawal.

20 **C. Plaintiff’s Domestic Out-of-Network ATM Withdrawals**

21 9. On May 20, 2018, McGovern withdrew \$20 in cash from an out-of-network
22 ATM at a CVS store in San Diego. Following her transaction, McGovern was surprised to
23 learn that she was assessed, in addition to the cash withdrawal surcharge paid to the out-
24 of-network ATM provider (\$2.95), a separate \$2.50 fee from US Bank for making an out-
25 of-network balance inquiry, and an additional \$2.50 fee from US Bank for making an out-
26 of-network cash withdrawal. In sum, US Bank charged McGovern two (2) OON Fees of
27 \$2.50 each—one for the withdrawal and one for the “balance inquiry.”
28

1 10. US Bank’s contract does not permit the bank to charge a \$2.50 balance inquiry
2 fee when a balance inquiry precedes a cash withdrawal at the same out-of-network ATM.

3 11. McGovern would not have checked her balance prior to withdrawing funds at
4 the out of network ATM had she known she would be charged two OON Fees by US Bank
5 for doing so.

6 12. If US Bank were enjoined from assessing *two* fees when a consumer makes a
7 balance inquiry prior to a withdrawal from a non-US Bank ATM, and instead only assessed
8 one fee as indicated in the governing documents, McGovern would check the balance of
9 her US Bank account prior to withdrawing funds from a non-US Bank ATM in the future.

10 **II. US BANK CHARGES OD FEES ON TRANSACTIONS THAT DO NOT
11 ACTUALLY OVERDRAW THE ACCOUNT**

12 **A. Mechanics of a Debit Card Transaction**

13 13. A debit card transaction occurs in two parts. First, authorization for the
14 purchase amount is instantaneously obtained by the merchant from US Bank. When a
15 merchant physically or virtually “swipes” a customer’s debit card, the card terminal
16 connects, via an intermediary, to US Bank, which verifies that the customer’s account is
17 valid and that sufficient funds are present to “cover” the transaction amount.

18 14. At this step, if the transaction is approved, US Bank immediately decrements
19 the funds in a consumer’s account and sequesters funds in the amount of the transaction,
20 but does not yet transfer the funds to the merchant.

21 15. Once again, the very purpose of the debit hold is to ensure there are enough
22 funds in the account to pay the transaction when it settles, as discussed in the Federal
23 Register notice announcing revisions to certain provisions of the Truth in Lending Act
24 regulations:

25 When a consumer uses a debit card to make a purchase, a hold may be placed
26 on funds in the consumer’s account to ensure that the consumer has sufficient
27 funds in the account when the transaction is presented for settlement. This is
28 commonly referred to as a “debit hold.” During the time the debit hold remains
in place, which may be up to three days after authorization, those funds may
be unavailable for the consumer’s use for other transactions.

1
2 Federal Reserve Board, Office of Thrift Supervision, and National Credit Union
3 Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 29, 2009).

4 16. Sometime thereafter, the funds are actually transferred from the customer's
5 account to the merchant's account. This is referred to in the banking industry as "posting"
6 or "settling"—something which usually occurs the same day or within one to three business
7 days after the transaction was completed with the merchant.

8 17. There is no change—no impact whatsoever—to the balance of "available
9 funds" in an account when posting or payment of a transaction that settles in the same
10 amount for which it was authorized occurs. That is because the amount of the transaction
11 was deducted from available funds at the time of approval.

12 **B. US Bank Account Documents**

13 18. Checking accounts with US Bank were, at all relevant times, governed by US
14 Bank's standardized contract for deposit accounts, the material terms of which are drafted
15 by US Bank, amended by US Bank from time to time at its convenience and complete
16 discretion, and imposed by US Bank on all of its customers (the "Deposit Agreement").

17 19. In plain language the checking account contract documents discussing OD
18 Fees promise that US Bank will place an immediate hold or "preauthorization" on debit
19 card transactions; will use an "available balance" to determine overdrafts; and that
20 "available balance" already accounts for preauthorized debit card transactions.

21 We reserve the right to decide the order of the items we will pay and which
22 items will be returned (if any). Our posting order may not be the same as the
23 order in which you conducted a transaction and could result in overdraft fees,
24 if you do not have available funds at the time the item is paid. Generally, we
25 post the following three transaction types after the close of each business day
26 in the following order: 1. Deposits we receive before the daily cut off time
27 will be posted before any withdrawals. 2. Your non-check withdrawals will
28 be posted in date/time order, based on the date and time associated with each
transaction. A date and time (if one is available) will be assigned to each
transaction based on one of the following: (1) **when the transaction was
preauthorized (for example a debit card or ATM transaction was
approved)**; or (2) when the transaction was processed by U.S. Bank (for

1 example an ACH, or Bill Pay transaction for which there is no pre-
2 authorization). If a date and time is not available, these transactions are posted
3 to your account after all transactions with a valid date and time or check
4 number are complete, and posted to your account in order of amount, starting
5 with the lowest transaction amount first (frequently referred to as low-to-
6 high).

7 [...]

8 INSUFFICIENT FUNDS AND OVERDRAFTS

9 “Account Balance” means the funds in your account, including deposits and
10 withdrawals made to date. Not all your transactions will be immediately
11 reflected. As a result, only part of this balance may be available for
12 withdrawal.

13 “Available Balance” means the amount of money that can be withdrawn at a
14 point in time. **The Available Balance will be less than the Account Balance
15 when there are pending transactions such as:**

- 16 • Funds held from deposits: These funds have been deposited, but are not
17 yet fully available for withdrawal or transfer. Once these funds are
18 available, they will be reflected in the Account Balance.
- 19 • **Funds held for debit card authorizations: This reflects merchant-**
20 **authorized requests for payment, when the final charge has not been**
21 **submitted by the merchant.** Once submitted by the merchant and
22 processed by us, these charges will be reflected in the Account Balance.
- 23 • Any other holds on funds in your account.

24 [...]

25 “Insufficient funds” means you do not have enough available funds in
26 your account to pay the withdrawals you are attempting from that
27 account. **Having insufficient funds in your account could lead to returned
28 items, which refers to any withdrawal or transfer that we return because
it exceeds your Available Balance on a given day.** Examples of withdrawals
that could be returned may include any checks, ACH transactions, online bill
payments, or any other debit from your account where we return it because it
is for more than the Available Balance you have in your account at the time
the transaction is presented to your account. We reserve the right to pay an
insufficient funds withdrawal and overdraw your account, which may result
in an Overdraft Paid Fee, or return the insufficient funds withdrawal, which
may result in an Overdraft Returned Fee. Even if we’ve paid insufficient funds
items before, we are not required to do it in the future.

1
2 **“Overdraft” means a transaction has caused the Available Balance on an**
3 **account to become a negative number.** An overdraft can happen, for
example,

- 4 • by writing a check without enough money in a checking account to pay
the check, and we pay the item;
- 5 • **by making a withdrawal from your account that exceeds your**
6 **Available Balance;**
- 7 • by making a deposit, withdrawing money based on the credit received
from that deposit, and then having that deposit reversed because the
8 deposited item is later returned to us unpaid;
- 9 • by withdrawing money from your account and not having enough money
left to pay any related charges posted to the account;
- 10 • when funds are credited to your account in error and you use the funds,
and the reversal of the credit results in an overdraft;
- 11 or • when fees such as monthly maintenance fees are charged and you do
12 not have sufficient funds to cover.

13 **Our Options: You do not have the right to withdraw funds that exceed**
14 **the Available Balance on your account. When an item of yours overdraws**
15 **an account, we can either pay or return the item.** You cannot choose which
16 items we pay or return, except as identified in your selection of “Overdraft
Handling” (as identified below).

17 **Our Fees: We charge an Overdraft Paid Fee for each item or transaction**
18 **we pay that causes the Available Balance to become negative or occurs**
19 **while the Available Balance is negative on the checking account.**

20 In addition to Standard Overdraft Coverage, you have the following options
outlined below. ATM and Debit Card Overdraft Coverage: Upon opening
21 your U.S. Bank Consumer checking OR money market account, you will
receive a notice advising you of your choice to “Opt In” or “Opt Out” of ATM
22 and Debit Card Overdraft Coverage. OPT IN If you “opt-in” (or say yes), you
allow U.S. Bank to authorize and pay ATM and everyday debit card
23 transactions (purchases made with your debit card on a day-to-day basis) that
may cause the Available Balance in your account to become negative. If this
24 happens we may charge an Overdraft Paid Fee.
25

26
27 Deposit Account Agreement.
28

1 20. Such overdraft fees cannot occur where the amount of the transaction has been
2 sequestered by US Bank, which is what happens with APPSN Transactions.

3 **C. The Account Documents Misconstrue US Bank's True Overdraft Fee and**
4 **Debit Processing Practices**

5 21. The account documents do not accurately describe US Bank's true debit card
6 processing and OD Fee practices in at least two ways.

7 22. First, and most fundamentally, US Bank charges OD Fees on debit card
8 transactions for which there are sufficient available funds when they are made.

9 23. US Bank assesses OD Fees on APPSN Transactions that do have sufficient
10 funds to pay them throughout their lifecycle.

11 24. Those available funds are sequestered at the moment a debit card transaction
12 is approved by US Bank.

13 25. US Bank's practice of charging OD Fees even where sufficient funds exist to
14 pay a transaction violates a contractual promise not to do so. This discrepancy between
15 US Bank's actual practice and the contract causes consumers like McGovern to incur more
16 OD Fees than they should.

17 26. Sufficient funds for APPSN Transactions are deducted immediately,
18 consistent with the practice of many banks.

19 27. Because these deductions take place upon initiation, they cannot be re-debited
20 later. But that is what US Bank does when it re-debits the account later at the time of
21 posting.

22 28. In reality, US Bank's actual practice is to reduce the balance for the debit hold
23 for all purposes favorable to US Bank, such as charging OD Fees on other transactions
24 coming in to post, but to then deplete those held funds and still charge an OD Fee for the
25 debit transaction that was subject to the hold.

26 29. At the time of settlement, however, the available balance *does not change at*
27 *all* for these transactions previously authorized. As such, US Bank cannot then charge an
28

1 OD Fee on such a transaction because the balance has not been rendered insufficient due
2 to the pseudo-event of settlement.

3 30. This discrepancy between US Bank’s actual practices and the contract causes
4 consumers to incur more OD Fees than they should.

5 31. Second, for debit card transactions, that moment of decision can only occur at
6 the point of sale, at the instant the transaction is authorized or declined. According to the
7 “must-pay” network rule, once US Bank authorizes a debit card transaction, it has no
8 choice but to pay it. It cannot change its mind later.

9 32. According to the contract, APPSN Transactions rightly cannot incur overdraft
10 fees.

11 33. In sum, there is a yawning gap between US Bank’s practices as described in
12 the account documents and US Bank’s practices in reality.

13 **D. Reasonable Consumers Understand Debit Card Transactions Are Debited**
14 **Immediately**

15 34. The assessment of OD Fees on APPSN Transactions is fundamentally
16 inconsistent with immediate withdrawal of funds for debit card transactions. That is
17 because if funds are immediately debited, they cannot be depleted by intervening
18 transactions (and it is that subsequent depletion that is the necessary condition of APPSN
19 Transactions). If funds are immediately debited, then they are necessarily available to be
20 applied to the debit card transactions for which they are debited.

21 35. US Bank was and is aware that this is precisely how its accountholders
22 reasonably understand debit card transactions to work.

23 36. US Bank well knows that many consumers prefer debit cards for these very
24 reasons. Consumer research indicates that consumers prefer debit cards as a budgeting
25 device; because they do not allow debt like credit cards do; and because the money comes
26 directly out of a checking account.

27 37. Consumer Action, a national nonprofit consumer education and advocacy
28 organization, advises consumers determining whether they should use a debit card that

1 “[t]here is no grace period on debit card purchases the way there is on credit card purchases;
2 the money is immediately deducted from your checking account. Also, when you use a
3 debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.”¹

4 38. Further, Consumer Action informs consumers: “Debit cards offer the
5 convenience of paying with plastic without the risk of overspending. When you use a debit
6 card, you do not get a monthly bill. You also avoid the finance charges and debt that can
7 come with a credit card if not paid off in full.”

8 39. This is a large part of the reason that debit cards have risen in popularity. The
9 number of terminals that accept debit cards in the United States has increased exponentially
10 in recent years and, with that increasing ubiquity, consumers have (along with credit cards)
11 viewed debit cards “as a more convenient option than refilling their wallets with cash from
12 an ATM.”²

13 40. Not only have consumers increasingly substituted cash with debit cards, but
14 they believe that a debit card purchase is the functional equivalent to a cash purchase, with
15 the swipe of a card equating to handing over cash, permanently and irreversibly.

16 41. US Bank was aware of a consumer perception that debit transactions reduce
17 balances at the time of authorization and its account agreement only supports this
18 perception.

19 **E. Plaintiff’s Overdraft Fee Experience**

20 42. On December 22, 2018, Plaintiff was assessed ~~an~~two OD Fees on ~~a~~ debit card
21 transaction that was initiated on an earlier date and at a time when Plaintiff had sufficient
22 funds in her account to cover the transactions. Pursuant to US Bank’s account documents,
23

24
25 ¹ See https://www.consumer-action.org/english/articles/understanding_debit_cards/ (last
26 visited
27 Aug. 2, 2018).

28 ² Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*,
MARKETWATCH, Mar. 23, 2016 (available at <http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23>).

1 the funds for each transaction were sequestered to pay the items when they posted, but US
2 Bank's software systems were instead programmed to allow the funds to be depleted so
3 additional profit-generating OD Fees could be assessed.

4 43. Plaintiff McGovern disputes that US Bank was authorized to charge OD Fees
5 against debit card transactions that had been subject to debit holds, because the money was
6 supposed to be sequestered and set aside by US Bank.

7 44. US Bank assessed the OD Fee on the held transaction even though it was
8 contractually required to sequester funds for those transactions at the time they were
9 authorized. US Bank's systems and software has been programmed to systematically
10 assess improper OD Fees.

11 **CLASS ALLEGATIONS**

12 45. Plaintiff brings this action on behalf of herself and all others similarly situated
13 pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the
14 numerosity, commonality, typicality, adequacy, predominance and superiority
15 requirements of Rule 23.

16 46. The proposed Classes are defined as:

17 All US Bank checking account holders in California who within the applicable
18 statute of limitations were assessed an OON Fee for a balance inquiry at an
19 out-of-network ATM when the balance inquiry was made in conjunction with
20 a withdrawal (the "OON Class").

21 All US Bank checking account holders in California who, within the
22 applicable statute of limitations, were charged an overdraft fee on a debit card
23 transaction that was authorized at the time when the account balance exceeded
24 the amount of the transaction (the "APPSN Class").

24 47. Plaintiff reserves the right to modify or amend the definition of the proposed
25 Classes before the Court determines whether certification is appropriate.

26 48. Excluded from the Classes are US Bank, its parents, subsidiaries, affiliates,
27 officers and directors, any entity in which US Bank has a controlling interest, all customers
28

1 who make a timely election to be excluded, governmental entities, and all judges assigned
2 to hear any aspect of this litigation, as well as their immediate family members.

3 49. The members of the Classes are so numerous that joinder is impractical. The
4 Classes consist of thousands of members, the identity of whom is within the knowledge of
5 and can be ascertained only by resort to US Bank's records.

6 50. The claims of Plaintiff are typical of the claims of the Classes. Plaintiff's
7 claims, like all OON Class members, seek relief for being charged multiple OON Fees for
8 the same ATM usage. Moreover, Plaintiff's claims, like all APPSN Class members, seek
9 relief for being charged OD Fees on transactions that did not actually overdraw their
10 accounts. Furthermore, the factual basis of US Bank's misconduct is common to all Class
11 members, and represents a common thread of unfair and unconscionable conduct resulting
12 in injury to all members of the Classes.

13 51. There are numerous questions of law and fact common to the Classes and
14 those common questions predominate over any questions affecting only individual Class
15 members.

- 16 52. Among the questions of law and fact common to the Classes are whether:
- 17 a. US Bank charged OON Fees for balance inquiries made in conjunction
 - 18 with a withdrawal;
 - 19 b. US Bank breached its contract by charging OON Fees for balance
 - 20 inquiries made in conjunction with a withdrawal;
 - 21 c. US Bank improperly charged overdraft fees on APPSN Transactions;
 - 22 and
 - 23 d. US Bank violated the UCL and CLRA;
 - 24 e. Whether Plaintiff and the Class were damaged by US Bank's conduct
 - 25 and if so, the proper measure of damages.

26 53. Plaintiff's claims are typical of the claims of other Class members, in that they
27 arise out of the same wrongful policies and practices related to US Bank's Account
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1 Agreement with consumers. Plaintiff has suffered the harm alleged and have no interests
2 antagonistic to the interests of any other Class member.

3 54. Plaintiff is committed to the vigorous prosecution of this action and have
4 retained competent counsel experienced in the prosecution of class actions and, in
5 particular, class actions on behalf of consumers and against financial institutions.
6 Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect
7 the interests of the Classes.

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

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

23 **FIRST CLAIM FOR RELIEF**

24 **Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**
25 **(On Behalf of the OON Class)**

26 57. Plaintiff incorporates by reference each of the allegations set forth in the
27 preceding paragraphs.
28

1 58. Plaintiff and US Bank have contracted for bank account deposit, checking,
2 ATM, and debit card services, as embodied in US Bank’s Account Agreement and related
3 documentation.

4 59. No contract provision authorizes US Bank to charge a separate OON Fee for
5 a balance inquiry made in conjunction with a withdrawal.

6 60. Therefore, US Bank, by imposing fees beyond those it was contractually
7 permitted to impose, breached the terms of its Account Agreement.

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

16 62. Subterfuge and evasion violate the obligation of good faith in performance
17 even when an actor believes their conduct to be justified. A lack of good faith may be overt
18 or may consist of inaction, and fair dealing may require more than honesty. Examples of
19 violations of good faith and fair dealing are willful rendering of imperfect performance,
20 abuse of a power to specify terms, and interference with or failure to cooperate in the other
21 party’s performance.

22 63. US Bank has breached the covenant of good faith and fair dealing in the
23 contract through its OON fee practices as alleged herein.

24 64. Specifically, US Bank harms consumers by abusing its contractual discretion
25 in a number of ways which no reasonable customer would anticipate.

26 65. Reasonable consumers like McGovern do not understand that a balance
27 inquiry which precedes a withdrawal counts as two “transactions” that could result in two
28 OON Fees.

1 66. US Bank abuses its contractual discretion by categorizing a balance inquiry
2 which precedes a withdrawal as a separate “transaction” for purposes of assessing two
3 OON Fees.

4 67. Plaintiff and members of the class have performed all, or substantially all, of
5 the obligations imposed on them under the Account Agreement.

6 68. Plaintiffs and members of the Class have sustained damages as a result of US
7 Bank’s breach of the Account Agreement.

8 **SECOND CLAIM FOR RELIEF**
9 **Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**
10 **(On Behalf of the APPSN Class)**

11 69. Plaintiff incorporates by reference each of the allegations set forth in the
12 preceding paragraphs.

13 70. Plaintiff and US Bank have contracted for bank account deposit, checking,
14 ATM, and debit card services, as embodied in US Bank’s Account Agreement and related
15 documentation.

16 71. No contract provision authorizes US Bank to charge OD Fees on APPSN
17 Transactions. Rather, the contract only authorizes US Bank to charge OD Fees on
18 transactions for which sufficient funds did not exist at the time of authorization.

19 72. Therefore, US Bank breached the terms of its account documents by charging
20 OD Fees on transactions that were authorized at a time when sufficient funds were present
21 in the account and a debit hold for the amount of funds was put in place. Through account
22 manipulations that were no fault of the customer, an allegedly insufficient balance was
23 concocted when the transactions were settled, resulting in an improper OD Fee.

24 73. Under the law of California good faith is an element of every contract
25 pertaining to the assessment of bank Fees. Whether by common law or statute, all contracts
26 impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing,
27 in connection with executing contracts and discharging performance and other duties
28 according to their terms, means preserving the spirit—not merely the letter—of the bargain.

1 Put differently, the parties to a contract are mutually obligated to comply with the substance
2 of their contract in addition to its form. Evading the spirit of the bargain and abusing the
3 power to specify terms constitute examples of bad faith in the performance of contracts.

4 74. Subterfuge and evasion violate the obligation of good faith in performance
5 even when an actor believes their conduct to be justified. A lack of good faith may be overt
6 or may consist of inaction, and fair dealing may require more than honesty. Examples of
7 violations of good faith and fair dealing are willful rendering of imperfect performance,
8 abuse of a power to specify terms, and interference with or failure to cooperate in the other
9 party's performance.

10 75. US Bank has breached the covenant of good faith and fair dealing in the
11 contract through its overdraft policies as alleged herein.

12 76. Specifically, US Bank harms consumers by abusing its contractual discretion
13 in a number of ways which no reasonable customer would anticipate.

14 77. US Bank uses its contractual discretion to cause APPSN Transactions to incur
15 OD Fees by knowingly authorizing later transactions that it allows to consume funds
16 previously sequestered for APPSN Transactions.

17 78. US Bank uses this contractual discretion to extract OD Fees on transactions
18 that no reasonable consumer would believe could cause OD Fees.

19 79. Plaintiff and members of the class have performed all, or substantially all, of
20 the obligations imposed on them under the Account Agreement.

21 80. Plaintiff and members of the Class have sustained damages as a result of US
22 Bank's breach of the Account Agreement.

23 **THIRD CLAIM FOR RELIEF**
24 **Violation of California Unfair Competition Law**
25 **Business and Professions Code § 17200**
26 **(On Behalf of the OON Class)**

27 81. Plaintiff incorporates by reference each of the allegations set forth in the
28 preceding paragraphs.

1 82. US Bank’s conduct described herein violates the Unfair Competition Law (the
2 “UCL”), codified at California Business and Professions Code section 17200, et seq.

3 83. The UCL prohibits, and provides civil remedies for, unfair competition. Its
4 purpose is to protect both consumers and competitors by promoting fair competition in
5 commercial markets for goods and services. In service of that purpose, the Legislature
6 framed the UCL’s substantive provisions in broad, sweeping language.

7 84. By defining unfair competition to include any “any unlawful, unfair or
8 fraudulent business act or practice,” the UCL permits violations of other laws to be treated
9 as unfair competition that is independently actionable, and sweeps within its scope acts and
10 practices not specifically proscribed by any other law.

11 85. US Bank’s conduct violates the UCL by charging OON Fees for a balance
12 inquiry that precedes a withdrawal at an out-of-network ATM.

13 86. US Bank failed to properly disclose these practices and affirmatively and
14 knowingly misrepresented its OON Fee practices in its contract with consumers. Such
15 misrepresentations and omissions misled Plaintiff and are likely to mislead the public.
16 Specifically, US Bank failed to disclose that a balance inquiry that immediately precedes
17 a withdrawal will incur an additional OON Fee. US Bank also failed to disclose that
18 consumers may be charged multiple OON Fees by US Bank for a single use of an out of
19 network ATM.

20 87. Plaintiff McGovern and the class relied on US Bank’s misrepresentations and
21 omissions in that Plaintiff McGovern viewed a version of US Bank’s Simple Snapshot in
22 effect at the time she opened her account and understood this document to mean she would
23 not be charged a separate fee for checking her balance prior to withdrawing funds at an
24 out-of-network ATM. Had Plaintiff known she would be charged a separate OON fee by
25 US Bank for checking her balance prior to withdrawing funds at an out-of-network ATM,
26 she would not have checked her balance at the out-of-network ATM prior to withdrawing
27 funds.

28

1 88. In addition, US Bank’s conduct was unfair insofar as it was not motivated by
2 any business or economic need or rationale. The harm and adverse impact of US Bank’s
3 conduct on members of the general public was neither outweighed nor justified by any
4 legitimate reasons, justifications, or motives.

5 89. The harm to Plaintiff and Class Members arising from US Bank’s unfair
6 practices relating to the imposition of OON Fees outweighs the utility, if any, of those
7 practices.

8 90. US Bank’s unfair business practices relating to OON Fees as alleged herein
9 are immoral, unethical, oppressive, unscrupulous, unconscionable and/or substantially
10 injurious to Plaintiff and members of the Class.

11 91. US Bank’s conduct was substantially injurious to consumer in that they have
12 been forced to pay OON Fees, which are not disclosed in their contract with US Bank.

13 92. As a result of US Bank’s violations of the UCL, Plaintiff and members of the
14 Class have paid, and/or will continue to pay OON Fees and thereby have suffered and will
15 continue to suffer actual damages.

16 **FOURTH CLAIM FOR RELIEF**
17 **Violation of California Unfair Competition Law**
18 **Business and Professions Code § 17200**
19 **(On Behalf of the APPSN Class)**

20 93. Plaintiff incorporates by reference each of the allegations set forth in the
21 preceding paragraphs.

22 94. US Bank’s conduct described herein violates the Unfair Competition Law (the
23 “UCL”), codified at California Business and Professions Code section 17200, et seq.

24 95. The UCL prohibits, and provides civil remedies for, unfair competition. Its
25 purpose is to protect both consumers and competitors by promoting fair competition in
26 commercial markets for goods and services. In service of that purpose, the Legislature
27 framed the UCL’s substantive provisions in broad, sweeping language.
28

1 96. By defining unfair competition to include any “any unlawful, unfair or
2 fraudulent business act or practice,” the UCL permits violations of other laws to be treated
3 as unfair competition that is independently actionable, and sweeps within its scope acts and
4 practices not specifically proscribed by any other law.

5 97. US Bank’s conduct violates the UCL by charging OD fees on APPSN
6 transactions.

7 98. Specifically, US Bank’s conduct was not motivated by any business or
8 economic need or rationale. The harm and adverse impact of US Bank’s imposition of OD
9 fees on APPSN transactions was neither outweighed nor justified by any legitimate
10 reasons, justifications, or motives.

11 99. The harm to Plaintiff and Class Members arising from US Bank’s unfair
12 practices relating to the imposition of OD Fees on APPSN transactions outweighs the
13 utility, if any, of those practices.

14 100. US Bank’s unfair business practices relating to OD Fees as alleged herein are
15 immoral, unethical, oppressive, unscrupulous, unconscionable and/or substantially
16 injurious to Plaintiff and members of the Class.

17 101. US Bank’s conduct was substantially injurious to consumers in that they have
18 been forced to pay OD Fees, which are not disclosed in their contract with US Bank.

19 102. As a result of US Bank’s violations of the UCL, Plaintiff and members of the
20 Class have paid, and/or will continue to pay OD Fees and thereby have suffered and will
21 continue to suffer actual damages.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff and the Classes demand a jury trial on all claims so triable
24 and judgment as follows:

- 25 a. Declaring US Bank’s OON Fee and OD Fee policies and practices to be
26 wrongful, unfair and a breach of contract;

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- b. Restitution of all relevant OON Fees and OD Fees paid to US Bank by Plaintiff and the Classes, as a result of the wrongs alleged herein in an amount to be determined at trial;
- c. Disgorgement of the ill-gotten gains derived by US Bank from its misconduct;
- d. Actual damages in an amount according to proof;
- e. Statutory, punitive and exemplary damages, as permitted by law;
- f. Pre-judgment interest at the maximum rate permitted by applicable law;
- g. An order on behalf of the general public enjoining US Bank from continuing to employ unfair methods of competition and commit unfair and deceptive acts and practices alleged in this complaint and any other acts and practices proven at trial;
- h. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- i. Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Date: August 2, 2018

Respectfully submitted,

/s/ Todd D. Carpenter
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Jeffrey Kaliel (CA Bar No. 238293)
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Attorneys for Plaintiff and the Putative Class

JS 44 (Rev. 06/17)

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

REYNA MCGOVERN, an individual, on behalf of herself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Todd D. Carpenter (CA 234464) / 619.762.1900
Carlson Lynch Sweet Kilpela & Carpenter, LLP
1350 Columbia Street, Ste. 603, San Diego, CA 92101

DEFENDANTS

U.S. BANK, N.A.

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

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

Attorneys (If Known)

'18CV1794 CAB JMA

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

28 U.S.C. section 1332(d)(2) and (d)(6)

Brief description of cause:

Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing; Violation of Unfair Competition Law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,001.00

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 08/02/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd D. Carpenter

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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 actual dollar amount 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.

Exhibit 1



U.S. Bank Easy Checking Common Checking Account Fees

U.S. Bank Easy Checking is a simple, straightforward checking account with standard benefits and features. Find common checking-related fees below, or for a complete list of account terms, policies, and pricing, refer to the [Your Deposit Account Agreement](#) and the [Consumer Pricing Information](#) brochure.

Account Opening and Maintenance		
Minimum Opening Deposit	\$25	
Monthly Maintenance Fee	\$6.95	
Waive Monthly Maintenance Fee	Combined monthly direct deposits totaling \$1,000+ OR An average account balance of \$1,500+	The average account balance for Easy Checking is calculated by adding the balance at the end of each calendar day in the statement period and dividing that sum by the total number of calendar days within the statement period.
Paper Statement Fee	\$2 Monthly Paper Statement Fee applies unless enrolled in eStatements	
ATM Fees		
Cash Withdrawal – U.S. Bank ATMs	\$0	
Cash Withdrawal – Non-U.S. Bank ATMs	\$2.50 Non-U.S. Bank ATM owner fees may apply unless owner participates in the MoneyPass® network	
Choose if you want ATM/Debit Card Overdraft Coverage		
You'll need to make a decision about ATM Transactions and debit card purchases (e.g., paying for gas at the pump, buying groceries, buying something online) when there isn't enough money available in your account."	<p>If you say "Yes" to ATM and Debit card overdraft coverage the bank may pay these transactions and charge an overdraft fee.</p> <p>If you say "No" to ATM and Debit card overdraft coverage these transactions will be declined, and you will not be charged an overdraft paid fee.</p> <p><i>Note: Saying "No" to overdraft coverage for ATM and debit card transactions does not guarantee that you will avoid any overdraft fees for other types of transactions on your account.</i></p>	
Checks, Automatic Bill Payments, and Recurring Debit Card Transactions	These items may be paid or returned at our discretion and are subject to Overdraft Paid or Overdraft Returned Item Fees	
Overdraft Fees and Overdraft Protection		
Overdraft Paid and Overdraft Returned Fees	\$36 for each item of \$5.01 or more \$0 for each item of \$5.00 or less Other merchant fees may apply	
Minimum Overdrawn Balance Threshold	In the event the Available Balance at the end of the business day is or would be overdrawn \$5.01 or more, an Overdraft Paid and/or Overdraft Returned Fee(s) may be assessed. In the event your Available Balance at the end of the business day is or would be overdrawn by \$5.00 or less, we will not charge an Overdraft Paid or Overdraft Returned Fee.	
Daily Maximum	U.S. Bank limits the number of charges to a daily maximum of 4 Overdraft Fees per day, no matter how many items we pay or return on your behalf. The Overdraft Fees assessed can be Overdraft Paid Fees, Overdraft Return Fees or a combination of both.	
Extended Overdraft Fee	A \$36.00 fee is charged if the Available Balance remains negative for seven consecutive calendar days; you will be charged \$36.00 on the eighth calendar day.	
Overdraft Protection	Link an eligible savings account, line of credit, or credit card account to your checking account to transfer funds when there is not enough money in your account to pay a transaction. For negative balances of \$5.01 or more, transfers will occur in multiples of \$50 to cover the negative balance. If however, the negative balance is \$5.00 or less, the amount advanced will be \$5.00 and the Overdraft Protection Transfer Fee will be waived.	
Overdraft Protection Transfer Fee	<p>\$12.50 per day when a transfer of \$50 or more occurs when a transfer is made from an eligible linked credit account. (<i>U.S. Bank Reserve Line, credit card, Premier Line, Home Equity Line of Credit, and/or other lines of credit</i>).</p> <p>\$0 per day when a transfer of \$5.00 or less occurs</p>	
Transaction Processing		
Transaction Posting Order	Transactions are generally processed in the following order on the business day they are received: <ol style="list-style-type: none"> 1. All deposits; then, 2. Customer-initiated, non-check withdrawals in date and time order, starting with the earliest transaction; then, 3. Paper checks in number order, starting with the lowest number 	

For a comprehensive list of all pricing, ATM and Debit Card Overdraft Coverage terms and policies please see the [Consumer Pricing Information](#) brochure and [Your Deposit Account Agreement](#).



Credit products offered by U.S. Bank National Association and subject to normal credit approval. Deposit products by U.S. Bank National Association. Member FDIC. ©2018 U.S. Bank. 180306c 3/18





Funds Availability	
Funds Availability	Branch Deposits and ATM Deposits: Please refer to the U.S. Bank "Your Deposit Account Agreement" for details regarding U. S. Bank's funds availability policy Direct Deposits and Wire Transfer Deposits: Same business day
Returned Deposited Item or Cashed Check Fee	\$19 for each check you deposit or cash from an account with insufficient funds
Digital Services	
Online Banking	\$0 View and manage your accounts through usbank.com
Bill Pay	Standard Delivery: \$0 1-2 days for electronic or \$0 3-4 days for paper check Express Delivery: \$14.95 Same day or overnight
Text Banking	\$0 Get up-to-the-minute account information with simple text commands
Account Alerts	\$0 Customize your own alerts to stay informed about important account activity
Mobile Banking	\$0 View and manage your accounts through the U.S. Bank Mobile App or the mobile website
Mobile Check Deposit	\$0 Deposit checks with your mobile device
Photo Bill Pay	\$0 Add a biller by taking a picture
Send Money - Zelle® - Send to Account	\$0 Send or request money with Zelle using an email address or U.S. mobile number (eligibility requirements and restrictions apply) \$0 Standard (2-3 days) with a valid account and routing number
External Transfers	Inbound Transfers Standard Delivery: \$0 Next Day Delivery: \$0 Outbound Transfers Standard Delivery: Up to \$3 Transfer money to or from your accounts at other financial institutions. Eligibility requirements and restrictions apply.
eBills	\$0 Set up electronic versions of your paper bills and get them delivered directly to your Online Banking inbox
eStatements	\$0 Receive, view and store electronic copies of your account statements
Debit Card Services	
Debit Card Cash Advance	\$2 Assessed when performing a cash advance with a teller at any financial institution that accepts Visa®
Other Account Services	
Paper Statements with Check Images	\$2 per statement cycle
Paper Statements with Check Return	\$6 per statement cycle
Stop Payment (24-Month Duration)	\$35

For more detailed fee information, consult the [Your Deposit Account Agreement](#) and the [Consumer Pricing Information](#) brochure. For more detailed information on Digital Services, refer to the [Online and Mobile Financial Services Agreement](#).

