

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

CRYESHA MCDONALD and CHANTAL  
LEWIS, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

TRUSTMARK NATIONAL BANK

Defendant.

Civil Action No.: 3:18cv852-DPJ-FKB

**CLASS ACTION PETITION**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs Cryesha McDonald and Chantal Lewis, ("Plaintiffs"), on behalf of themselves and all persons similarly situated, allege the following based on personal knowledge as to allegations regarding the Plaintiffs and on information and belief as to other allegations.

**INTRODUCTION**

1. Plaintiffs bring this action on behalf of themselves and classes of all similarly situated consumers against Defendant Trustmark National Bank ("Trustmark" or "Bank"), arising from the Bank's routine practices of (a) assessing overdraft fees ("OD Fees") on transactions that did not actually overdraw the account; (b) adopting a policy that results in accountholders being assessed two out-of-network Automated Teller Machine ("ATM") fees ("OON Fees") on a single cash withdrawal; and (c) adopting a policy that results in accountholders being assessed three OON Fees on out-of-network ATM withdrawals immediately preceded by a purported "balance inquiry."

2. Each of these practices breaches contractual promises; violates the covenant of good faith and fair dealing; and/or results in the Bank being unjustly enriched.

3. Trustmark's customers have been injured by Trustmark's improper practices to the tune of millions of dollars bilked from their accounts in violation of their agreements with Trustmark.

4. On behalf of himself and the Classes, Plaintiffs seek damages, restitution, and injunctive relief for Defendant's violations as set forth more fully below.

### **PARTIES**

5. Cryesha McDonald is a resident of Wayne County, Mississippi, residing therein at 2 Easthill Drive, Waynesboro, Mississippi 39367 and holds a Trustmark checking account.

6. Chantal Lewis is a resident of Hinds County, Mississippi, residing therein at 6295 Old Canton Road, Apartment 31-A, Jackson, Mississippi 39211 and holds a Trustmark checking account.

7. Defendant Trustmark is engaged in the business of providing retail banking services to consumers, including Plaintiffs and members of the putative Classes, which includes the issuance of debit cards for use by its customers in conjunction with their checking accounts. Trustmark operates banking centers, and thus conducts business, throughout the States of Mississippi, Alabama, Florida, Tennessee and Texas. Trustmark may be served with process by sending a summons and copy of this complaint to its registered agent for service of process in the State of Mississippi, same being Granville Tate, Jr., 248 East Capitol Street, Suite 733, Jackson, Mississippi 39201.

### **JURISDICTION AND VENUE**

8. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because (1) the proposed class is comprised of at least 100 members; (2) proposed class

members reside in at least Mississippi, Alabama, Florida, Tennessee, and Texas, meaning at least one member of the proposed class resides outside of Mississippi; and (3) the aggregate claims of the putative class members exceed \$5 million, exclusive of interest and costs.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Trustmark is subject to personal jurisdiction here and regularly conducts business in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this district.

### **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

#### **I. TRUSTMARK CHARGES OD FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT**

##### **A. Overview of Claim**

10. Plaintiffs bring this cause of action challenging Trustmark's practice of charging overdraft fees on what are referred to in this complaint as "Authorize Positive, Purportedly Settle Negative Transactions" ("APPSN Transactions").

11. Here's how it works. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Trustmark immediately reduces consumers' checking accounts for the amount of the purchase, sets aside funds in a checking account to cover that transaction, and as a result, the consumer's displayed "available balance" reflects that subtracted amount. As a result, customers' accounts will always have sufficient available funds available to cover these transactions because Trustmark has already sequestered these funds for payment.

12. However, Trustmark still assesses crippling \$36 OD Fees on many of these transactions, and misrepresents its practices in its account documents.

13. Despite putting aside sufficient available funds for debit card transactions at the

time those transactions are authorized, Trustmark later assesses OD Fees on those same transactions when they purportedly settle days later into a negative balance. These types of transactions are APPSN transactions.

14. Trustmark maintains a running account balance in real time, tracking funds consumers have for immediate use. This running account balance is adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Trustmark sequesters the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the accountholder, and such funds are specifically associated with a given debit card transaction.

15. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles, as discussed in the Federal Register notice announcing revisions to certain provisions of the Truth in Lending Act regulations:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is 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.

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

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



17. Still, despite keeping those held funds off-limits for other transactions, Trustmark improperly charges OD Fees on those APPSN Transactions, although the APPSN Transactions *always* have sufficient available funds to be covered.

18. Indeed, the Consumer Financial Protection Bureau (“CFPB”) has expressed concern with this very issue, flatly calling the practice “unfair” and/or “deceptive” when:

A financial institution authorized an electronic transaction, which reduced a customer’s available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer’s available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive. At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer’s available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer’s decision-making and actions, examiners found the practice to be deceptive. 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 fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, Winter 2015 “Supervisory Highlights.”

19. There is no justification for these practices, other than to maximize Trustmark’s

overdraft fee revenue. APPSN Transactions only exist because intervening checking account transactions supposedly reduce an account balance. But Trustmark is free to protect its interests and either reject those intervening transactions or charge OD Fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year. But Trustmark was not content with these millions in OD Fees. Instead, it sought millions *more* in OD Fees on these APPSN Transactions.

20. Besides being unfair and unjust, these practices breach contract promises made in Trustmark’s adhesion contracts—contracts which fail to inform consumers about the true nature of Trustmark’s processes and practices. These practices also exploit contractual discretion to gouge consumers.

21. In plain, clear, and simple language, the checking account contract documents covering overdraft fees promise that Trustmark will only charge overdraft fees on transactions that have insufficient funds to cover that transaction.

22. In short, Trustmark is not authorized by contract to charge OD Fees on transactions that have not overdrawn an account, but it has done so and continues to do so.

**B. Mechanics of a Debit Card Transaction**

23. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Trustmark. When a merchant physically or virtually “swipes” a customer’s debit card, the credit card terminal connects, via an intermediary, to Trustmark, which verifies that the customer’s account is valid and that sufficient available funds exist to “cover” the transaction amount.

24. At this step, if the transaction is approved, Trustmark immediately decrements the funds in a consumer’s account and sequesters funds in the amount of the transaction, but does

not yet transfer the funds to the merchant.

25. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles, as discussed in the Federal Register notice announcing revisions to certain provisions of the Truth in Lending Act regulations:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is 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.

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

26. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.

27. There is no change—no impact whatsoever—to the available funds in an account when this step occurs.

**C. Trustmark's Account Contract**

28. Plaintiff McDonald has a Trustmark checking account, which is governed by Trustmark's standardized "Deposit Agreement, Disclosures and Fees" document ("Consumer Account Agreement").

29. The Consumer Account Agreement and relevant contract documents covering overdraft fees provide that Trustmark will not charge OD Fees on transactions that have sufficient funds to cover them at the time they are initiated.

30. Trustmark promises that "available" balance is the balance used to determine overdrafts; that "available" funds are reduced for holds, including those placed immediately on

debit card transactions; and that “non-sufficient funds items” are only those items that “overdraw[] your account”:

**Non-Sufficient Funds.** When you do not have enough available funds in your account to cover an Item, you agree that the Item is a non-sufficient funds Item. (Funds in your account are not available if we determine that they are subject to a hold, dispute or legal process that prevents their withdrawal.) If a non-sufficient funds Item is presented to us for payment, we (at our discretion and without notice to you) may return it unpaid or may pay it (overdrawing your account).

31. Via this provision of the Consumer Account Agreement, Trustmark promises that it uses available balance—the same balance that is immediately reduced when a debit card transaction is authorized—to determine whether an overdraft occurs.

32. For APPSN Transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there are always funds to “cover” those transactions—yet Trustmark assesses OD Fees on them anyway.

33. The above promises indicate that transactions are only overdraft transactions when they are authorized and approved into a negative account balance. Of course, that is not true for APPSN Transactions.

34. In fact, Trustmark actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to “post” those same transactions. Instead, it uses a secret posting process described below.

35. All the above representations and contractual promises are untrue. In fact, Trustmark charges OD Fees even when sufficient funds exist to “cover” transactions that are “authorized” into a positive balance. No express language in any document states that Trustmark may impose overdraft fees on any APPSN Transactions.

36. The Consumer Account Agreement misconstrues Trustmark’s true debit card processing and overdraft practices.

37. First, and most fundamentally, Trustmark charges overdraft fees on debit card transactions for which there are sufficient funds available to “cover” the transactions. That is despite contractual representations that Trustmark will only charge overdraft fees on transactions with insufficient available funds to “cover” a given transaction.

38. Trustmark assesses OD Fees on APPSN Transactions that do have sufficient funds available to “cover” them throughout their lifecycle.

39. Trustmark’s practice of charging OD Fees even when sufficient available funds exist to “cover” a transaction violates a contractual promise not to do so. This discrepancy between Trustmark’s actual practice and the contract causes consumers like the Plaintiffs to incur more overdraft fees than they should.

40. Next, sufficient funds for APPSN Transactions are actually debited from the account immediately, consistent with standard industry practice.

41. Because these withdrawals take place upon initiation, they cannot be re-debited later. But that is what Trustmark does when it re-debits the account during a secret batching posting process.

42. In reality, Trustmark’s actual practice is to assay the same debit card transaction twice to determine if the transaction overdraws an account—both at the time a transaction is authorized and later at the time of settlement.

43. At the time of settlement, however, an available balance *does not change at all* for these transactions previously authorized into good funds. As such, Trustmark cannot then charge an overdraft fee on such transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

44. Upon information and belief, something more is going on: at the moment a debit



card transaction is getting ready to settle, Trustmark does something new and unexpected, during the middle of the night, during its nightly batch posting process. Specifically, Trustmark releases the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debits the same transaction a second time.

45. This secret step allows Trustmark to charge overdraft fees on transactions that never should have caused an overdraft—transactions that were authorized into sufficient funds, and for which Trustmark specifically set aside money to pay them.

46. This discrepancy between Trustmark's actual practices and the contract causes consumers to incur more overdraft fees than they should.

47. In sum, there is a huge gap between Trustmark's practices as described in the account documents and Trustmark's practices in reality.

**D. Trustmark Abuses Contractual Discretion**

48. Trustmark's treatment of debit card transactions to charge overdraft fees is not simply a breach of the express terms of the numerous account documents. In addition, Trustmark exploits contractual discretion to the detriment of accountholders when it uses these policies.

49. The term "to cover" a transaction is undefined. Trustmark uses its discretion to define "to cover" in a manner contrary to any reasonable, common sense understanding of that term. In Trustmark's implied definition, a transaction is not "covered" even if Trustmark sequesters sufficient available funds for that transaction at the time it is made.

50. Moreover, Trustmark uses its contractual discretion to cause APPSN Transactions to incur overdraft fees by knowingly authorizing later transactions that it allows to consume available funds previously sequestered for APPSN Transactions.

51. Trustmark uses all of these contractual discretion points unfairly to extract

overdraft fees on transactions that no reasonable consumer would believe could cause overdraft fees.

**E. Reasonable Consumers Understand Debit Card Transactions are Debited Immediately**

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

53. Trustmark was and is aware that this is precisely how accountholders reasonably understand debit card transactions to work.

54. Trustmark knows that many consumers prefer debit cards for these very reasons. Consumer research indicates that consumers prefer debit cards as a budgeting device; because they don't allow debt like credit cards do; and because the money comes directly out of a checking account.

55. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of 'float' time that a check usually takes to clear." See [https://www.consumer-action.org/helpdesk/articles/what\\_do\\_i\\_need\\_to\\_know\\_about\\_using\\_a\\_debit\\_card](https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card) (last visited November 14, 2018).

56. Further, Consumer Action informs consumers that "Debit cards offer the

convenience of paying with plastic without the risk of overspending. When you use a debit card, you do not get a monthly bill. You also avoid the finance charges and debt that can come with a credit card if not paid off in full.”

57. That is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have (along with credit cards) viewed debit cards “as a more convenient option than refilling their wallets with cash from an ATM.”<sup>1</sup>

58. Not only have consumers increasingly transitioned from cash to debit cards, but they believe that a debit card purchase is the fundamental equivalent of a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

59. Trustmark was aware of a consumer perception that debit transactions reduce an available balance *in a specified order*—namely, the moment they are actually initiated—and its account agreement only supports this perception.

#### **F. Plaintiff McDonald’s Debit Card Transactions**

60. On June 6, 2017 and November 10, 2017, Plaintiff McDonald was assessed OD Fees in the amount of \$36.00 each for two debit card transactions that settled on those days, despite the fact that positive funds were deducted immediately, many days prior, for at least one of the transactions on which Plaintiff was assessed an overdraft fee.

#### **II. ATM CLAIM: TWO FEES FOR CASH WITHDRAWALS**

61. In recent years, there has been significant consumer and political outcry over the

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<sup>1</sup> Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch, Mar. 23, 2016, <http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23>.

business practices of the ATM industry. Consumer advocates, commentators, and politicians have railed against “usurious” fees charged by ATM operators. Almost all of the focus has concerned the high cost of surcharge fees, or the fees that an ATM operator charges directly to consumers for engaging in cash withdrawal transactions, which range from \$3-\$5 per transaction. This litigation does not concern those fees.

62. There is also a second fee that Trustmark consumers using out-of-network ATMs are hit with—the OON Fee, which is charged by their own bank for using an ATM not owned by their bank.

63. When a consumer uses an ATM not owned by his or her home bank, the consumer is often assessed a fee by that out-of-network ATM operator. Some banks like Trustmark then add their own out-of-network fee for out-of-network ATM use.

64. But Trustmark’s account disclosures never inform consumers they will be hit with this fee in addition to the fee charged by the ATM owner—in other words, Trustmark never discloses that its accountholders will incur two fees for out of network withdrawals.

65. Trustmark’s Consumer Account Agreement provides a misleading disclosure as to the number of fees an accountholder will be charged for an out-of-network withdrawal—indeed, the Agreement only references fees charged by ATM owners, not by Trustmark:

ATM Charge. When you use an ATM not owned by us, you may be charged a fee by the ATM operator and/or by any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer. You may be charged a fee for use of a Trustmark Express ATM card or a Trustmark ExpressCheck card at a Pulse Network ATM, at a CIRRUS Network ATM, or at other Network ATMs. You will be charged a fee for use of a Trustmark Express ATM card or a Trustmark ExpressCheck card at a Trustmark Express ATM located on casino property. We will not charge you a fee for your use of a Trustmark Express ATM card or a Trustmark ExpressCheck card at other Trustmark Express ATMs unless a notice of fee is posted on the Trustmark Express ATM being used by you.

66. Later, the Consumer Account Agreement states in the Fee Schedule that:

ATM charges for transactions

- Trustmark ATMs.....FREE
- Non-Trustmark ATMs (unless otherwise posted) .....\$2.50

67. Thus, the Consumer Account Agreement provision quoted above—which only states that the ATM operator may charge one fee—and the Summary of Fees, which only lists one fee—indicate to reasonable consumers when read together that they will be charged one fee.

68. In short, Trustmark conceals that consumers will be charged two separate fees for each out-of-network ATM withdrawal, one by the out-of-network ATM operator and one by Trustmark.

69. Trustmark’s disclosure around out-of-network fees is misleading as it does not put an accountholder on notice that a withdrawal at an out-of-network ATM provider will incur two fees.

70. Other leading banks in Mississippi do not mislead consumers in the same way. For example, Bank of America—consistent with the vast majority of other banks in the state and in the country—states expressly in its standard account agreement:

When you use an ATM that is not prominently branded with the Bank of America name and logo, you may be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer. We may also charge you fees. (emphasis added).

71. Similarly, Bank of America’s Fee Schedule states:

Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S. \$2.50 each.

When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer.

(emphasis added).



72. Unlike Trustmark, which leads consumers to believe that accountholders will be subject to one fee, Bank of America makes clear in *both* the standard account agreement, and in the Summary of Fees that *two* fees could be charged—one by Bank of America, and one by the ATM operator. Upon information and belief, Trustmark is rare among leading banks in Mississippi to omit this express disclosure that *two fees* will be assessed for out-of-network withdrawals.

73. Neither Trustmark nor the ATM operator informs account holders of the total number of fees for a single ATM withdrawal from an out-of-network ATM. Indeed, at the moment a consumer withdraws funds from an out-of-network ATM, that ATM displays a screen asking the consumer to accept the ATM operator's fee before proceeding with the withdrawal. But that fee does not include the additional fees assessed by Trustmark. And Trustmark's account disclosures never explicitly tell consumers they will likely be charged two fees—an ATM operator fee *in addition to* fees charged by Trustmark.

74. Trustmark's failure to ever plainly tell consumers the total number of fees they will pay for an out-of-network ATM withdrawal is by design. Trustmark knows full well that reasonable consumers would want to know that they are paying two fees totaling \$6 or \$7 for a simple withdrawal. So Trustmark ensures that the full fee is only partially disclosed in the Account Agreement, and only partially disclosed in the Summary of Fees, in a murky and non-transparent way.

75. The combined amount of the two fees comes as a surprise to the consumers. According to USA Today, "the average fee consumers pay to withdraw cash from an ATM outside their bank's network is a record \$4.52 per transaction, according to a 2015 survey from Bankrate.com. That amount is a combination of two fees, rather than one, which may come as a

surprise to some consumers”.<sup>2</sup>

76. On numerous occasions, including but not limited to May 21, 2018, Plaintiff Lewis withdrew cash from an out-of-network ATM. On that day, the ATM operator charged Plaintiff a fee of \$4.99 for a cash withdrawal of \$20. In addition, Trustmark charged Ms. Lewis an OON Fee of \$2.50—resulting in a total of \$7.49 in fees to make a mere \$20 withdrawal.

77. Trustmark’s contract misleadingly led Plaintiff Lewis and consumers like her to believe that they would be charged only one fee. Under its contract with consumers, Trustmark was not permitted to charge an additional OON Fee to its customers who paid the out-of-network ATM operator a separate fee.

### **III. ATM CLAIM: THREE FEES FOR CASH WITHDRAWALS UNDERTAKEN WITH A BALANCE INQUIRY**

78. In some circumstances, Trustmark charges yet a third fee for out-of-network ATM uses, and it involves so-called “balance inquiries” undertaken at out-of-network ATMs. Unbeknownst to consumers, they can be charged an additional fee by Trustmark for supposedly performing balance inquiries in addition to the surcharge from the ATM owner and the first OON Fee, discussed above.

79. A Trustmark accountholder who unsuspectingly checks her balance as part of a cash withdrawal transaction at an out of network ATM machine can expect to pay the following fees: 1) the customer will pay the ATM defendants a surcharge for the withdrawal; 2) the customer also pays Trustmark an OON Fee for making an out of network cash withdrawal; 3) and the customer will also pay Trustmark another OON Fee for supposedly undertaking one or

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<sup>2</sup> Charisse Jones, *Out-of-network ATM fees, overdraft charges hit record, survey says*, USA TODAY, Oct. 5, 2015, available at <https://www.usatoday.com/story/money/personalfinance/2015/10/05/out--network-atm-fees-overdraft-charges-hit-record-new-survey-says/73384264/>.

more balance inquiries during the cash withdrawal. A single \$20.00 withdrawal can generate between \$6.00 and \$11.00 in fees, including \$5.00 to Trustmark.

80. Because the provision of balance inquiries are essentially cost-free to ATM owners, and because they are hugely profitable, ATM owners have placed a great emphasis in recent years on increasing the number of supposed balance inquiries undertaken at their machines—by any means necessary.

81. In the last decade, the revolution of mobile banking applications and increasing legislative scrutiny on the punitive nature of independent ATM machine withdrawal surcharges has forced the ATM operators to seek other sources of revenue. The 2015 Independent ATM deployer survey sponsored by Kahuna ATM Solutions and the ATM Industry Association found that declining interchange rates were one of the top concerns for Independent ATM operators.<sup>3</sup> For example, one of the largest ATM operators repeatedly voiced this concern in its financial disclosures, stating:

In addition to the impact of the net interchange rate decrease, we saw certain financial institutions migrate their volume away from some networks to take advantage of the lower pricing offered by other networks, resulting in lower net interchange rates per transaction to us. If financial institutions move to take further advantage of lower interchange rates, or if networks reduce the interchange rates they currently pay to ATM deployers or increase their network fees, our future revenues and gross profits could be negatively impacted.

*See* Cardtronics plc SEC Form 10-Q, filed May 3, 2018, p. 46 (available at <https://www.sec.gov/Archives/edgar/data/1671013/000155837018003893/catm-20180331x10q.htm>).

82. Feeling the financial pressure of declining interchange rates, the ATM operators sought to increase revenue in other ways.

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<sup>3</sup> *See* 2015 IAD Poll at <https://www.atmmarketplace.com/news/2015-iad-poll-reveals-growing-attention-on-emv-shrinking-focus-on-mobile/> Last Viewed June 11, 2018.

83. They turned to balance inquiries to drive revenue. But they had a problem: very few consumers seek them out and are willing to pay for them.

84. Americans, in short, use ATMs for the service of withdrawing cash, not to perform balance inquiries and transfers that are now commonly performed online or on mobile devices for free.

85. ATM operators and banks have known for years that the vast majority of customers who come to use their ATM machines are there to perform only a cash withdrawal.

86. This makes perfect sense. Due to the availability of cost-free alternatives, like checking a balance on a mobile app, phone banking, or online access, paying for a balance inquiry at an ATM is not a rational act for the vast majority of consumers. Moreover, the shelf-life of the information obtained through a balance inquiry is extremely short. With checking accounts having numerous transactions that post throughout the day, as well as scheduled withdrawals that occur overnight, the viability of the information received through a balance inquiry at an ATM is only even arguably beneficial for the immediate business at hand, *i.e. the cash withdrawal*.

87. Moreover, because consumers are entitled to receive, as part of their cash withdrawal, a printed receipt at the conclusion of their transaction, they already have free access to their account balances without having to engage in a separate balance inquiry.

88. Therefore, when a consumer uses an ATM for a balance inquiry, it is almost always *in conjunction* with a cash withdrawal transaction.

89. For all these reasons, historically only a tiny percentage of ATM transactions were for balance inquiries. Very few consumers need this information urgently enough to pay for it.

90. But ATM operators had a solution: lure consumers into balance inquiries via trickery and deception in order to increase balance inquiries from those customers who otherwise do not need them or would not be willing to pay for them as part of a cash withdrawal. The ATM operators have embraced a number of tactics to increase the number of balance inquiries supposedly performed at their ATM machines.

91. When consumers use ATMs not owned by their own bank, federal law requires the owners of those Out-of-Network ATMs to inform users of the amount of the usage fees charged by the ATM owner.

92. That message appears only after a user has decided to perform a cash withdrawal and entered the amount of cash she would like to withdraw.

93. Through repeated exposure to such fee warning messages, consumers are accustomed to being warned of fee assessments at out of network ATMs, and to being provided with the opportunity to decide whether the fees charged are reasonable—before proceeding with their cash withdrawal. But there is no warning whatsoever at an ATM that any form of balance inquiry could be an event worthy of a fee, either from the ATM owner or from the consumer's bank.

94. Without such a notice, a balance inquiry appears to be nothing more than an unremarkable, free lead-in to a cash withdrawal to reasonable, diligent consumers.

95. Second, many ATM operators use intentionally deceptive on-screen prompts to exploit and add to the consumer confusion resulting from a lack of an on-screen fee notice. While varying in certain ways, the intention and effect is the same: to trick American consumers into repeatedly paying more for a single ATM usage by increasing purported balance inquiries.



**A. Overview of Claim Against Trustmark**

96. Plaintiffs bring this claim challenging Trustmark's practice of assessing three OON Fees on out-of-network ATM withdrawals immediately preceded by a purported "balance inquiry."

97. As discussed in Section II, when Trustmark accountholders use a non-Trustmark ATM, ATM fees add up very quickly—to account holders' surprise. Not only does the non-Trustmark ATM operator charge the consumer a fee for use of its ATM, a charge which now averages \$3.00, but Trustmark charges an OON Fee for a cash withdrawal as well—a punishing double-fee on accountholders that can rise to a total of several dollars for simply accessing their own money. Section II concerns Trustmark's failure to disclose this *second* OON Fee to consumers.

98. This section concerns Trustmark's imposition of a *third* fee for certain out-of-network ATM transactions—one fee to the ATM operator and *two* OON Fees to Trustmark. Specifically, when Trustmark accountholders are deemed to have requested a balance inquiry prior to withdrawing funds at an out-of-network ATM, Trustmark charges its accountholder three OON Fees—one or two for the *purported balance inquiry* and one for the *withdrawal*.

99. Trustmark's Consumer Account Agreement and other supporting documents misrepresent to accountholders the true nature of Trustmark's assessment of these fees. Trustmark's contract terms mislead accountholders to believe that a balance inquiry is not a separate, individual transaction; rather, accountholders are led to believe that a balance inquiry is part of a single transaction, such as a deposit or withdrawal, conducted almost simultaneously at a single out of network ATM.

100. For a simple \$50 out-of-network ATM withdrawal, for example, Plaintiff

McDonald paid a total of \$9 for three separate fees, including \$5.00 for fees to Trustmark.

101. Trustmark's uniform practice of charging two OON Fees per cash withdrawal preceded by a balance inquiry violates representations in Trustmark's account documents, and constitutes a breach of contract, breach of the covenant of good faith and fair dealing, and/or constitutes unjust enrichment. Indeed, Trustmark's account documents fail to provide adequate notice of the possibility of being charged two fees by Trustmark during one transaction at an out of network ATM.

102. American consumers simply do not know they can be assessed *three discrete fees for a simple out of network ATM session that lasts less than two minutes*. Trustmark, along with the ATM owners, is all too happy to keep consumers in the dark.

103. Trustmark's account documents do nothing to place consumers on notice of the triple OON Fee for an out-of-network ATM withdrawal preceded by what they deem to be a consented-for "balance inquiry."

104. When consumers use ATMs not owned by their own bank, federal law requires the owners of those Out-of-Network ATMs to inform users of the amount of the usage fees charged by the ATM owner.

105. Thus, it is standard at ATMs in the United States that when a consumer uses an ATM not owned by her home bank, a message is displayed on the screen stating that usage of the ATM will cost a specified amount ("Surcharge") to proceed with a withdrawal of funds, and that such a fee is in addition to a fee that may be assessed by a consumer's financial institution for use of the ATM. *See supra*.

106. Through repeated exposure to such fee warning messages, consumers are accustomed to being warned of fee assessments at out of network ATMs, and to being provided

with the opportunity to decide whether the fees charged are reasonable—before proceeding with their cash withdrawal.

107. Trustmark knows this—that consumers expect a fair fee disclosure at the ATM—and has exploited consumers' reasonable expectation that they will only engage in fee-worthy actions knowingly and with appropriate disclosures—and will be provided a warning and an opportunity to cancel actions before being assessed a fee. Trustmark does this by assessing two or more additional OON Fees on consumers merely because they pressed buttons during a cash withdrawal transaction that the Bank, in its discretion, deems to be tantamount to requests for balance inquiries.

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

109. Reasonable consumers like the Plaintiffs do not, in sum, understand a balance inquiry to be an independent transaction worthy of a separate fee.

110. Trustmark knows this—that in the absence of a prominent warning otherwise, consumers expect a balance inquiry to be an integral, included part of a cash withdrawal.

111. Trustmark has designed a scheme to assess OON Fees on those purported balance inquiries. The Banks prey on the common sense that a balance inquiry preceded by a cash withdrawal is not an independent and separate transaction and therefore should not form the basis for a separate fee.

112. If a Bank is going to charge such a conscience-shocking fee, it must fully and fairly disclose such a fee in its account documentation. Trustmark did the opposite—providing

express and implied indications that balance inquiries undertaken in conjunction with cash withdrawals would not incur additional OON Fees. Alternatively, this practice constitutes a breach of the covenant of good faith and fair dealing or unjust enrichment.

#### **B. Account Disclosures**

113. Against the backdrop of the reasonable consumer expectations and federal law above, Trustmark's disclosures reinforce the reasonable understanding that no fee will be assessed for a balance inquiry—especially if ATM users are not warned beforehand.

114. Trustmark's disclosures also reinforce the common sense presumption that there can be no balance inquiry fee when such an inquiry is in conjunction with a cash withdrawal at the same ATM.

115. Trustmark's Consumer Account Agreement provides a misleading disclosure as to the number of fees an accountholder will be charged for an out-of-network withdrawal preceded by a balance inquiry—indeed, the Agreement only references fees charged by ATM owners, not by Trustmark.

116. The Fee Schedule issued by Trustmark makes no reference whatsoever to OON Fees for balance inquiries, and states only that an OON Fee of \$2.50 will be charged for a “transaction.”

117. Based on the Consumer Account Agreement and the Fee Schedule, standard checking accountholders and the general public would have no reason to believe that a balance inquiry is a separate, individual “transaction,” such that it will incur an additional OON Fee when it precedes a withdrawal.

118. Accountholders using non-Trustmark ATMs are never warned that they will receive **two separate fees** from Trustmark—plus another one from the ATM owner—when they

check their balance before proceeding with a cash withdrawal at the same ATM. But that is exactly what happens.

119. As discussed *supra*, ATMs immediately prompt consumers to check their balance, and never warn that such a balance inquiry will be the basis for a fee, either from the ATM owner or from the consumer's own bank. Trustmark's disclosures do nothing to disabuse consumers of the reasonable understanding that a balance inquiry will not incur a separate fee when it precedes a cash withdrawal at the same ATM.

120. These disclosures totally fail to authorize the assessment of multiple OON Fees on the same ATM usage or on a balance inquiry that precedes a cash withdrawal.

121. The most reasonable understanding of this disclosure is that for all activities incident to a cash withdrawal, including a balance inquiry undertaken simultaneously, a single \$2.50 fee will be assessed.

122. When a balance inquiry precedes a withdrawal, common sense and consumer expectation dictate that that two-step process is part of the same ATM use.

123. In general, and in Plaintiffs' case here, the ATM owner does not warn the user that there is a separate charge for a balance inquiry, and in fact the ATM owner does not charge a separate fee to the user for a balance inquiry. Therefore, the user can have no reasonable expectation that Trustmark will assess a fee for an action that the ATM owner does not charge or warn about.

124. Trustmark accountholders using a non-Trustmark ATM are never warned that they will receive two separate fees from Trustmark—plus another one from the ATM owner—when they check their balance before proceeding with a cash withdrawal at the same ATM. But that is exactly what happens.



125. At the very least, Trustmark uses contractual discretion in bad faith when it assesses two OON Fees during the same ATM use when a balance inquiry immediately precedes a cash withdrawal.

**C. Plaintiff's Out of Network ATM Balance Inquiry Transactions**

126. On numerous occasions, including, but not limited to, May 31, 2017, Plaintiff McDonald placed her Trustmark debit card into an out of network ATM in order to make a cash withdrawal. Following her transaction, Plaintiff was surprised to learn that she was assessed, in addition to the cash withdrawal surcharge paid to the ATM operator, a separate \$2.50 fee from Trustmark for making an out-of-network balance inquiry, and an additional \$2.50 fee from Trustmark for making an out-of-network cash withdrawal.

**CLASS ACTION ALLEGATIONS**

127. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated pursuant to F.R.C.P. 23. The Classes include:

All persons who hold a Trustmark checking account who, within the applicable statute of limitations preceding the filing of this lawsuit, were charged OD Fees on transactions that were authorized into a positive available balance (the "APPSN Class").

All persons who hold a Trustmark checking account who, within the applicable statute of limitations preceding the filing of this lawsuit, were assessed an OON Fee when they withdrew cash at an out-of-network ATM (the "OON Fee Class").

All persons who hold a Trustmark checking account who, within the applicable statute of limitations preceding the filing of this lawsuit, were assessed two or more OON Fees when they performed a balance inquiry prior to withdrawing cash at an out-of-network ATM (the "Balance Inquiry Class").

128. Excluded from the Classes are Defendant, Defendant's subsidiaries and affiliates, their officers, directors and member of their immediate families and any entity in which Defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any

such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

129. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes and/or to add a Subclass(es) if necessary before this Court determines whether certification is appropriate.

130. The questions here are ones of common or general interest such that there is a well-defined community of interest among the members of the Classes. These questions predominate over questions that may affect only individual class members because Trustmark has acted on grounds generally applicable to the classes. Such common legal or factual questions include, but are not limited to:

- a) Whether Trustmark improperly charged OON Fees;
- b) Whether Trustmark improperly charged OON Fees for balance inquiries made in conjunction with a withdrawal at out-of-network ATMs;
- c) Whether Trustmark improperly charged OD Fees on APPSN Transactions;
- d) Whether any of the conduct enumerated above violates the contract;
- e) Whether any of the conduct enumerated above violates the covenant of good faith and fair dealing;
- f) Whether any of the conduct enumerated above constitutes unjust enrichment;
- g) The appropriate measure of damages.

131. The parties are numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Classes consist of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to Trustmark's records. Trustmark has the administrative capability through its computer systems and other records to identify all members of the Classes, and such specific information is not otherwise available to Plaintiffs.

132. It is impracticable to bring members' of the Classes individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

133. Plaintiffs' claims are typical of the claims of the other members of the Classes in that they arise out of the same wrongful business practices by Trustmark, as described herein.

134. Plaintiffs are more than an adequate representative of the Classes in that Plaintiffs have a Trustmark checking account and have suffered damages as a result of Trustmark's contract violations, Trustmark's violations of the covenant of good faith and fair dealing, and Trustmark's unjust enrichment. In addition:

- a) Plaintiffs are committed to the vigorous prosecution of this action on behalf of themselves and all others similarly situated and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;
- b) There is no conflict of interest between Plaintiffs and the unnamed members of the Classes;
- c) Plaintiffs anticipate no difficulty in the management of this litigation as a class action; and
- d) Plaintiffs' legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

135. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

136. Trustmark has acted or refused to act on grounds generally applicable to each of

the classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each of the classes as a whole.

137. All conditions precedent to bringing this action have been satisfied and/or waived.

**CAUSES OF ACTION**

**COUNT I**

**BREACH OF CONTRACT**

**(On Behalf of Plaintiffs and the Classes)**

138. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this Petition as if fully set forth herein.

139. Plaintiffs and Trustmark contracted for checking account and debit card services, as embodied in the Customer Account Agreement.

140. Trustmark breached the terms of the contract when it assessed overdraft fees (“OD Fees”) on transactions that did not actually overdraw the account.

141. Trustmark breached the terms of the contract when it assessed accountholders two OON Fees on a single out-of-network ATM cash withdrawal.

142. Trustmark breached the terms of the contract when it assessed accountholders three OON Fees on out-of-network ATM withdrawals immediately preceded by a purported “balance inquiry.”

143. Plaintiffs and members of the putative Classes have performed all of the obligations on them pursuant to the Customer Account Agreement.

144. Plaintiffs and members of the putative Classes have sustained monetary damages as a result of each of Defendant’s breaches.

**COUNT II**  
**BREACH OF THE COVENANT OF**  
**GOOD FAITH AND FAIR DEALING**

**(On Behalf of Plaintiffs and the Classes)**

145. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this Petition as if fully set forth herein.

146. Plaintiffs and Trustmark contracted for checking account and debit card services, as embodied in the Customer Account Agreement.

147. Mississippi law implies a covenant of good faith and fair dealing in every contract. The covenant of good faith and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

148. This good faith requirement extends to the manner in which a party employs discretion conferred by a contract.

149. 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.

150. 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 overt or may consist of inaction, and fair dealing may require more than honesty. Examples of violations of good faith and fair dealing are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in



the other party's performance.

151. Trustmark breached the covenant of good faith and fair dealing when it assessed OD Fees on transactions that did not actually overdraw the account.

152. Trustmark breached the covenant of good faith and fair dealing when it assessed accountholders two OON Fees on a single out-of-network ATM cash withdrawal.

153. Trustmark breached the covenant of good faith and fair dealing when it assessed accountholders three OON Fees on out-of-network ATM withdrawals immediately preceded by a purported "balance inquiry."

154. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

155. Plaintiffs and members of the putative Classes have performed all of the obligations on them pursuant to the Deposit Agreement.

156. Plaintiffs and members of the putative Classes have sustained monetary damages as a result of each of Defendant's breaches of the covenant of good faith and fair dealing.

**COUNT III**  
**UNJUST ENRICHMENT**  
**(In the Alternative to COUNT I and COUNT II)**

**(On Behalf of Plaintiffs and the Classes)**

157. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing paragraphs of this Petition as if fully set forth herein.

158. To the detriment of Plaintiffs and the Class, Defendant has been, and continues to be, unjustly enriched as a result of their wrongful conduct alleged herein.

159. Plaintiffs and the Class conferred a benefit on Defendants when they paid Defendant the fees that were not disclosed or allowed for in the in the Customer Account

Agreement.

160. Defendant unfairly, deceptively, unjustly and/or unlawfully accepted said benefits, which under the circumstances, would be unjust to allow Defendant to retain.

161. Plaintiffs and the Class, therefore, seek disgorgement of all wrongfully obtained fees received by Defendant as a result of its inequitable conduct as more fully stated herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Classes, demand a jury trial on all claims so triable and judgment as follows:

A. For an order certifying the proposed Classes pursuant to Federal Rule of Civil Procedure 23, appointing the Plaintiffs as representatives of the Classes and appointing counsel for Plaintiffs as lead counsel for the respective Classes;

B. Declaring that Defendant's policies and practices as described herein constitutes a breach of contract and a breach of the covenant of good faith and fair dealing or unjust enrichment;

C. Enjoining Defendant from the wrongful conduct as described herein;

C. Awarding restitution of all fees at issue paid to Defendant by Plaintiffs and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

D. Compelling disgorgement of the ill-gotten gains derived by Defendant from its misconduct;

E. Awarding actual and/or compensatory damages in an amount according to proof;

F. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

G. Reimbursing all costs, expenses, and disbursements accrued by Plaintiffs in connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to

applicable law and any other basis; and

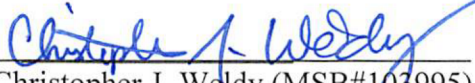
J. Awarding such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

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

Dated: December 7, 2018

By:

  
Christopher J. Weldy (MSB#103995)  
**WELDY LAW FIRM, PLLC**  
105 North College Street  
Brandon, Mississippi 39042  
Tele: (601) 624-7460  
Fax: (866)900-4850  
Email: [Chris@WeldyLawFirm.com](mailto:Chris@WeldyLawFirm.com)

Jeffrey Kaliel (to seek admission *Pro Hac Vice*)  
Sophia Gold (to seek admission *Pro Hac Vice*)  
**KALIEL, PLLC**  
1875 Connecticut Avenue NW, 10th Floor  
Washington, DC 20009  
Tele: (202) 350-4783  
Email: [jkaliel@kaliellpc.com](mailto:jkaliel@kaliellpc.com)  
Email: [sgold@kaliellpc.com](mailto:sgold@kaliellpc.com)

**ATTORNEYS FOR PLAINTIFFS AND THE  
PROPOSED CLASSES**

JS 44 (Rev. 08/16)

**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**

CRYESHA MCDONALD and CHANTAL LEWIS, on behalf of themselves and all others similarly situated

**DEFENDANTS**

TRUSTMARK NATIONAL BANK

(b) County of Residence of First Listed Plaintiff WAYNE COUNTY, MS

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant HINDS, MS

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Christopher J. Weldy, Weldy Law Firm, PLLC, 105 N. College St.,  
Brandon, MS 39042  
601-624-7460

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

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

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

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input 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 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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. Sections 1332(d), 1453, and 1711-1715

Brief description of cause:

Class Action Fairness Act of 2005

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$

greater than \$5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
12/07/2018

SIGNATURE OF ATTORNEY OF RECORD

Christopher J. Weldy

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

3464 305 29 91