

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

RICHMOND DIVISION

TIM FORD, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

ATLANTIC UNION BANK,

SERVE: Registered Agent:
Rachael Lape
Union Bankshares Corporation
1051 E. Cary Street, Suite 1200
Richmond, VA 23219

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

Plaintiff Tim Ford, individually and on behalf of all others similarly situated, complains and alleges as follows based on personal knowledge as to himself, on the investigation of his counsel, and on information and belief as to all other matters:

INTRODUCTION

1. This is a civil action seeking monetary damages, restitution and declaratory relief from Defendant, Atlantic Union Bank (“Atlantic Union”), arising from the unfair and unconscionable assessment and collection of “overdraft fees” (“OD Fees”) on accounts that were never actually overdrawn.

2. Atlantic Union’s customers have been injured by Atlantic Union’s improper practices to the tune of millions of dollars bilked from their accounts in violation of their agreements with Atlantic Union.

3. On behalf of himself and the Class, Plaintiff seeks damages, restitution, and injunctive relief for Defendant’s violations as set forth more fully below.

JURISDICTION

4. This Court has original jurisdiction over this putative class action lawsuit pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d)(2) & (6), because the aggregate sum of the claims of the members of the putative class exceeds \$5 million, exclusive of interest and costs, because Plaintiff brings this action on behalf of a proposed class that is comprised of over one hundred members, and because at least one of the members of the proposed class is a citizen of a different state than Atlantic Union.

PARTIES

5. Plaintiff Tim Ford (“Plaintiff Ford”) is a natural person who resides in Virginia. Plaintiff Ford has a business checking account with Atlantic Union.

6. Defendant Atlantic Union is a bank with approximately \$16 billion in assets. Atlantic Union is one of the largest banks based in Virginia. Atlantic Union is headquartered in Richmond, VA and maintains branch locations across the state of Virginia, Maryland and North Carolina.

7. Plaintiff is informed and believes, and thereupon alleges, that at least one of the members of the proposed class is a citizen of a state other than Virginia.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

I. ATLANTIC UNION CHARGES OD FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT

A. Overview of Claim

8. Plaintiff brings this cause of action challenging Atlantic Union’s practice of charging overdraft fees on what are referred to in this complaint as “Authorize Positive, Purportedly Settle Negative Transactions” (“APPSN Transactions”).

9. Here’s how it works. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Atlantic Union 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 Atlantic Union has already sequestered these funds for payment.

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

11. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Atlantic Union 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.

12. Atlantic Union 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, Atlantic Union 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.

13. 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).

14. 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.

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

16. 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."

17. There is no justification for these practices, other than to maximize Atlantic Union's overdraft fee revenue. APPSN Transactions only exist because intervening checking account transactions supposedly reduce an account balance. But Atlantic Union 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 Atlantic Union was not content with these millions in OD Fees. Instead, it sought millions *more* in OD Fees on these APPSN Transactions.

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

19. In plain, clear, and simple language, the checking account contract documents covering overdraft fees promise that Atlantic Union will only charge overdraft fees on transactions that have insufficient funds to "cover" that debit card transaction.

20. In short, Atlantic Union 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

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

22. At this step, if the transaction is approved, Atlantic Union 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.

23. 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).

24. Sometime thereafter, the funds are actually transferred from the customer’s account to the merchant’s account.

25. Atlantic Union (like all banks) decides whether to “pay” debit card transactions at authorization. After that, Atlantic Union is obligated to pay the transaction no matter what. For debit card transactions, that moment of decision can only occur at the point of sale, at the instant

the transaction is authorized or declined. It is at that point—and only that point—when Atlantic Union may choose to either pay the transaction or decline it. When the time comes to actually settle the transaction, it is too late—the bank has no discretion and must pay the charge. This “must pay” rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it “must pay” it when the merchant later makes a demand, regardless of other account activity. *See* Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

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

C. Atlantic Union’s Account Contract

27. Plaintiff Ford has a Atlantic Union checking account, which is governed by Atlantic Union’s standardized “Deposit Account Terms and Conditions” document (“Deposit Agreement”), Ex. A.

28. The Overdraft Disclosure, found at <https://www.atlanticunionbank.com/personal/resources/overdraft-services>, repeatedly links authorization and covering of transactions to the moment of authorization; promises “available balance” is reduced for holds, including those placed immediately on debit card transactions; and confirms that “non-sufficient funds items” are only those items that “overdraw[] your account”:

We offer 3 options for overdraft coverage - Overdraft Privilege, Overdraft Transfer or Overdraft Line of Credit. They're designed to cover accidental overdrafts when you write a check, make withdrawals at a branch or ATM or **when you use your debit card.**

[...]

At our discretion, **we may authorize and pay overdraft transactions.**

[...]

Fees may be imposed for covering overdrafts created by check, in-person withdrawal, ATM withdrawal, or other electronic means such as a debit card. Atlantic Union Bank does not authorize and pay overdrafts for ATM and one-time debit card transactions unless we receive authorization from you to opt in to that service.

29. The overdraft opt-in form,

<https://www.atlanticunionbank.com/personal/resources/overdraft-services/overdraft-choice-form>, again links “authorization” and “payment”:

I want Atlantic Union Bank to authorize and pay overdrafts on my ATM and everyday debit card transactions. I understand that I have an ongoing right to revoke this consent at any time.

I do not want Atlantic Union Bank to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Id. (emphasis added).

30. The Deposit Agreement also provides that Atlantic Union makes overdraft determinations when it decides to “honor” transactions, which is the moment of authorization for debit card transactions; it repeatedly states that Atlantic Union will not charge OD Fees on transactions that have sufficient funds to “cover” them at the time they are initiated; that only transactions “drawn” against insufficient funds will be assessed OD Fees:

Overdrafts - You understand that we may, at our discretion, honor withdrawal requests that overdraw your account. However, the fact that we may honor withdrawal requests that overdraw the account balance does not obligate us to do so later...So you can NOT rely on us to pay overdrafts on your account regardless of how frequently or under what circumstances we have paid overdrafts on your account in the past...You agree that we may charge fees for overdrafts.

[...]

If an item is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item (resulting

in a NSF). Overdraft, NSF, and other fees are disclosed in the Personal Deposit and Business Deposit Fee Schedules.

Deposit Agreement, Ex. A.

31. 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 Atlantic Union assesses OD Fees on them anyway.

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

33. In fact, Atlantic Union actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to settle those same transactions. Instead, it uses a secret posting process described below.

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

35. The Deposit Agreement and Overdraft Disclosure misconstrue Atlantic Union’s true debit card processing and overdraft practices.

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

37. Atlantic Union assesses OD Fees on APPSN Transactions that do have sufficient

funds available to “cover” them throughout their lifecycle.

38. Atlantic Union’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 Atlantic Union’s actual practice and the contract causes consumers like the Plaintiff to incur more overdraft fees than they should.

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

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

41. In reality, Atlantic Union’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.

42. At the time of settlement, however, an available balance *does not change at all* for these transactions previously authorized into good funds. As such, Atlantic Union 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.

43. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Atlantic Union does something new and unexpected, during the middle of the night, during its nightly batch posting process. Specifically, Atlantic Union 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.

44. This secret step allows Atlantic Union to charge overdraft fees on transactions

that never should have caused an overdraft—transactions that were authorized into sufficient funds, and for which Atlantic Union specifically set aside money to pay them.

45. This discrepancy between Atlantic Union’s actual practices and the contract causes consumers to incur more overdraft fees than they should.

46. In sum, there is a huge gap between Atlantic Union’s practices as described in the account documents and Atlantic Union’s practices in reality.

D. Atlantic Union Abuses Contractual Discretion

47. Atlantic Union’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, Atlantic Union exploits contractual discretion to the detriment of accountholders when it uses these policies.

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

49. Moreover, Atlantic Union 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.

50. Atlantic Union 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

51. 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.

52. Atlantic Union was and is aware that this is precisely how accountholders reasonably understand debit card transactions to work.

53. Atlantic Union 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.

54. 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.

55. 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.”

56. 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.”¹

57. 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.

58. Atlantic Union 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 Ford’s Debit Card Transactions

59. As an example, on June 25, 2018, Plaintiff Ford 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, prior to that day, for the transactions on which Plaintiff was assessed an overdraft fee.

II. CLASS ACTION ALLEGATIONS

60. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated pursuant to F.R.C.P. 23. The Class is defined as:

All persons who hold a Atlantic Union 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 “Class”).

¹ 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>.

61. Excluded from the Class 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.

62. Plaintiff reserves the right to modify or amend the definition of the proposed Class and/or to add a Subclass(es) if necessary before this Court determines whether certification is appropriate.

63. 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 Class. These questions predominate over questions that may affect only individual class members because Atlantic Union has acted on grounds generally applicable to the class. Such common legal or factual questions include, but are not limited to:

- a) Whether Atlantic Union improperly charged OD Fees on APPSN Transactions;
- b) Whether the conduct enumerated above violates the contract;
- c) Whether the conduct enumerated above violates the covenant of good faith and fair dealing;
- d) The appropriate measure of damages.

64. The parties are numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Class 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 Atlantic Union's records. Atlantic Union has the administrative capability through its computer systems and other records to identify all members of the Class, and such specific information is

not otherwise available to Plaintiff.

65. It is impracticable to bring members' of the Class 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.

66. Plaintiff's claims are typical of the claims of the other members of the Class in that they arise out of the same wrongful business practices by Atlantic Union, as described herein.

67. Plaintiff is more than an adequate representative of the Class in that Plaintiff is an Atlantic Union checking account and have suffered damages as a result of Atlantic Union's contract violations. In addition:

- a) Plaintiff is committed to the vigorous prosecution of this action on behalf of himself 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 Plaintiff and the unnamed members of the Class;
 - c) Plaintiff anticipates no difficulty in the management of this litigation as a class action; and
 - d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.
68. Plaintiff knows of no difficulty to be encountered in the maintenance of this

action that would preclude its maintenance as a class action.

69. Atlantic Union has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

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

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF BREACH OF CONTRACT INCLUDING THE COVENANT OF GOOD FAITH AND FAIR DEALING (Individually and on Behalf of the Class)

71. Plaintiff repeats and incorporates all of the preceding allegations as if fully set forth herein.

72. Plaintiff, and all members of the proposed Class contracted with Atlantic Union for bank account services.

73. Atlantic Union breached promises made to Plaintiff and all members of the proposed class when as described herein, Atlantic Union charged overdraft fees as a result of transactions that did not overdraw a checking account.

74. In addition, under the laws of the states where Atlantic Union does business, good faith is an element of every contract. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

75. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of

inaction, and fair dealing may require more than honesty. Examples of bad faith 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.

76. Atlantic Union has breached the covenant of good faith and fair dealing and abused its discretion in its contract as described herein. Specifically, Atlantic Union should not have used its discretion to charge overdraft fees as a result of transactions that did not overdraw a checking account.

77. Plaintiff and all members of the proposed Class have performed all, or substantially all, of the obligations imposed on them under the contract.

78. Plaintiff and all members of the proposed Class have sustained damages as a result of Atlantic Union's breach of the contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, demands a jury trial on all claims so triable and judgment as follows:

- A. Certification for this matter to proceed as a class action on behalf of the Class;
- B. Declaring Atlantic Union's OD Fee policies and practices to be in breach of its contract with consumers;
- C. Restitution of all OD Fees paid to Atlantic Union by Plaintiff and the members of the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
- D. Actual damages in an amount according to proof;
- E. Pre-judgment interest at the maximum rate permitted by applicable law;
- F. For costs and attorneys' fees under the common fund doctrine, and all other applicable law; and
- G. Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Class, hereby demands a trial by jury on all claims so triable.

Dated: June 13, 2019

Respectfully submitted,

/s/ Bernard J. DiMuro

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