

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**CATHERINE CORBETT**, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

**BETHPAGE FEDERAL CREDIT UNION**,

Defendant.

Case No. \_\_\_\_\_

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff Catherine Corbett, by counsel, and for her Class Action Complaint against the Defendant, she alleges as follows:

**INTRODUCTION**

1. This is a civil action seeking monetary damages, restitution and declaratory relief from Defendant, Bethpage Federal Credit Union (“Bethpage” or “Credit Union”), arising from the unfair and unconscionable assessment and collection of Non-Sufficient Funds Fees (“NSF Fees”), which Bethpage charges when it returns certain checking account debits unpaid.

2. Plaintiff Corbett (“Plaintiff” or “Ms. Corbett”) brings this action on behalf of herself and a class of all similarly situated consumers against Bethpage arising from the assessment of charging multiple \$30 NSF Fees on the same payment item, which is barred by the account contract and is deceptive.

3. Two documents permit Bethpage to impose NSF Fees and address the policies at issue in this Complaint. *See* Consumer Member Account Agreement (“Account Agreement”) attached as *Exhibit A*, and “Fee Schedule” attached as *Exhibit B* (collectively “Account Documents”).

4. Plaintiff does not dispute Bethpage's right to either (a) reject a transaction and charge a single NSF Fee or (b) pay a transaction and charge a single overdraft fee on a transaction that actually overdraws the account, but Bethpage unlawfully maximizes its already profitable account fees with deceptive practices that also violate its contract.

5. Specifically, in violation of its contract and reasonable consumer understanding, Bethpage often charges more than one NSF Fee on the *same transaction*, even though the contract states—and reasonable consumers understand—that the same transaction can only incur a *single* NSF Fee. These double and triple penalties crush accountholders already struggling to make ends meet.

6. This practice works to catch accountholders in an increasingly devastating cycle of account fees.

7. Bethpage unlawfully assesses *multiple* NSF Fees on a single Automated Clearing House (“ACH”) transaction or check.

8. In Bethpage's sole and undisclosed view, each time it processes an ACH transaction or check for payment after a having been rejected for insufficient funds, it becomes a new, unique item or transaction that is subject to another NSF Fee. But Bethpage's Account Documents never even hints that this counterintuitive result could be possible.

9. Bethpage's Account Documents indicate that only a single NSF Fee will be charged for “checks, ACH, and ATM withdrawals” however many times the request for payment is reprocessed. An electronic item reprocessed after an initial return for insufficient funds cannot and does not fairly become a new, unique item for NSF fee assessment purposes.

10. Bethpage breaches its contract when it charges more than one \$30 NSF Fee on the same item, since the contract states—and reasonable consumers understand—that the same item

can only incur a single NSF Fee.

11. Bethpage also breaches its duty of good faith and fair dealing when it charges multiple NSF Fees on a single transaction. Specifically, Bethpage abuses its contractual discretion by (a) processing transactions when it knows full well that a customer's account lacks sufficient funds and (b) charging NSF Fees upon each reprocessing of the same item.

12. This practice not only violates Bethpage's Account Documents and the covenant of good faith and fair dealing but is also unfair and deceptive under the consumer protection law of New York.

13. Ms. Corbett and other Bethpage customers have been injured by Bethpage's practices. On behalf of herself and the putative class, Ms. Corbett seeks damages, restitution and injunctive relief for Bethpage's breach of contract and violation of New York consumer protection law.

### **JURISDICTION**

14. 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 Ms. Corbett brings this action on behalf of the 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 Bethpage.

15. Venue and personal jurisdiction are proper in this district because Bethpage is located in a county encompassed by this District.

### **PARTIES**

16. Ms. Corbett is a natural person who is a citizen of New York and resides in Island

Park, New York. Ms. Corbett has a personal checking account with Bethpage.

17. Defendant Bethpage is a credit union with approximately \$7.5 billion in assets. It is one of the largest credit unions in New York. Bethpage is headquartered in Bethpage, New York and maintains branch locations across the state of New York. Many of Bethpage's accountholders are located in New York, but, on information and belief, many accountholders of Bethpage are citizens of other states.

18. Upon information and belief, at least one of the members of each of the proposed class is a citizen of a state other than New York.

19. Upon information and belief, numerous individuals who are citizens of other states and reside outside of New York are in fact members of Bethpage, and that many of those non-New York citizen members are members of the proposed class in this case.

20. Even for accountholders who first opened a Bethpage account while they lived in New York, many now are citizens of states other than New York. Upon information and belief, at least one of those persons is a member of the putative class

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

#### **I. BETHPAGE IMPROPERLY CHARGES TWO OR MORE NSF FEES ON THE SAME ITEM**

21. Bethpage regularly assesses two or more NSF Fees on the *same* item or transaction.

22. Plaintiff does not dispute Bethpage's right to reject a transaction and charge a *single* NSF Fee, but Bethpage unlawfully maximizes its already profitable NSF Fees with deceptive practices that also violate the express terms of its Account Documents.

23. Specifically, Bethpage unlawfully assesses *multiple* NSF Fees on a single Automated Clearing House ("ACH") transaction or check.

24. Unbeknownst to consumers, each time Bethpage reprocesses an ACH transaction

or check for payment after it was initially rejected for insufficient funds, Bethpage chooses to treat it as a new and unique item or transaction that is subject to yet another NSF Fee. But Bethpage's account documents never disclose that this counterintuitive and deceptive result could be possible and, in fact, suggest the opposite.

25. The account documents indicate that only a *single* NSF Fee will be charged per "item," however many times that item is reprocessed with no request from the customer to do so. An electronic item reprocessed after an initial return for insufficient funds, especially through no action by the customer, cannot and does not fairly become a new, unique item for fee assessment purposes, particularly here where Bethpage reprocesses the items knowing there are insufficient funds.

26. This abusive practice is not universal in the financial services industry. Indeed, major financial institutions like Chase—the largest consumer bank in the country—do not undertake the practice of charging more than one NSF Fee on the same item when it is reprocessed. Instead, Chase charges one NSF Fee even if a transaction is reprocessed for payment multiple times.

27. Bethpage's Account Documents never disclose this practice. To the contrary, the Credit Union's Account Documents indicate it will only charge a single NSF Fee on an item or per transaction.

#### **A. Plaintiff's Experience**

28. In support of her claims, Plaintiff offers an example of NSF Fees that should not have been assessed against her checking account. As alleged below, Bethpage: (a) reprocessed a previously declined transaction; and (b) charged a fee upon reprocessing.

29. On May 2, 2019, Ms. Corbett attempted to make a payment via ACH to Mid-Island

Mortgage.

30. Bethpage rejected payment of that transaction due to insufficient funds in Plaintiff Corbett's account and charged her a \$30 NSF Fee for doing so. Ms. Corbett does not dispute this initial fee, as it is allowed by Bethpage's Account Documents.

31. Unbeknownst to Ms. Corbett and without her request to Bethpage to reprocess the transaction, however, four days later, on May 6, 2019, Bethpage processed the same transaction yet again, and again rejected the transaction due to insufficient funds and charged Ms. Corbett *another* \$30 NSF Fee.

32. *In sum, Bethpage charged Ms. Corbett \$60 in NSF Fees to attempt to process a single payment.*

33. Ms. Corbett understood the payment to be a single transaction as is laid out in Bethpage's account, capable at most of receiving a single NSF Fee (if Bethpage returned it) or a single overdraft fee ("OD Fee") (if Bethpage paid it).

34. The same fact pattern occurred on other dates in 2019 when Ms. Corbett attempted a payment to Mid-Island Mortgage.

**B. The Imposition of Multiple NSF Fees on a Single Transaction Violates Bethpage's Account Documents**

35. The Account Agreement provides the general terms of Plaintiff's relationship with the credit union and makes explicit promises and representations regarding how transactions will be processed, as well as when NSF Fees and OD Fees may be assessed.

36. The Account Agreement and Fee Schedule, Ex. B, contain explicit terms promising that NSF Fees will only be assessed once per "item," when in fact Bethpage regularly charges two or more NSF Fees per "item" even though a customer only requested the payment or transfer once.

37. Bethpage's contract indicates that a singular NSF Fee can be assessed per "item."

According to the Fee Schedule:

NSF/Return item (per item)..... \$30

(emphasis added).

38. The Account Agreement states:

**For Transaction Types:**

Check, ACH, recurring debit

Check, ACH, recurring debit

Point of Sale (POS) everyday non-recurring debit card transactions

Point of Sale (POS) everyday debit card transactions

ATM and Online Bill Payments

Overdraft Protection transfers are available for all transaction types except for ATM debits.

**Fee Status (if and when fee is charged):**

Fee charged for each item paid if your Available Balance is insufficient when we post your payment.

Fee charged for each item returned unpaid if your Available Balance is insufficient to pay the item at the time your payment is presented.

(underline added).

39. The same "item" on an account cannot conceivably become a new "item" each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to reprocess it.

40. There is zero indication anywhere in the Account Agreement that the same "item" is eligible to incur multiple NSF Fees.

41. In fact, the Account Agreement defines "ACH transaction" so that any reasonable individual would expect a fee to be charged only once, when the ACH transaction is first posted:

If you do not have enough money in your Available Balance at the time an ACH payment is posted to your account, there will be an overdraft. If we pay the ACH, you will be charged a Courtesy Pay fee. If we decline to pay it, then it will be returned unpaid and you will be charged a non-sufficient funds (NSF) fee.

Ex. A (emphasis added).

42. Even if Bethpage reprocesses an instruction for payment, it is still the same “item.” The credit union’s reprocessing is simply another attempt to effectuate an accountholder’s original request for payment.

43. The disclosures described above never discuss a circumstance where Bethpage may assess multiple NSF Fees for a single item that was returned for insufficient funds and later reprocessed one or more times and returned again.

44. In sum, Bethpage promises that one \$30 NSF Fee will be assessed per “item,” and that term must mean all iterations of the same request for payment. As such, Bethpage breached its Account Agreement when it charged more than one NSF Fee per item.

45. Reasonable consumers understand any given authorization for payment to be one, singular “item” as those terms are used in Bethpage’s Account Agreement.

46. Taken together, the representations and omissions identified above convey to customers that all submissions for payment of the same transaction will be treated as the same “item,” which the Credit Union will either authorize (resulting in an overdraft item) or reject (resulting in a returned item) when it decides there are insufficient funds in the account. Nowhere does Bethpage disclose that it will treat each reprocessing of a check or ACH payment as a separate item, subject to additional fees, nor do Bethpage customers ever agree to such fees.

47. Customers reasonably understand, based on the language of the Account Agreement and Fee Schedule, that the Credit Union’s reprocessing of checks or ACH payments are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger NSF Fees. In other words, it is always the same item.

48. Banks and credit unions like Bethpage that employ this abusive practice know how



to plainly and clearly disclose it. Indeed, other banks and credit unions that do engage in this abusive practice disclose it expressly to their accountholders—something Bethpage never did.

49. For example, First Citizens Bank, a major institution in the Carolinas, engages in the same abusive practice as Bethpage, but at least expressly states:

Because we may charge a service fee for an NSF item each time it is presented, **we may charge you more than one service fee for any given item.** All fees are charged during evening posting. When we charge a fee for NSF items, the charge reduces the available balance in your account and may put your account into (or further into) overdraft.

(emphasis added).

50. First Hawaiian Bank engages in the same abusive practices as Bethpage, but at least currently discloses it in its online banking agreement, in all capital letters, as follows:

YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT **MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND RESUBMISSION.**

(emphasis added).

51. Klein Bank similarly states in its online banking agreement:

[W]e will charge you an NSF/Overdraft Fee each time: (1) a Bill Payment (electronic or check) is submitted to us for payment from your Bill Payment Account when, at the time of posting, your Bill Payment Account is overdrawn, would be overdrawn if we paid the item (whether or not we in fact pay it) or does not have sufficient available funds; or (2) we return, reverse, or decline to pay an item for any other reason authorized by the terms and conditions governing your Bill Payment Account. We will charge an NSF/Overdraft Fee as provided in this section regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the bill payment.

52. First Financial Bank in Ohio, aware of the commonsense meaning of “item,” clarifies the meaning of that term to its accountholders:

Merchants or payees may present an item multiple times for payment if the initial or subsequent presentment is rejected due to insufficient funds or other reason

(representation). Each presentment is considered an item and will be charged accordingly.<sup>1</sup>

53. Bethpage provides no such disclosures, and in so doing, deceives its accountholders.

**C. The Imposition of Multiple NSF Fees on a Single Transaction Breaches Bethpage's Duty of Good Faith and Fair Dealing**

54. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are invested with a discretionary power over the other party. In such circumstances, the party with discretion is required to exercise that power and discretion in good faith. This creates an implied promise to act in accordance with the parties' reasonable expectations and means that the credit union is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, the credit union has a duty to honor transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater penalties on the depositor. Here—in the adhesion agreements Bethpage foisted on Plaintiff and its other customers—Bethpage has provided itself numerous discretionary powers affecting its customers' accounts. But instead of exercising that discretion in good faith and consistent with consumers' reasonable expectations, the Credit Union abuses that discretion to take money out of consumers' account without their permission and contrary to their reasonable expectations that they will not be charged multiple fees for the same transaction.

55. When Bethpage charges multiple NSF Fees, the Credit Union uses its discretion to define the meaning of “item” in an unreasonable way that violates common sense and reasonable consumer expectations. Bethpage uses its contractual discretion to set the meaning of that term to choose a meaning that directly causes more NSF Fees.

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<sup>1</sup>[https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking\\_Disclosure\\_of\\_Charges.pdf](https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf) (last accessed July 15, 2019).

56. In addition, Bethpage exercises its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it reprocesses a transaction when it knows a customer’s account lacks funds and then charges additional NSF Fees on a single item. Further, Bethpage abuses the power it has over customers and their accounts and acts contrary to his reasonable expectations under the Account Agreement. This is a breach of the credit union’s implied covenant to engage in fair dealing and act in good faith.

57. It was bad faith and totally outside of Plaintiff’s reasonable expectations for Bethpage to use its discretion to assess two or three NSF Fees for a single attempted payment.

58. When Bethpage charges multiple NSF Fees, the Credit Union uses its discretion to define contract terms in an unreasonable way that violates common sense and reasonable consumer expectations. Bethpage uses its contractual discretion to set the meaning of those terms to choose a meaning that directly causes more NSF Fees.

59. Moreover, Bethpage provides itself discretion to refuse to reprocess transactions that are initially rejected. It abuses that discretion when it repeatedly reprocesses transactions and charges NSF Fees each time.

### **CLASS ALLEGATIONS**

60. Ms. Corbett brings this action on behalf of themselves and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

61. The proposed class (“Class”) is defined as:

All Bethpage checking accountholders in the United States who, during the applicable statute of limitations, were charged multiple NSF Fees on the same item.

62. Ms. Corbett reserves the right to modify or amend the definition of the proposed

Class before the Court determines whether certification is appropriate.

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

64. The members of the Class are so numerous that joinder is impractical. The Class consist of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to Bethpage's records.

65. The claims of Ms. Corbett are typical of the claims of the Class in that she, like all Class members, was charged improper NSF Fees. Ms. Corbett, like all Class members, has been damaged by Bethpage's misconduct in that she paid improper NSF Fees. Furthermore, the factual basis of Bethpage's misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Class.

66. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual Class members.

67. Among the questions of law and fact common to the Class are whether Bethpage:
- a. Charged multiple NSF Fees on a single item;
  - b. Breached its contract with consumers by charging multiple NSF Fees on a single item;
  - c. Breached the covenant of good faith and fair dealing by charging multiple NSF Fees on a single transaction;
  - d. Violated New York consumer protection law by charging multiple NSF Fees on a single transaction;

- e. Whether Ms. Corbett and the Class were damaged by Bethpage's conduct and if so, the proper measure of damages.

68. Ms. Corbett is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers and against financial institutions. Accordingly, Ms. Corbett is an adequate representative and will fairly and adequately protect the interests of the Class.

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

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

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**  
**(On Behalf of Plaintiff and the Class)**

71. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

72. Ms. Corbett and Bethpage have contracted for account deposit, checking, ATM, and debit card services. That contract does not permit Bethpage to charge multiple NSF Fees for the same item.

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

74. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A failure to act in 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 include 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.

75. Bethpage has breached the covenant of good faith and fair dealing in its account agreement with customers by charging multiple NSF Fees for the same item.

76. Ms. Corbett and members of the Class have performed all, or substantially all, of the obligations imposed on them under the contract.

77. Ms. Corbett and members of the Class have sustained damages as a result of Bethpage's breach of the contract.

**SECOND CLAIM FOR RELIEF**  
**Violations of New York Consumer Protection Laws**  
**(On Behalf of Plaintiff and the Class)**

78. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

79. This claim is asserted on behalf of the Class of Bethpage customers who all enjoy the protections of Article 22-A of the New York General Business Law, the Consumer Protection from Deceptive Acts and Practices Law, N.Y. Gen. Bus. Law §§ 349 *et seq.*, which prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service.” N.Y. Gen. Bus. Law § 349(a).

80. Bethpage’s policies and practices complained of herein were and are consumer-oriented, in that they affect all consumers who maintain checking accounts with Bethpage.

81. The complained-of policies and practices were and are misleading in a material respect, because Ms. Corbett and the Class did not agree to pay more than one NSF Fee per item.

82. Ms. Corbett and members of the Class were injured as a result of Bethpage’s policies and practices, in that their accounts were debited by Bethpage in violation of their agreements with Bethpage.

83. Bethpage’s actions were willful and knowing.

84. As redress for Bethpage’s repeated and ongoing violations of these consumer protection statutes, Ms. Corbett and members of the Class are each entitled to (a) injunctive relief, and (b) three times actual damages (up to \$1,000.00). *See* N.Y. Gen. Bus. Law § 349(h).

**PRAYER FOR RELIEF**

WHEREFORE, Ms. Corbett and members of the Class demands a jury trial on all claims so triable and judgment as follows:

1. Declaring Bethpage's NSF Fee policies and practices to be wrongful, unfair and unconscionable;
2. Restitution of all NSF Fees paid to Bethpage by Ms. Corbett and the Class above \$10 per transaction;
3. For each member of the Class, actual damages in an amount according to proof;
4. For each member of the Class, pursuant to GBL 349, *et seq.*, the lesser of (a) three times actual damages in an amount according to proof, or (b) \$1,000;
5. Pre-judgment interest at the maximum rate permitted by applicable law;
6. Costs and disbursements assessed by Ms. Corbett in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
7. Such other relief as this Court deems just and proper.

**TRIAL BY JURY IS DEMANDED**

Dated: July 19, 2019

Respectfully submitted,

/s/ Todd S. Garber

**FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP**

Todd S. Garber  
Bradley F. Silverman  
445 Hamilton Avenue  
White Plains, New York 10601  
Tel: 914-298-3281  
Fax: 914-908-6709  
tgarber@fbfglaw.com  
bsilverman@fbfglaw.com



**KALIEL PLLC**

Jeffrey D. Kaliel (*pro hac vice* to be filed)  
1875 Connecticut Ave. NW 10<sup>th</sup> Floor  
Washington, D.C. 20009  
Telephone: (202) 350-4783  
*jkaliel@kalielllc.com*

**KOPELOWITZ OSTROW FERGUSON  
WEISELBERG GILBERT**

Jeff Ostrow (*pro hac vice* to be filed)  
Jonathan M. Streisfeld (*pro hac vice* to be filed)  
Daniel Tropin (*pro hac vice* to be filed)  
One W. Las Olas Blvd., Suite 500  
Fort Lauderdale, Florida 33301  
Telephone: 954-525-4100  
Facsimile: 954-525-4300

*Counsel for Plaintiff and the Proposed Class*

JS 44 (Rev. 02/19)

**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**

CATHERINE CORBETT, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Todd S. Garber, FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER, LLP, 445 Hamilton Avenue, White Plains, New York 10601,  
Tel: 914-298-3281

**DEFENDANTS**

BETHPAGE FEDERAL CREDIT UNION

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

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

Attorneys (If Known)

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

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

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

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" 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)

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

**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 1332(d)

Brief description of cause:  
Breach of contract and violation of New York General Business Law § 349

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$  
> 5,000,000.00

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

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

(See instructions):

JUDGE

DOCKET NUMBER

DATE 7/19/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Bradley F. Silverman, counsel for Catherine Corbett, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):



monetary damages sought are in excess of \$150,000, exclusive of interest and costs,



the complaint seeks injunctive relief,



the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is 'related' to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed 'related' to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be 'related' unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☒ Yes ☐ No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.



Yes



No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?



Yes (If yes, please explain



No

I certify the accuracy of all information provided above.

Signature: 

Eastern District of New York

CATHERINE CORBETT, on behalf of herself and all  
others similarly situated

Plaintiff(s)

V.

BETHPAGE FEDERAL CREDIT UNION

Defendant(s)

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* BETHPAGE FEDERAL CREDIT UNION  
899 S. Oyster Bay Road  
Bethpage, NY 11714-1030

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Todd S. Garber

Todd S. Garber  
Bradley F. Silverman  
Finkelstein, Blankinship,  
Frei-Pearson & Garber, LLP  
445 Hamilton Avenue  
White Plains, New York 10601

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER  
CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: