

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

JEFFREY MINTER, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CITIZENS AND FARMERS BANK,

Defendant.

CASE NO. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Jeffrey Minter (“Plaintiff”), individually and on behalf of all others similarly situated (collectively the “Class”), 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 Citizens and Farmers Bank (“Citizens and Farmers”), arising from the unfair and unconscionable assessment and collection of “overdraft fees” (“OD Fees”) on accounts that were never actually overdrawn.

2. This practice breaches contract promises made in Citizens and Farmers’ adhesion contracts.

3. In plain, clear, and simple language, the checking account contract documents discussing OD Fees promise that Citizens and Farmers will only charge OD Fees or Non-Sufficient Funds Fees (“NSF Fees”) on transactions where there are insufficient funds to cover them.

4. As happened to Plaintiff, however, Citizens and Farmers charges OD Fees even when there are sufficient funds to cover a debit card transaction.

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

6. 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

7. 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 each of the putative classes 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 each of the proposed classes is a citizen of a different state than Citizens and Farmers.

8. Venue is proper in this District because Defendant maintains its headquarters here and because a substantial portion of events giving rise to this action occurred in this District.

PARTIES

9. Plaintiff Jeffrey Minter is a resident of Prince Edward County, Virginia.

10. Defendant Citizens and Farmers Bank is a \$2 billion bank headquartered in King William County, Virginia. It has 26 locations across eastern Virginia. On information and belief, many account holders reside in surrounding states and the District of Columbia.

11. 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 or is a citizen of the District

of Columbia. Citizens and Farmers' website makes clear that individuals who reside outside of Virginia are welcomed to bank with Citizens and Farmers. Plaintiff is informed and believes, and thereupon alleges, that numerous individuals who reside outside of Virginia do in fact bank with Citizens and Farmers, and that many of those non-Virginia-resident accountholders are members of the proposed class in this case.

12. Even among accountholders who first opened a Citizens and Farmers account while they lived in Virginia, many now reside outside of Virginia. Virginia has experienced a prolonged period of out-migration. Indeed, more people have moved out of Virginia than into Virginia for four straight years.¹ Upon information and belief, at least one of those persons is a member of the putative class.

FACTUAL ALLEGATIONS

13. Plaintiff has a checking account with Citizens and Farmers.

14. Citizens and Farmers issues debit cards to its checking account customers, including Plaintiff, which allows its customers to have electronic access to their checking accounts for purchases, payments, withdrawals and other electronic debit transactions.

15. Pursuant to its standard account agreement, Citizens and Farmers charges fees for debit card transactions that purportedly result in an overdraft.

I. CITIZENS AND FARMERS CHARGES OD FEES ON TRANSACTIONS THAT DO NOT ACTUALLY OVERDRAW THE ACCOUNT

A. Overview of Claim

16. Plaintiff brings this cause of action challenging Citizens and Farmers' practice of charging OD Fees on what are referred to in this complaint as "Authorize Positive, Purportedly

¹ <https://news.virginia.edu/content/out-migration-virginia-continues-fourth-consecutive-year>

Settle Negative Transactions” (“APPSN Transactions”).

17. Here is how it works. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Citizens and Farmers immediately reduces accountholders’ checking accounts for the amount of the purchase, sets aside funds in a checking account to cover that transaction, and as a result, the accountholder’s displayed “available balance” reflects that subtracted amount. As a result, customers’ accounts will always have sufficient available funds to cover these transactions because Citizens and Farmers has already sequestered these funds for payment.

18. However, Citizens and Farmers still assesses crippling OD Fees on many of these transactions, and misrepresents its practices in its account documents.

19. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Citizens and Farmers 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.

20. Citizens and Farmers maintains a running account balance in real time, tracking funds accountholders 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, Citizens and Farmers 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.

21. 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).

22. 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.

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

24. 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."

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

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

27. In plain, clear, and simple language, the checking account contract documents covering OD Fees promise that Citizens and Farmers will only charge OD Fees on transactions

that have insufficient funds to cover that debit card transaction.

28. In short, Citizens and Farmers 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

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

30. At this step, if the transaction is approved, Citizens and Farmers immediately decrements the funds in an accountholder’s account and sequesters funds in the amount of the transaction, but does not yet transfer the funds to the merchant.

31. 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).

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

33. Citizens and Farmers (like all banks) decides whether to “pay” debit card transactions at authorization. After that, the Bank 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 the Bank may choose to either pay the transaction or decline it. When the time comes to actually settle the transaction, it is too late—the financial institution 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).

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

C. Citizens and Farmers’ Account Contract

35. Plaintiff has a Citizens and Farmers checking account, which is governed by Citizens and Farmers’ standardized Fee Schedule, Ex. B; “Terms and Conditions of Your Account” (“Deposit Agreement”), Ex. A; and “NOTICE REGARDING POSTING ORDER OF ITEMS AND HOLDS DUE TO PENDING TRANSACTIONS,” Ex. C.

36. The Deposit Agreement expressly promises that it uses a consumer’s “available balance” to determine when an overdraft occurs, that the Bank places holds for pending debit card transactions, and that Citizens and Farmers makes overdraft determinations when it decides to authorize transactions, which is the moment of authorization for debit card transactions:

A Temporary Debit Authorization Hold Affects Your Account Balance. On debit card purchases, merchants may request a temporary hold on your account for a specified sum of money, which may be more than the actual amount of your purchase. When this happens, our processing system cannot determine that the

amount of the hold exceeds the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it may be up to three days before the adjustment is made. Until the adjustment is made, **the amount of funds in your account available for other transactions will be reduced by the amount of the temporary hold. If another transaction is presented for payment in an amount greater than the funds left after the deduction of the temporary hold amount, that transaction will be a nonsufficient funds (NSF) transaction if we do not pay it or an overdraft transaction if we do pay it...**Here is an example of how this can occur - assume for this example the following: (1) you have opted-in to our overdraft services for the payment of overdrafts on ATM and everyday debit card transactions, (2) we pay the overdraft, and (3) our overdraft fee is \$35 per overdraft, but we do not charge the overdraft fee if the transaction overdraws the account by less than \$10.

You have \$120 in your account. You swipe your card at the card reader on a gasoline pump. Since it is unclear what the final bill will be, the gas station's processing system immediately requests a hold on your account in a specified amount, for example, \$80. Our processing system authorizes a temporary hold on your account in the amount of \$80, and the gas station's processing system authorizes you to begin pumping gas. You fill your tank and the amount of gasoline you purchased is only \$50. Our processing system shows that you have \$40 in your account available for other transactions ($\$120 - \$80 = \$40$) even though you would have \$70 in your account available for other transactions if the amount of the temporary hold was equal to the amount of your purchase ($\$120 - \$50 = \$70$). Later, another transaction you have authorized is presented for payment from your account in the amount of \$60 (this could be a check you have written, another debit card transaction, an ACH debit or any other kind of payment request). This other transaction is presented before the amount of the temporary hold is adjusted to the amount of your purchase (remember, it may take up to three days for the adjustment to be made). Because the amount of this other transaction is greater than the amount our processing system shows is available in your account, our payment of this transaction will result in an overdraft transaction. Because the transaction overdraws your account by \$20, your account will be assessed the overdraft fee of \$35 according to our overdraft fee policy. You will be charged this \$35 fee according to our policy even though you would have had enough money in your account to cover the \$60 transaction if your account had only been debited the amount of your purchase rather than the amount of the temporary hold or if the temporary hold had already been adjusted to the actual amount of your purchase.

Ex. A at 3.

37. The Deposit Agreement then reiterates that an overdraft is determined when the Bank chooses to "honor" transactions, which again happens at authorization:

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.

Ex. A at 3.

38. The “NOTICE REGARDING POSTING ORDER OF ITEMS AND HOLDS DUE TO PENDING TRANSACTIONS” says the same thing:

PENDING TRANSACTION HOLDS: Please be aware that holds will be placed on your account for pending electronic transactions such as hotel or rental car deposits, and/or purchases using your debit card. These holds reduce your available balance and may cause your account to become overdrawn. When using your debit card-with or without your signature-to make a purchase, a hold will be placed on your account for the amount of the authorized expense. We will consider "pending" funds spent and unavailable to be used to pay for other items drawn on your account. "Pending" debit card transactions will usually post to your account within 1 to 3 business days after the transaction.

Ex. C.

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

40. The above promises indicate that transactions are only overdraft transactions when they are authorized into a negative account balance. Of course, that is not true for APPSN Transactions. APPSN transactions are always authorized at the time the customer swipes the debit card when there are sufficient available funds in the account.

41. In fact, Citizens and Farmers 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.

42. All the above representations and contractual promises are untrue. In fact, Citizens and Farmers 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 Citizens and

Farmers may impose OD Fees on any APPSN Transactions.

43. The account documents misconstrue Citizens and Farmers's true debit card processing and overdraft practices.

44. First, and most fundamentally, Citizens and Farmers charges OD Fees on debit card transactions for which there are sufficient funds available to cover the transactions. That is despite contractual representations that Citizens and Farmers will only charge OD Fees on transactions with insufficient available funds to cover a given transaction.

45. Citizens and Farmers assesses OD Fees on APPSN Transactions that do have sufficient funds available to cover them throughout their lifecycle.

46. Citizens and Farmers'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 Citizens and Farmers's actual practice and the contract causes accountholders like the Plaintiff to incur more OD Fees than they should.

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

48. Because these withdrawals take place upon initiation, they cannot be re-debited later. But that is what Citizens and Farmers does when it re-debits the account during a secret batch posting process.

49. In reality, Citizens and Farmers'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.

50. At the time of settlement, however, an available balance *does not change at all* for these transactions previously authorized into good funds. As such, Citizens and Farmers cannot

then charge an OD Fee on such transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

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

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

53. This discrepancy between Citizens and Farmers's actual practices and the contract causes accountholders to incur more OD Fees than they should.

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

D. Citizens and Farmers Abuses Contractual Discretion

55. Citizens and Farmers's treatment of debit card transactions to charge OD Fees is not simply a breach of the express terms of the numerous account documents. In addition, Citizens and Farmers exploits contractual discretion to the detriment of accountholders when it uses these policies.

56. The term "hold" is interpreted by Citizens and Farmers in a surprising, counterintuitive way. Citizens and Farmers uses its discretion to define this term in a manner contrary to any reasonable, common sense understanding of that term.

57. Moreover, Citizens and Farmers uses its contractual discretion to cause APPSN

Transactions to incur OD Fees by knowingly authorizing later transactions that it allows to consume available funds previously sequestered for APPSN Transactions.

58. Citizens and Farmers uses these contractual discretion points unfairly to extract OD Fees on transactions that no reasonable accountholder would believe could cause OD Fees.

E. Reasonable Accountholders Understand Debit Card Transactions are Debited Immediately

59. 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.

60. Citizens and Farmers was and is aware that this is precisely how accountholders reasonably understand debit card transactions to work.

61. Citizens and Farmers knows that many accountholders prefer debit cards for these very reasons. Research indicates that accountholders prefer debit cards as a budgeting device because they do not allow debt like credit cards do, and because the money comes directly out of a checking account.

62. 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.” *What Do I Need to Know About Using a Debit Card?* ConsumerAction (Jan. 14, 2019), https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card.

63. 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.” *Understanding Debit Cards*, ConsumerAction, http://www.consumer-action.org/english/articles/understanding_debit_cards (last visited August 29, 2019).

64. This understanding 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.” 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>.

65. Not only have accountholders 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.

66. Citizens and Farmers was aware of a accountholder 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’s Debit Card Transactions

67. As an example, on May 25, 2017, August 28, 2017, and October 17, 2017, Plaintiff was assessed OD Fees in the amount of \$36.00 each for debit card transactions that settled on those days, despite the fact that positive funds were immediately deducted prior to those days, when the

transactions were authorized.

II. CITIZENS AND FARMERS CHARGES MORE THAN ONE NSF FEE ON THE SAME ITEM

68. Citizens and Farmers's Fee Schedules allows it to charge a *single* \$36 NSF Fee or a *single* \$36 OD Fee when an item is returned for insufficient funds or paid despite insufficient funds.

69. Citizens and Farmers breaches its contract by charging more than one \$36 NSF Fee on the same item, since the contract explicitly states—and reasonable consumers understand—that the same item can only incur a single NSF or OD Fee.

70. Citizens and Farmers's abusive practices are not standard within the financial services industry. Indeed, major banks like JP Morgan Chase—the largest consumer bank in the country—charge one NSF Fee per item, even if that item is resubmitted for payment multiple times. And while some other banks engage in the same practices as Citizens and Farmers, they clearly disclose those charges in the deposit agreements with their customers.

71. Citizens and Farmers's Deposit Agreement does not say that Citizens and Farmers repeatedly charges customers multiple NSF fees on a single item. To the contrary, the Deposit Agreement indicates it will only charge a single NSF Fee or OD Fee on an item.

A. Plaintiff Minter's Experience

72. In support of his claims, Plaintiff offers examples of fees that should not have been assessed against his checking account. As alleged below, Citizens and Farmers: (a) reprocessed previously declined items; and (b) charged an additional fee upon reprocessing, for a total assessment of *\$72 in fees on each item*.

73. As an example, on February 3, 2020, Plaintiff attempted a payment via ACH.

74. Citizens and Farmers rejected payment of that item due to insufficient funds in Plaintiff's account and charged him a \$36 NSF Fee for doing so. Plaintiff does not dispute this initial fee, as it is allowed by Citizens and Farmers' Account Documents.

75. Unbeknownst to Plaintiff, and without his request to Citizens and Farmers to reprocess the item, however, on February 6, 2020, Citizens and Farmers processed the same item yet again, with Citizens and Farmers labeling the transaction a RETRY PYMT on his statements. Again, Citizens and Farmers returned the item unpaid and charged Plaintiff *another* \$36 NSF Fee for doing so.

76. In sum, Citizens and Farmers assessed Plaintiff \$72 in fees in its effort to process a single payment.

77. Plaintiff understood the payment to be a single item as is laid out in Citizens and Farmers's contract, capable at most of receiving a single NSF Fee (if Citizens and Farmers returned it) or a single OD Fee (if Citizens and Farmers paid it).

B. The Imposition of Multiple NSF Fees on a Single Item Violates Citizens and Farmers' Express Promises and Representations

78. Citizens and Farmers' Fee Schedule state that the Credit Union will assess a single fee of \$36 for an item that is returned due to insufficient funds.

79. According to the Fee Schedule, at most a *single* fee will be assessed when an item is returned or paid into overdraft:

Overdraft fee/Returned item fee, **per item**
Sixth and greater occurrence.....36.00

Fee Schedule, Ex. B (emphasis added).

80. The same check, automatic bill payment, or other electronic payment on an account is not a new “item” each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit the item.

81. Even if Citizens and Farmers 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 order or instruction.

82. As alleged herein, Plaintiff took only a single action to make a single transfer; she therefore may be charged only a single fee.

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

84. In sum, Citizens and Farmers promises that one \$36 NSF Fee or one \$36 OD Fee will be assessed per item, and this must mean all iterations of the same instruction for payment. As such, Citizens and Farmers breached the contract when it charged more than one fee per item.

85. A reasonable consumer would understand that Citizens and Farmers’s Account Documents permit it to assess an NSF Fee only once per item.

86. 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 Bank will either pay (resulting in an overdraft item) or return (resulting in a returned item) when it decides there are insufficient funds in the account. Nowhere does Citizens and Farmers disclose that it will treat each reprocessing of a check or ACH payment as a separate item, subject to additional fees, nor do Citizens and Farmers customers ever agree to such fees.

87. Customers reasonably understand, based on the language of the Account Documents, that the Bank'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 additional NSF Fees. In other words, it is always the same item.

88. Banks like Citizens and Farmers that employ this abusive multiple fee 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 Citizens and Farmers never did.

89. For example, First Hawaiian Bank engages in the same abusive practices as Citizens and Farmers, 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.

Terms and Conditions of FHB Online Services, First Hawaiian Bank 40, https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RXP1.pdf (last accessed September 25, 2019) (emphasis added).

90. 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.**

Consumer and Small Business Online Access Agreement, Klein Bank ¶ H, <https://www.kleinbankonline.com/bridge/disclosures/ib/disclose.html> (last accessed September 25, 2019) (emphasis added).

91. Central Pacific Bank, a leading bank in Hawai'i, states in its Fee Schedule under the "MULTIPLE NSF FEES" subsection:

Items and transactions (such as, for example, checks and electronic transactions/payments) returned unpaid due to insufficient/non-sufficient ("NSF") funds in your account, may be resubmitted one or more times for payment, and a \$32 fee will be imposed on you each time an item and transaction resubmitted for payment is returned due to insufficient/nonsufficient funds.

Miscellaneous Fee Schedule, Central Pacific Bank 1 (Feb. 15, 2019), <https://www.centralpacificbank.com/PDFs/Miscellaneous-Fee-Schedule.aspx>.

92. BP Credit Union likewise states: "We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item and resubmission(s) of the returned item."

93. Regions Bank likewise states:

If an item is presented for payment on your account at a time when there is an insufficient balance of available funds in your account to pay the item in full, you agree to pay us our charge for items drawn against insufficient or unavailable funds, whether or not we pay the item. If any item is presented again after having previously been returned unpaid by us, you agree to pay this charge for each time the item is presented for payment and the balance of available funds in your account is insufficient to pay the item.

https://www.regions.com/virtualdocuments/Deposit_Agreement_6_1_2018.pdf.

94. First Financial Bank states, "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 (representment). Each presentment is considered an item and will be charged accordingly." Special Handling/Electronic Banking Disclosures of Charges, First Financial Bank

2 (Aug. 2018), https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf.

95. Andrews Federal Credit Union states,

You understand and agree that a merchant or other entity may make multiple attempts to resubmit a returned item for payment. Consequently, 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. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to use for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item. 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.

https://www.andrewsfcu.org/AndrewsFCU/media/Documents/Terms-and-Conditions_REBRANDED_Dec2019-Update.pdf.

96. Consumers Credit Union states:

Consequently, 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. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission 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 item.

https://www.myconsumers.org/docs/default-source/default-document-library/ccu_membership_booklet_complete.pdf?sfvrsn=6.

97. Wright Patt Credit Union states:

Consequently, 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. Therefore, multiple fees may be charged to you as a result of a returned item and represented regardless of the number of times an item is presented or represented to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.

<https://www.wpcu.coop/en-us/PDFDocuments/Important%20Account%20Information%20Disclosure%20-%20WCitizensandFarmers.pdf>.

98. Railroad & Industrial Federal Credit Union states,

Consequently, because we may charge an NSF fee for an NSF item each time it is presented, we may charge you more than one NSF fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.

<https://www.rifcu.org/Documents/Disclosures/Account-Terms-Conditions.aspx>.

99. Partners 1st Federal Credit Union states.

Consequently, because we may charge a fee for an NSF item each time it is presented, we may charge you more than one fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission 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 item.

https://www.partners1stcu.org/uploads/page/Consumer_Account_Agreement.pdf.

100. Members First Credit Union states,

We reserve the right to charge an Non-Sufficient Funds Fee (NSF Fee) each time a transaction is presented if your account does not have sufficient funds to cover the transaction at the time of presentment and we decline the transaction for that reason. **This means that a transaction may incur more than one Non-Sufficient Funds Fee (NSF Fee) if it is presented more than once . . .** we reserve the right to charge a Non-Sufficient Funds (NSF Fee) for both the original presentment and the representation [.]

http://www.membersfirstfl.org/files/mfcufl/1/file/Membership_and_Account_Agreement.pdf.

101. Community Bank, N.A. states,

We cannot dictate whether or not (or how many times) a merchant will submit a previously presented item. You may be charged more than one Overdraft or NSF Fee if a merchant submits a single transaction multiple times after it has been rejected or returned.

<https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure.pdf>.

102. RBC Bank states,

We may also charge against the Account an NSF fee for each item returned or rejected, including for multiple returns or rejections of the same item.

<https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf>.

103. Diamond Lakes Credit Union states,

Your account may be subject to a fee for each item regardless of whether we pay or return the item. We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item and resubmission(s) of the returned item.

<https://www.diamondlakesfcu.org/termsconditions.html>.

104. Parkside Credit Union states,

If the Credit Union returns the item, you will be assessed an NSF Fee. Note that the Credit Union has no control over how many times an intended payee may resubmit the same check or other item to us for payment. In the event the same check or other item is presented for payment on more than one occasion, your account will be subject to an additional charge on each occasion that the item is presented for payment. There is no limit to the total fees the Credit Union may charge you for overdrawing your account.

https://www.parksidecu.org/_/kcms-doc/1043/44277/Membership-and-Account-Agreement.pdf?__cf_chl_captcha_tk__=add6ebea42df3385074decd4b16c1f86a8369dc9-1580434763-0-AfXmB7FcyYTqzK9oMNBMSKM6k5fnKS5Xf-z7p3Tv-Pt951tDs7wM8yaaIV06w718t2nomyWR1Q8COwgpfgE07FJWZUeFkJN6lxbXDZG1SvidTWhYm9l85AbCd5afw2imyGdtzKhXI9bQ9TYkjOITVM4w8OFJOtE3wVIHrEITnQnSfoR5mZxM5O0bu4f_FHoHiJj0XsjNkVoGblk0-lti6-gMn-Wcu_o87SGQW6dOUF2i6rHGIM_CkdI-ULanKI2NS3KlhkYAuNatN9Jdwr7Plc6oJozMbZQeczuO7VlbRnuCFD0tjzkw1lsnof7uaRvLRAkfKYi3wh0tUU1c_Y6N4aH1qN8SPftOn8TYJHO7OoILvpMfamNTqv_djpbUI3GVA.

105. Citizens and Farmers provides no such disclosure, and in so doing, breaches its contracts with accountholders, engages in bad faith conduct, and deceives its accountholders.

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

106. 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 vested 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. Here—in the adhesion agreements Citizens and Farmers foisted on Plaintiff and its other customers—Citizens and Farmers has provided itself numerous discretionary powers affecting customers' bank 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' accounts without their permission and contrary to their reasonable expectations that they will not be charged multiple fees for the same transaction.

107. Citizens and Farmers exercises its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it defines “item” in a way that directly leads to more NSF Fees. Further, Citizens and Farmers abuses the power it has over customers and their bank accounts and acts contrary to their reasonable expectations under the Account Documents. This is a breach of the Credit Union's implied covenant to engage in fair dealing and act in good faith.

108. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging more than one NSF Fee on a single item, Citizens and Farmers

breaches the reasonable expectation of Plaintiff and other customers and in doing so violates the implied covenant to act in good faith.

109. It was bad faith and totally outside Plaintiff's reasonable expectations for Citizens and Farmers to use its discretion to assess two or three NSF Fees for a single attempted payment.

III. CLASS ACTION ALLEGATIONS

110. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated pursuant to Rule 23. The Class is defined as:

All consumers who, within the applicable statute of limitations preceding the filing of this lawsuit, were charged OD Fees on APPSN Transactions on their Citizens and Farmers Bank account (the "APPSN Class").

All consumers who, within the applicable statute of limitations preceding the filing of this lawsuit, were charged more than one NSF Fee on the same item on their Citizens and Farmers Bank account (the "NSF Class").

111. 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.

112. Plaintiff reserves 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.

113. 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 Citizens and Farmers has acted on grounds generally applicable to the class. Such common legal or factual questions include, but

are not limited to:

- a) Whether Citizens and Farmers improperly charged OD Fees on APPSN Transactions, or more than one NSF Fee on the same item;
- b) Whether the conduct enumerated above violates the contract;
- c) Whether the conduct enumerated above violates the covenant of good faith and fair dealing; and
- d) The appropriate measure of damages.

114. 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 Citizens and Farmers' records. Citizens and Farmers 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 Plaintiff.

115. It is impracticable to bring Class members' 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.

116. 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 Citizens and Farmers, as described herein.

117. Plaintiff is more than an adequate representative of the Classes in that Plaintiff has suffered damages as a result of Citizens and Farmers'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 has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of accountholders 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.

118. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

119. Citizens and Farmers has acted or refused to act on grounds generally applicable to the class, thereby making appropriate corresponding declaratory relief with respect to the Class as a whole.

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

**COUNT I - BREACH OF CONTRACT INCLUDING THE
COVENANT OF GOOD FAITH AND FAIR DEALING
(Individually and on Behalf of the Class)**

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

122. Plaintiff, and all members of the proposed Class contracted with Citizens and Farmers for checking account services, including debit card services.

123. Citizens and Farmers breached promises made to Plaintiff and all members of the proposed class when, as described herein, Citizens and Farmers charged OD Fees as a result of transactions that did not overdraw a checking account, on APPSN Transactions, and charged more than one NSF Fee on the same item.

124. In addition, under Virginia law, there exists an implied covenant of good faith and fair dealing in all contracts that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. 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.

125. 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.

126. The implied covenant of good faith and fair dealing applies to the performance and enforcement of contracts, limits the parties' conduct when their contract defers decision on a particular term, omits terms, or provides ambiguous terms.

127. Citizens and Farmers has breached the covenant of good faith and fair dealing and abused its discretion in its contract as described herein. Specifically, Citizens and Farmers should not have used its discretion to charge OD Fees on APPSN Transactions or more than one NSF Fee on the same item.

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

129. Plaintiff and all members of the proposed Class have sustained damages as a result of Citizens and Farmers'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 Citizens and Farmers's OD and NSF Fee policies and practices to be in breach of its contract with accountholders;
- C. Restitution of all OD and NSF Fees paid to Citizens and Farmers by Plaintiff and the

members of the Classes, 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 and post-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: March 24, 2020

Respectfully submitted,

/s/ Bernard J. DiMuro

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Counsel for Plaintiff and the Class

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jeffrey Minter, on behalf of himself and all others similarly situated

DEFENDANTS

Citizens and Farmers Bank

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

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

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

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number) Bernard J. DiMuro, (VSB No. 18784) DiMuroGinsberg, P.C. 1101 King St, Ste 610, Alexandria, VA 22314, 703-684-4333 bdimuro@dimuro.com

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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, 7 Appeal to District Judge from Magistrate Judgment

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)(2) & (6)

Brief description of cause:

Class Action Fairness Act of 2005

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 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 03/24/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Bernard J. DiMuro, Esq. (VSB No. 18784)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.