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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 DAVID SPONHEIM, individually and on  
16 behalf of all others similarly situated

17 Plaintiff,

18 v.

19 CITIBANK, N.A.,

20 Defendant.

Case No. 8:19-cv-264

**CLASS ACTION COMPLAINT**

**[DEMAND FOR JURY TRIAL]**

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

#### 4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself, the general public, and classes  
6 of all similarly situated consumers against Defendant Citibank, N.A. (“CITI,” or “Bank”),  
7 arising from a practice that breaches the Bank’s contracts and/or is deceptive and designed  
8 to unfairly increase the Bank’s fee revenue.

9 2. Foreign Transaction Fees or Foreign Exchange Fees are assessed by most  
10 retail banks, including CITI, when a customer makes a purchase with their debit card in a  
11 foreign country at an international vendor or when a withdrawal is made at an international  
12 ATM. To process these foreign transactions, retail banks, including CITI, charge a flat  
13 percentage of the transaction amount.

14 3. CITI’s standard account agreement, the “Client Manual Consumer Accounts”  
15 (“Client Manual”) and its accompanying fee disclosures, the “Marketplace Addendum,”  
16 (“Addendum”) govern all of their retail deposit accounts in the United States, including  
17 Plaintiff Sponheim’s checking account.

18 4. As set forth in the Marketplace Addendum, CITI charges accountholders a  
19 3.00% Foreign Exchange Fee on all foreign transactions *made outside* of the United States.  
20 *See* Exhibit No. 1, Client Manual, p. 51, “Transactions Made Outside the U.S. and Puerto  
21 Rico...”

22 5. CITI represents in the Client Manual and Addendum to its customers,  
23 prospective customers and members of the public, that the only circumstances in which  
24 CITI will charge a Foreign Exchange Fee is, “[w]henever you use your Citibank® Banking  
25 Card outside of the U.S. and Puerto Rico to get cash at an ATM or to purchase goods or  
26 services...” *Id.* at p. 51. (emphasis and underline added)

1           6.     CITI’s Client Manual and Marketplace Addendum do not permit CITI to  
2 charge Foreign Exchange Fees on transactions conducted online, *within the United States*  
3 at foreign websites.

4           7.     Unfortunately, CITI undertakes to maximize Foreign Exchange Fees with a  
5 deceptive practice which also violates its contracts. As discussed more fully below, it is a  
6 breach of the Bank’s contract and of reasonable consumers’ expectations for the Bank to  
7 charge Foreign Exchange Fees on transactions conducted from within the United States on  
8 international websites, since the contract states—and reasonable consumers understand—  
9 that Foreign Exchange Fees are paid only when the customer enters into a transaction at a  
10 physical location in a foreign country, outside the United States.

11           8.     CITI misleadingly and deceptively misrepresents the above practice in its  
12 publicly-available marketing materials, including its own account contracts. CITI also  
13 omits material facts pertaining to the following practices in its publicly-available marketing  
14 materials, including its account contracts. The general public relies on representations in  
15 these documents in making important financial decisions regarding within whom they  
16 would like to open a checking account. Consumers who have already opened accounts  
17 also rely on the misrepresentations and omissions in the publicly-available account  
18 documents when making daily financial transactions.

19           9.     The Pew Charitable Trusts has emphasized the importance of transparent  
20 checking account fee disclosures for both comparison shopping for checking accounts and  
21 for effective fee avoidance:

22           Bank accounts are an essential financial product, used by 9 in 10 American  
23 households, and need to be safe and transparent. Account agreements and fee  
24 schedules provide customers with account costs, terms, and conditions.  
25 Among the largest U.S. banks, however, the median length of checking  
26 account disclosure documents is 40 pages, and the information is presented in  
27 varied formats with inconsistent wording, making it difficult for consumers to  
easily find the information they need to comparison shop, avoid overdraft and  
other fees, and manage their money.

28           The Pew Trusts, “The Benefits of Uniform Checking Account Disclosures.”



1 15. Defendant CITI is a federal savings bank with its headquarters located in New  
2 York, New York. Defendant is engaged in the business of providing retail banking services  
3 to consumers, including Plaintiff and members of the putative Class, which includes the  
4 issuance of debit cards for use by its customers in conjunction with their checking accounts.

5 **JURISDICTION AND VENUE**

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

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

15 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

16 18. Foreign exchange fees or foreign transaction fees are charged by debit card-  
17 issuing retail banks when transactions made by their customers process in foreign  
18 currencies or pass through a foreign bank in the payment settlement process.

19 19. Foreign Transaction fees are typically disclosed to retail banking customers  
20 in their deposit account agreements and/or fee disclosure schedules and marketing  
21 materials as a fixed percentage, flat fee ranging from 1.00% to 3.00% of the total value of  
22 the international transaction at issue. The explanation of CITI’s Foreign Exchange Fee is  
23 found on page 51 of their Client Manual; and again on page 31 of the Addendum.

24 20. Many unsuspecting customers, including Plaintiff Sponheim, only **actually**  
25 learn of the foreign exchange fees after they discover these unwelcome charges on their  
26 monthly bank statements.

27 21. Despite the fact that retail banks, including CITI, incur **negligible** costs in  
28 performing these **automated** currency conversions, CITI levies foreign exchange fees on

1 every single transaction international transaction and charges one of the highest rates  
2 among the larger consumer retail banks, at 3.00% per transaction.

3 **I. CITI CHARGES FOREIGN EXCHANGE FEES ON TRANSACTIONS**  
4 **ORIGINATED IN THE UNITED STATES IN BREACH OF ITS**  
5 **ACCOUNT AGREEMENT**

6 **A. CITI’s Foreign Exchange Fee**

7 22. The CITI Client Manual outlines the circumstances in which a consumer  
8 could expect to be assessed an Foreign Exchange Fee as follows:

9 **Transactions Made Outside the U.S. and Puerto Rico**

10 **ATM Cash and POS Transactions Outside the U.S.: Transaction Charge.**

11 Whenever you use your Citibank® Banking Card outside of the U.S. and Puerto Rico to  
12 get cash at an ATM or to purchase goods or services, we will apply a foreign exchange fee  
13 equal to 3% of the transaction amount (including credits and reversals). *See* Exhibit No. 1,  
14 Client Manual, p. 51.

15  
16 23. The CITI Addendum announces the amount of the fee as follows:

17 Foreign Exchange Fee (FN7)  
18 (Foreign Transaction Fee (FN10)).....3%

19  
20 FN 7: Fee applies to transactions made outside of the U.S. and Puerto Rico using your  
21 Citibank® Banking Card. Transaction amount includes credits and reversals.

22 FN 10: How fee/s will be described on your bank statement.  
23

24 24. The Client Manual states explicitly that consumers will not be charged a fee  
25 unless they are using the Citibank® Banking Card “outside of the U.S.” Reasonable  
26 consumers interpret that disclosure to mean they will not be charged a fee unless *they* are  
27 outside of the country engaged in a debit card transaction—in possession of their card,  
28 while in a foreign country. CITI’s disclosure furthers this reasonable interpretation because

1 it immediately identifies the typical scenario where a customer is, using their card “to get  
 2 cash at an ATM.” Consumers reading this disclosure properly assume CITI is describing  
 3 only scenarios where the consumer is physically in a foreign country.

4 25. Further, reasonable consumers who are familiar with traditional foreign  
 5 exchange fees, would expect to pay such fees when they travel, *i.e.*, when exchanging U.S.  
 6 Dollars at a foreign port of entry or vice versa, exchanging a foreign currency for U.S.  
 7 Dollars upon returning from a foreign trip or vacation.

8 26. CITI very purposefully chose to describe these fees within the Client Manual  
 9 as “Foreign *Exchange* Fees” and not Foreign *Transaction* Fees when describing the  
 10 circumstances in which the fee would be imposed. Its primary competitors in the retail  
 11 banking segment choose to describe the fee as a “Foreign Transaction Fee,” and the fee is  
 12 more accurately described to consumers by explicitly disclosing that customers would be  
 13 charged a foreign transaction fee if they engaged in a debit card purchase **in the United**  
 14 **States** but *with a foreign merchant*.

15 27. For example, Bank of America provides the following disclosure regarding  
 16 its “International Transaction Fee”:

<p>17 <b>International</b>                  18 <b>Transaction</b>                  19 <b>Fee</b></p>	<p>20 <b>3% of the U.S.</b>                  21 <b>Dollar amount</b>                  22 <b>of the</b>                  23 <b>transaction</b></p>	<p>• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. Dollars with a foreign merchant (a “Foreign Transaction”). <i>Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country.</i></p>
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24 See Exhibit No. 2, Bank of America’s Personal Schedule of Fees, Effective Nov. 3, 2018,  
 25 p. 9.

26 28. Other banks, including Bank of America were very careful to inform their  
 27 consumers and the general public that the imposition of a Foreign Exchange Fee (Bank of  
 28 America’s version is called the “International Transaction Fee”) could still occur while the  
 customer was physically present in the United States. The Bank of America checking

1 account fee disclosure acknowledges what most banking customers believe, that an internet  
2 purchase, even if made at the website of a company based in a foreign country, is still an  
3 “internet transaction made in the U.S.” – because the consumer is physically present in the  
4 United States and accessing the internet from the United States.

5 29. CITI failed to adequately inform their customers that a Foreign Exchange Fee  
6 could be imposed on them if they were to engage in an online transaction, from the United  
7 States, with a foreign merchant. Thus, the collection of Foreign Exchange Fees on such  
8 transactions is misleading, fraudulent, illegal and in breach of their Client Manual account  
9 contract.

10 30. CITI’s misrepresentations and omissions are ongoing, and negatively affect  
11 not only current accountholders’ ability to manage their funds, but also deceive members  
12 of the general public who have no choice but to rely on CITI’s publicly available statements  
13 in making important decisions regarding who to bank with and what transactions to make.  
14 Public injunctive relief is necessary to ensure CITI is transparent with both accountholders  
15 and the general public about the Foreign Exchange Fees it charges.

16 **B. Plaintiff Sponheim’s Experience**

17 31. Mr. Sponheim maintains a Regular Checking Account at CITI. Mr. Sponheim  
18 is a citizen of California and resides at 11892 Davenport Road, Los Alamitos, California  
19 90720. On or about March 15, 2018, Mr. Sponheim, from a computer at his residence,  
20 made a purchase online at a foreign merchant’s website. Mr. Sponheim purchased products  
21 from King Seed, which is based in Vancouver, Canada. Mr. Sponheim paid approximately  
22 \$238.31 in American dollars for his products. At the time Mr. Sponheim engaged in the  
23 transaction, the purchase price of the products he selected were offered in U.S. Dollar  
24 amounts; as was the total price of his products at checkout. Mr. Sponheim received no  
25 indication whatsoever that any of the products he purchased involved the exchange of U.S.  
26 dollars for Canadian dollars.

27 32. Later, upon examining his CITI checking account statement, Mr. Sponheim  
28 was surprised to learn that CITI had assessed him a \$7.15 “Foreign Transaction Fee”. The

1 fee was assessed at 3.00% of the total value of his \$238.31 purchase from King Seed in  
2 Vancouver. Mr. Sponheim did not believe that the Foreign Transaction Fee applied to  
3 purchases made online, while he was physically present in the United States.

4 **C. CITI Abuses Discretion**

5 33. To the extent the account documents do not explicitly permit the charging of  
6 a Foreign Exchange Fee as described above, CITI exploits contractual discretion to the  
7 detriment of accountholders and breaches good faith and fair dealing when it uses these  
8 policies.

9 34. CITI routinely and systematically charges Foreign Exchange Fees on internet  
10 debit card purchases at websites of foreign merchants which were originated from the  
11 United States.

12 35. CITI uses its discretion to define the meaning of “use your Citibank® Banking  
13 Card outside of the U.S.” in an unreasonable way that violates common sense and  
14 reasonable consumer expectations. CITI uses its contractual discretion to set the meaning  
15 of that phrase to choose a meaning that directly causes more Foreign Exchange Fees to be  
16 imposed.

17 36. By charging Foreign Exchange Fees on transactions that were conducted  
18 while the cardholder was in the United States, CITI engages in bad faith and contradicts  
19 reasonable consumer expectations.

20 **CLASS ACTION ALLEGATIONS**

21  
22 37. Plaintiff brings this action on his own behalf, the general public, and all others  
23 similarly situated. The Class includes:

24 All holders of a CITI checking account in California who, within the  
25 applicable statute of limitation preceding the filing of this lawsuit, incurred a  
26 Foreign Exchange Fee on an online debit card purchase transaction  
27 (the “Foreign Exchange Fee Class”).  
28

1 38. Excluded from the Class is Defendant, its subsidiaries and affiliates, their  
2 officers, directors and members of their immediate families and any entity in which  
3 defendants have a controlling interest, the legal representatives, heirs, successors or assigns  
4 of any such excluded party, the judicial officer(s) to whom this action is assigned, and the  
5 members of their immediate families.

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

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

- 14 a. Whether CITI improperly charges Foreign Exchange Fees on online  
15 debit card transactions;
- 16 b. Whether such conduct violates the contract;
- 17 c. Whether such conduct is deceptive or in bad faith; and
- 18 d. Whether Plaintiff and other members of the Class have sustained  
19 damages as a result of CITI's wrongful business practices described  
20 herein, and the proper measure of damages.

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

27 42. It is impracticable to bring Class members' individual claims before the Court.  
28 Class treatment permits a large number of similarly situated persons or entities to prosecute

1 their common claims in a single forum simultaneously, efficiently and without the  
2 unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or  
3 contradictory judgments that numerous individual actions would engender. The benefits  
4 of the class mechanism, including providing injured persons or entities with a method for  
5 obtaining redress on claims that might not be practicable to pursue individually,  
6 substantially outweigh any difficulties that may arise in the management of this class  
7 action.

8 43. Plaintiff's claims are typical of the claims of the other Class members in that  
9 they arise out of the same wrongful business practice by CITI, as described herein.

10 44. Plaintiff is more than an adequate representative of the Classes in that he has  
11 a CITI checking account and has suffered damages as a result of CITI's usurious and  
12 improper business practices. In addition:

13 a. Plaintiff is committed to the vigorous prosecution of this action on behalf of  
14 himself and all others similarly situated and has retained competent counsel  
15 experienced in the prosecution of class actions and, in particular, class actions on  
16 behalf of consumers against financial institutions;

17 b. There is no conflict of interest between Plaintiff and the unnamed Class  
18 members;

19 c. They anticipate no difficulty in the management of this litigation as a class  
20 action; and

21 d. Plaintiff's legal counsel has the financial and legal resources to meet the  
22 substantial costs and legal issues associated with this type of litigation.

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

25 46. CITI has acted or refused to act on grounds generally applicable to the class,  
26 thereby making appropriate final injunctive relief or corresponding declaratory relief with  
27 respect to the class as a whole.

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

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**  
3 **BREACH OF CONTRACT INCLUDING THE COVENANT**  
4 **OF GOOD FAITH AND FAIR DEALING**  
5 **(On behalf of himself and the putative class)**

6 48. Plaintiff incorporates the preceding allegations by reference as if fully set  
7 forth herein.

8 49. Plaintiff and CITI contracted for checking account and debit card services, as  
9 embodied in the Client Manual and Addendum.

10 50. The Client Manual and Addendum states that CITI will assess a Foreign  
11 Exchange Fee only in the following circumstances:

12 “Whenever you **use your Citibank® Banking Card outside of the**  
13 **U.S.** and Puerto Rico to get cash at an ATM or to purchase goods or  
14 services, we will apply a foreign exchange fee equal to 3% of the  
15 transaction amount (including credits and reversals). *See Exhibit No. 1,*  
16 *Client Manual, p. 51. (bold and underline added).*

17 51. CITI breached its contract with Plaintiff and the putative class when it charged  
18 Foreign Exchange Fees on online transactions which were initiated in the United States.  
19 Specifically, CITI breached its contract with Mr. Sponheim when it assessed him a Foreign  
20 Exchange Fee of \$7.15 on his \$238.31 purchase from King Seed in Vancouver on March  
21 15, 2018. Mr. Sponheim made his purchase online, from a computer located in his home  
22 in Orange County, California.

23 52. Plaintiff and members of the putative Class have performed all of the  
24 obligations on them pursuant to Client Manual and Addendum.

25 53. Plaintiff and members of the putative Class have sustained monetary damages  
26 as a result of Defendant’s breach.

27 54. Under the laws of the State of California where CITI does business, good faith  
28 is an element of every contract. Whether by common law or statute, all such contracts  
impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing,

1 in connection with executing contracts and discharging performance and other duties  
2 according to their terms, means preserving the spirit—not merely the letter—of the bargain.  
3 Put differently, the parties to a contract are mutually obligated to comply with the substance  
4 of their contract in addition to its form. Evading the spirit of the bargain and abusing the  
5 power to specify terms constitute examples of bad faith in the performance of contracts.

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

12 56. CITI breached the covenant of good faith and fair dealing in its Client Manual  
13 and Addendum by engaging in the policies and practices as alleged herein. Specifically,  
14 CITI's Client Manual misrepresents to accountholders the true nature of CITI's assessment  
15 of its Foreign Exchange Fees. CITI's contract terms are unclear and mislead  
16 accountholders to believe that Foreign Exchange Fees would not be assessed on  
17 transactions entered into while the customer was physically present in the United States.

18 57. Plaintiff and members of the Class have performed all, or substantially all, of  
19 the obligations imposed on them under the Client Manual and Addendum.

20 58. Plaintiff and members of the Class have sustained damages as a result of  
21 CITI's breach of the contract and the covenant of good faith and fair dealing.

22 **SECOND CAUSE OF ACTION**  
23 **VIOLATION OF THE UCL**  
24 **Cal. Bus. & Prof. Code § 17200, et seq.**  
25 **(On behalf of himself, the general public, and the putative class)**

26 59. Plaintiff incorporates the preceding allegations by reference as if fully set  
27 forth herein.  
28



- (c) Declaring CITI's Foreign Exchange Fees on in-country purchases to be wrongful, unfair, and a breach of contract;
- (d) Restitution of all relevant Foreign Exchange Fees paid to CITI by Plaintiff and the Classes, as a result of the wrongs alleged herein an amount to be determined at trial;
- (e) Disgorgement of the ill-gotten gains derived by CITI from its misconduct;
- (f) Actual damages in an amount according to proof;
- (g) Statutory, punitive, and exemplary damages, as permitted by law;
- (h) Pre-judgment interest at the maximum rate permitted by applicable law;
- (i) An order on behalf of the general public enjoining CITI from continuing to misrepresent its Foreign Exchange Fee policies in its publicly available documents and marketing materials, such as its "Client Manual" and "Addendum".
- (j) Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- (k) Such other relief as this Court deems just and proper.

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