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ATTORNEYS FOR PLAINTIFFS

**UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA**

Kamiesha Calhoun, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

Credit Union 1,

Defendant.

CASE NO:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Kamiesha Calhoun (“Plaintiff”), on behalf of herself and all persons similarly situated, alleges the following based on personal knowledge as to the allegations regarding herself and on information and belief as to other allegations.

INTRODUCTION

1. Plaintiff brings this action on behalf of herself and a class of all similarly situated consumers against Defendant Credit Union 1 (“Defendant” or “CU1”), arising

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from Defendant's routine practice of assessing two or more non-sufficient funds fees ("NSF Fees") on a single transaction.

2. CU1's improper scheme to extract funds from accountholders has victimized Plaintiff and thousands of other similarly situated consumers. Unless enjoined, Defendant will continue to engage in this scheme and continue to cause substantial injury to its consumers.

JURISDICTION

3. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the aggregate claims of the putative class members exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed class is a citizen of a different state than Defendant.

4. CU1 regularly and systematically conducts business and provides retail banking services in this district, and provides retail banking services to customers in this district, including Plaintiff and members of the putative class.

VENUE

5. Venue is likewise proper in this district pursuant to 28 U.S.C. § 1391 because Defendant is subject to personal jurisdiction in this Court and regularly conducts business within this district. Thus, many of the events giving rise to the claims asserted herein occurred and continue to occur in this district.

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PARTIES

6. Plaintiff Kamiesha Calhoun is a citizen and resident of Jackson, Mississippi.

7. Defendant CU1 is the second largest credit union in Alaska, with nearly \$1 billion in assets, and maintains its headquarters in Anchorage, Alaska.

BACKGROUND FACTS

CU1 CHARGES MORE THAN ONE NSF FEE ON THE SAME ITEM

5. Prior to February of 2020, CU1’s Member Service Agreement and Service Charge Disclosure (collectively, the “Account Documents”), allowed it to charge a *single* NSF Fee or a *single* overdraft fee (“OD Fee”) when an “item” is returned for insufficient funds or paid despite insufficient funds.

6. After February of 2020, for the first time, CU1 amended its Account Documents to inform accountholders that they may incur an NSF fee each time a previously returned item is presented for payment against insufficient funds.

7. While CU1’s disclosures changed, its practices didn’t. CU1 breached its Account Documents with its accountholders by charging more than one NSF Fee on the same item, since its contract explicitly stated—and reasonable consumers understand—that the same item can only incur a single NSF or OD Fee.

8. CU1’s abusive practices are not standard within the financial services industry. Indeed, major banks like JP Morgan Chase—the largest consumer bank in the

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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 CU1, they clearly disclose those charges in the deposit agreements with their customers.

9. Prior to February 2020, CU1’s Former Account Documents did not say that CU1 repeatedly charges customers multiple NSF fees on a single item. To the contrary, the Account Documents indicated it would only charge a single NSF Fee or OD Fee on an item.

A. Plaintiff’s Experience.

10. In support of her claims, Plaintiff offers examples of fees that should not have been assessed against her checking account. As alleged below, CU1: (a) twice reprocessed previously declined electronic transactions that they made; and (b) charged an additional fee upon reprocessing, for a total assessment of *\$66 in fees on a single item*.

11. As an example, on July 19, 2019 Plaintiff attempted a payment *via* ACH for \$109.06.

12. CU1 rejected payment of that item due to insufficient funds in Plaintiff’s account and charged Plaintiff a \$22 NSF Fee for doing so. Plaintiff does not dispute this initial fee, as it was allowed by CU1’s account documents.

13. However, unbeknownst to Plaintiff, and without her request to CU1 to reprocess the item, CU1 processed the same item yet again on July 23, 2019. Again, CU1 returned the item unpaid and charged Plaintiff *another* \$22 NSF Fee for doing so.

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14. Subsequently, unbeknownst to Plaintiff, and again without her request to CU1 to reprocess the item, CU1 processed the same item yet again on July 25, 2019. Again, CU1 returned the item unpaid and charged Plaintiff another \$22 NSF Fee for doing so.

15. In sum, CU1 assessed Plaintiff \$66 in fees in its effort to process a single transaction.

16. Plaintiff understood the payment to be a single item as is laid out in CU1's contract, capable at most of receiving a single NSF Fee (if CU1 returned it) or a single OD Fee (if CU1 paid it).

17. The same pattern occurred on April 22 and 25, 2019 with respect to a different transaction, and Plaintiff incurred \$44 in NSF Fees on CU1's effort to process a \$30.50 transaction, less than the total NSF Fee amount.

B. The Imposition of Multiple NSF Fees on a Single Item Violates CU1's Express Promises and Representations.

18. CU1's Account Documents stated that CU1 will assess a single fee of \$22 for an "item" that is returned due to insufficient funds.

19. The Member Service Agreement in effect at the time of the relevant transactions made clear an item can incur only a single OD or NSF Fee:

If the available balance of funds in a spending account are not sufficient to pay a check or other item presented on the account, we may return it for insufficient funds, and require a service charge for the dishonored check or item (as explained in Provision 9.).

20. The Former Service Charge Disclosure made the same promise, that at most

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a *single* fee will be assessed when an item is returned or paid into overdraft:

Non-Sufficient Funds (NSF)..... \$22.00

21. The same ACH payment 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.

22. Even if CU1 reprocesses an instruction for payment, it is still the same item. Defendant’s reprocessing is simply another attempt to effectuate an accountholder’s original order or instruction.

23. The Former Account Documents described above never discussed a circumstance where CU1 may assess multiple NSF or OD Fees for an item that was returned for insufficient funds and later reprocessed one or more times and returned again.

24. In sum, CU1 promised that single NSF Fee will be assessed per item, and this must mean all iterations of the same instruction for payment. As such, CU1 breached the contract when it charged more than one fee per item.

25. A reasonable consumer would understand that CU1’s Former Account Documents permitted it to assess an NSF Fee only once per item.

26. Taken together, the representations and omissions identified above conveyed to customers that all submissions for payment of the same transaction will be treated as the same “item,” which Defendant 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.

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Nowhere in the Former Account Documents did CU1 disclose that it will treat each reprocessing of a check or ACH payment as a separate item, subject to additional fees, nor do CU1 customers ever agree to such fees.

27. Customers reasonably understand, based on the language of CU1's Former Account Documents, that Defendant'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.

28. For the first time ever in February of 2020, CU1 amended its Member Service Agreement to state that accountholders may incur multiple fees if the same item is presented multiple times:

If we return an item for insufficient funds, the payee (or the payee's institution) may re-present it. Each presentment against insufficient funds will result in a separate fee.

29. Additionally, for the first time ever in February of 2020, CU1 amended its Service Charge Disclosure to state that accountholders may incur multiple fees if the same item is presented multiple times:

A NSF charge is imposed each time an item is presented against insufficient funds. The payee (or the payee's institution) may re-present a previously returned item. Each presentment against insufficient funds will result in a separate charge.

30. As CU1 discovered by February of 2020, other banks that employ this abusive multiple-fee practice know how to plainly and clearly disclose it. Indeed, other

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banks and credit unions that do engage in this abusive practice disclose it expressly to their accountholders—something CU1 took years to do.

31. For example, First Hawaiian Bank engages in the same abusive practices as CU1, but at least 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.¹

32. 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.²**

¹ *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).

² *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).

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33. 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.³

34. 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."⁴

35. 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.⁵

³ *Miscellaneous Fee Schedule*, Central Pacific Bank 1 (March 4, 2021), <https://www.cpb.bank/media/2776/fee-001.pdf>.

⁴ *Membership and Account Agreement*, BP Federal Credit Union, ¶ 14(a), <https://www.bpfcu.org/images/docs/membership-agreement.pdf> (last accessed March 2, 2021).

⁵ *Deposit Agreement*, Regions Bank, ¶ 19, <https://www.regions.com/-/media/pdfs/terms/Deposit-Agreement.pdf?revision=89ba3f19-6503-434b-8c33-e6ca0cb7f717&la=en&hash=B8A7EC6CD761AF127881AD212CC231E1> (last accessed March 2, 2021).

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36. 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 (representation). Each presentment is considered an item and will be charged accordingly.”⁶

37. 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.⁷

38. 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

⁶ *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.

⁷ *Terms and Conditions*, Andrews Federal Credit Union (August 2020), ¶ 6, https://www.andrewsfcu.org/AndrewsFCU/media/Documents/Terms-and-Conditions_Aug-2020.pdf (last accessed March 2, 2021).

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submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.⁸

39. 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.⁹

40. 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.¹⁰

41. 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.

⁸ *Member Services Guide*, Consumers Credit Union, ¶ 11a, https://www.myconsumers.org/docs/default-source/default-document-library/ccu_membership_booklet_complete.pdf?sfvrsn=6 (last accessed March 2, 2021).

⁹ *Important Account Information*, Wright Patt Credit Union, ¶ 6.1, <https://www.wpcu.coop/en-us/PDFDocuments/Important%20Account%20Information%20Disclosure%20-%20WPCU.pdf> (last accessed March 2, 2021).

¹⁰ *Important Account Information for Our Members*, Railroad & Industrial Federal Credit Union (August 1, 2019), p. 2, <https://www.rifcu.org/Documents/Disclosures/Account-Terms-Conditions.aspx> (last accessed March 2, 2021).

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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.¹¹

42. 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 representment [.]¹²

43. 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.¹³

44. RBC Bank states:

¹¹ *Consumer Membership and Account Agreement*, Partners 1st Federal Credit Union (September 15, 2019), p. 11, https://s3.us-east-1.amazonaws.com/assets.partners1stcu.org/uploads/PDFs/Consumer_Account_Agreement.pdf (last accessed March 2, 2021).

¹² *Membership and Account Agreement*, Members First Credit Union, ¶ 14(a), http://www.membersfirstfl.org/files/mfcufl/1/file/Membership_and_Account_Agreement.pdf (last accessed March 2, 2021).

¹³ *Community Bank, N.A., Overdraft and Unavailable Funds Practices Disclosure*, p. 5, <https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure.pdf> (last accessed March 2, 2021).

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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.¹⁴

45. 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.¹⁵

46. 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.¹⁶

¹⁴ *Service Agreement for Personal Accounts*, RBC Bank, p. 13, <https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf> (last accessed March 2, 2021).

¹⁵ *Terms and Conditions, Membership and Account Agreement*, Diamond Lakes Credit Union, ¶ 14(a), <https://www.diamondlakesfcu.org/termsconditions.html> (last accessed March 2, 2021).

¹⁶ *Membership and Account Agreement*, Parkside Credit Union, ¶ K, https://www.parksidecu.org/_/kcms-doc/1043/44277/Membership-and-Account-Agreement.pdf?__cf_chl_captcha_tk__=add6ebea42df3685074decd4b16c1f86a8369dc9-1580434763-0-AfXmB7FcyYTqzK9oMNBMSKM6k5fnKS5Xf-z7p3Tv-Pt951tDs7wM8yaaIV06w718t2nomyWR1Q8COwgpfgE07FJWZUeFkJN6lxbXDZG1SvidTWhYm9l85AbCd5afw2imyGdtdzKhXl9bQ9TYkjOITVM4w8OFJOtE3wVIHrEITnQnSfoR5mZxM5O0bu4f_FHoHiJj0XsjNkVoGblk0-lti6-gMn-Wcu_o87SGQW6dOUF2i6rHGIM_CkdI-ULanKI2NS3KlkhYAuNatN9Jdwr7Plc6oJozMbZQeczuO7VlbRnuCFD0tjzkw1lsnof7ua

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47. In the Account Documents in effect at the time the relevant transactions occurred, CU1 provided no such disclosure, and in so doing, breached 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 CU1's Duty of Good Faith and Fair Dealing.

48. 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 CU1 is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, CU1 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 CU1 foisted on Plaintiff and its other customers—CU1 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, Defendant abuses that discretion to take money out of consumers'

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GVA (last accessed March 2, 2021).

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accounts without their permission and contrary to their reasonable expectations that they will not be charged multiple fees for the same transaction.

49. CU1 exercised its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it defined “item” in a way that directly lead to more NSF Fees. Further, CU1 abuses the power it has over customers and their bank accounts and acts contrary to their reasonable expectations under its Former Account Documents. This is a breach of CU1’s implied covenant to engage in fair dealing and act in good faith.

50. 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, CU1 breaches the reasonable expectation of Plaintiff and other customers and in doing so violates the implied covenant to act in good faith.

51. It was bad faith and totally outside Plaintiff’s reasonable expectations for CU1 to use its discretion to assess two or three NSF Fees for a single attempted payment.

CLASS ACTION ALLEGATIONS

52. Plaintiff brings this action on behalf of herself 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. The proposed Class is defined as:

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All CU1 checking account holders who during the applicable statute of limitations up until February 2020, were charged multiple NSF Fees on the same item or transaction on a CU1 checking account.

53. Excluded from the Class are Defendant, Defendant's subsidiaries and affiliates, their officers, directors and member of their immediate families and any entity in which Defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

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

55. 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 CU1 has acted on grounds generally applicable to the class. Such common legal or factual questions include, but are not limited to:

- a) Whether CU1 charged multiple NSF Fees on a single transaction or item;
- b) Whether CU1 breached its contract;
- c) Whether CU1's misconduct was deceptive, unconscionable, or unjust;
- d) Whether CU1 violated Alaska consumer protection law;
- e) Whether CU1 was unjustly enriched;

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- f) The proper method or methods by which to measure damages; and
- g) The declaratory and injunctive relief to which the Class is entitled.

56. The parties are numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Class consist of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to CU1's records. CU1 has the administrative capability through its computer systems and other records to identify all members of the Class, and such specific information is not otherwise available to Plaintiff.

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

58. 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 CU1, as described herein.

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59. Plaintiff is a more than adequate representative of the Class in that Plaintiff is a CU1 checking accountholder and has suffered damages as a result of CU1's contract violations. In addition:

- a) Plaintiff is committed to the vigorous prosecution of this action on behalf of herself 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.

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

61. CU1 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.

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

FIRST CLAIM FOR RELIEF
Breach of Contract Including the Covenant of Good Faith and Fair Dealing
(On behalf of Plaintiff and all the Class)

63. Plaintiff realleges the preceding paragraphs as if fully set forth herein.

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64. Plaintiff and CU1 contracted for checking account services, as embodied in CU1's Account Documents.

65. CU1 breached the terms of the contract.

66. Plaintiff and members of the putative Class have performed all of the obligations on them pursuant to Defendant's agreements.

67. Plaintiff and members of the putative Class have sustained monetary damages as a result of each of Defendant's breaches.

68. Alaska law mandates that an implied covenant of good faith and fair dealing govern every contract. For banking transactions, this is also mandated by the Uniform Commercial Code that has been adopted in each state. The covenant of good faith and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

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

70. 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.

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71. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes her conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Other examples of violations of good faith and fair dealing are 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.

72. CU1 breached the covenant of good faith and fair dealing as explained herein.

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

74. Plaintiff and members of the putative Classes have performed all of the obligations imposed on them pursuant to the Account Agreements.

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

SECOND CLAIM FOR RELIEF
Violations of the Consumer Protection Act
(On Behalf of Plaintiff and the Class)

76. Plaintiff realleges the preceding paragraphs as if fully set forth herein.

77. The Alaska Consumer Protection Act ("Consumer Protection Act") is designed to protect consumers from deceptive, unfair, and unconscionable trade practices.

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The Consumer Protection Act is a remedial statute which is to be liberally construed in favor of consumers.

78. CU1's wrongful actions as described herein violate the Consumer Protection Act, specifically AK ST § 45.50.471(b)(11) and (12).

79. As detailed herein, CU1 has violated (and continues to violate) AK ST § 45.50.471(b)(11) and (12) by unfairly, unconscionably, and deceptively assessing and collecting improper NSF Fees from its customers in violation of CU1's own Account Documents.

80. As a result, Plaintiff has suffered actual financial loss proximately caused by CU1's unlawful conduct. Plaintiff suffered actual financial loss proximately caused by her reliance on CU1's unlawful conduct.

81. Accordingly, Plaintiff is entitled to recover her damages, attorneys' fees, and costs pursuant to AK ST § 45.50.537.

82. Plaintiff is also entitled to punitive damages. CU1 knew or should have known that its conduct would result in injury to Plaintiff and it continues such conduct with reckless disregard for the consequences.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, demand 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;

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- B. Declaring CU1's OD Fee and multiple fee policies and practices to be in breach of its contract with accountholders;
- C. Restitution of all OD Fees and improperly assessed paid to CU1 by Plaintiff and the members of the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
- D. Actual damages in an amount according to proof;
- E. Pre-judgment 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.

Dated: April 8, 2021

Respectfully submitted,

By: *s/ Daniel I. Pace*
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COMPLAINT

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