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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JENNIFER REGALA, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

Case No.: '20CV1910 JM MDD

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff Jennifer Regala, on behalf of herself and all others similarly situated, alleges the following based on personal knowledge as to allegations regarding the Plaintiff, and on information and belief as to other allegations.

**INTRODUCTION**

1  
2 1. Plaintiff brings this action on behalf of herself, the general public, and Class  
3  
4 of all similarly situated consumers against Defendant JPMorgan Chase Bank, N.A.  
5 (“Defendant,” “Chase,” or “Bank”), arising from its routine practice of assessing overdraft  
6 fees (“OD Fees”) on transactions that did not actually overdraw the customer’s account.  
7

8 2. Chase misleadingly and deceptively misrepresents the above practice in its  
9 publicly available marketing materials, including its own account contracts. Chase also  
10 omits material facts pertaining to this practice in its publicly available marketing materials,  
11 including its account contracts.  
12

13 3. Chase’s customers have been injured by Chase’s improper practices to the  
14 tune of millions of dollars bilked from their accounts in violation of their agreements with  
15 Chase.  
16

17 4. In addition, the deception, aimed at general public, continues to this day.  
18 Chase’s contracts (including the Deposit Account Agreement and the Fee Schedule) and  
19 marketing materials (including the Standard Overdraft Practice disclosure) are publicly  
20 available online and in Chase branches to all current and prospective accountholders. The  
21 general public relies on representations in these documents in making important financial  
22 decisions regarding with whom they would like to open a checking account. Consumers  
23 who have already opened accounts also rely on the misrepresentations and omissions in  
24 the publicly available account documents when making every day financial transactions.  
25  
26

27 5. The Pew Charitable Trusts has emphasized the importance of transparent  
28

1 checking account fee disclosures for both comparison shopping for checking accounts and  
2 for effective fee avoidance:

3  
4 Bank accounts are an essential financial product, used by 9 in 10 American  
5 households, and need to be safe and transparent. Account agreements and fee  
6 schedules provide customers with account costs, terms, and conditions. Among  
7 the largest U.S. banks, however, the median length of checking account disclosure  
8 documents is 40 pages, and the information is presented in varied formats with  
9 inconsistent wording, making it difficult for consumers to easily find the  
10 information they need to comparison shop, avoid overdraft and other fees, and  
11 manage their money.

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

13  
14 6. Members of the public considering opening a checking account have the right  
15 to accurate information regarding the checking accounts they are considering. Research  
16 shows that fees are the most important factor influencing consumers’ selection of a new  
17 banking provider. *See* Ron Shevlin, “How Consumers Choose a Bank: A Tale of Two  
18 Surveys.” Insight Vault, Cornerstone Advisors, 23 Aug. 2018,  
19 [www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of](http://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/)  
20 [two-surveys/](http://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/) (summarizing two consumer surveys that revealed that the most important  
21 factor influencing consumers’ selection of a new banking provider is the amount of fees  
22 charged); Claire Greene and Joanna Stavins, The 2016 and 2017 Surveys of Consumer  
23 Payment Choice: Summary Results. Federal Reserve Bank of Boston, 10 May 2018,  
24 [www.bostonfed.org/publications/research-data-report/2018/the-2016-and-2017-surveys-](http://www.bostonfed.org/publications/research-data-report/2018/the-2016-and-2017-surveys-of-consumer-payment-choice-summary-results.aspx)  
25 [of-consumer-payment-choice-summary-results.aspx](http://www.bostonfed.org/publications/research-data-report/2018/the-2016-and-2017-surveys-of-consumer-payment-choice-summary-results.aspx) (finding that 4 in 10 consumers who  
26 did not have a bank account cited expense as the reason, including “fees and service charges  
27  
28

1 are too high.”).

2 7. Reasonable consumers would not agree to open Chase checking accounts or  
3 would not agree to opt-in to Chase’s overdraft services, if they were informed, for example,  
4 that they could incur overdraft fees on transactions that did not overdraw their account.  
5

6 8. On behalf of herself, the general public, and the Class, Plaintiff seeks  
7 damages, restitution, and public injunctive relief due to Chase’s breach of contract and  
8 violations of California’s consumer protection laws  
9

10 **PARTIES**

11 9. Plaintiff Jennifer Regala is a citizen and resident of San Diego, California and  
12 holds a Chase checking account.  
13

14 10. Defendant JPMorgan Chase Bank, N.A. (referred to herein as “Chase”,  
15 “Defendant,” or “Bank”) is engaged in the business of providing retail banking services to  
16 consumers, including Plaintiff and members of the Class, which includes the issuance of  
17 debit cards for use by its customers in conjunction with their checking accounts. Chase  
18 operates banking centers and branches across the State of California and the nation, and  
19 thus, it conducts business throughout California and the United States.  
20  
21

22 **JURISDICTION AND VENUE**

23 11. Chase regularly and systematically provides retail banking services  
24 throughout the State of California, including in this county, and engages in marketing and  
25 providing retail banking services to its customers, including Plaintiff and members of the  
26 putative Class, throughout the State of California, including in this county. As such, Chase  
27  
28

1 is subject to the personal jurisdiction of this Court.

2 12. The Court has original jurisdiction over this suit pursuant to the Class Action  
3 Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d)(2) and (6), because the aggregate  
4 claims of the putative class members exceed \$5 million, exclusive of interest and costs,  
5 and at least one of the members of the proposed class is a citizen of a different state than  
6 Chase.  
7

8  
9 13. Venue is proper in this District under 28 U.S.C. § 1391 because Chase is  
10 subject to personal jurisdiction in this District, Chase regularly conducts business in this  
11 District, and because Plaintiff was assessed overdraft fees in this District, as discussed  
12 herein.  
13

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

### 15 **I. Chase Charges Overdraft Fees On Transactions That Do Not Actually** 16 **Overdraw The Account**

#### 17 **A. Overview of Claim**

18  
19 14. Plaintiff brings this cause of action challenging Chase’s practice of charging  
20 overdraft fees (“OD Fees”) on what are referred to in this complaint as “Authorize Positive,  
21 Purportedly Settle Negative Transactions,” or “APPSN Transactions.”  
22

23 15. Here is how it works. At the moment debit card transactions are authorized on  
24 an account with positive funds to cover the transaction, Chase immediately reduces a  
25 consumer’s checking account for the amount of the purchase, sets aside funds in the  
26 checking account to cover that specific transaction, and as a result, the consumer’s  
27  
28

1 displayed “available balance” reflects that subtracted amount. As a result, a customer’s  
2 accounts will always have sufficient available funds available to cover these transactions  
3 because Chase has already sequestered those funds for payment.  
4

5 16. Chase, nonetheless, still assesses a crippling \$32.00 OD Fee on many of these  
6 transactions and mispresents its practices in its account documents.  
7

8 17. Despite putting aside sufficient available funds for a particular debit card  
9 transaction at the time the transaction is authorized, Chase later assesses OD Fees on those  
10 same transactions when they purportedly settle, usually days later, into a negative account  
11 balance. These types of transactions are APPSN transactions.  
12

13 18. Chase maintains a running account balance in real time, tracking the amount  
14 of funds that consumers has available for immediate use. This running account balance is  
15 adjusted, in real-time, to account for debit card transactions at the precise instance they are  
16 made. When a customer makes a purchase with a debit card, Chase sequesters the funds  
17 needed to pay the transaction, subtracting the dollar amount of the transaction from the  
18 customer’s available balance. Such funds are not available for any other use by the  
19 accountholder, and such funds are specifically associated with a given debit card  
20 transaction.  
21  
22

23 19. Indeed, the entire purpose of the immediate debit and hold of positive funds  
24 is to ensure that there are enough funds in the account to pay the transaction when it  
25 eventually settles, as discussed in the Federal Register notice announcing revisions to  
26 certain provisions of the Truth in Lending Act regulations:  
27  
28

1 When a consumer uses a debit card to make a purchase, a hold may be placed  
2 on funds in the consumer’s account to ensure that the consumer has sufficient  
3 funds in the account when the transaction is presented for settlement. This is  
4 commonly referred to as a “debit hold.” During the time the debit hold remains  
5 in place, which may be up to three days after authorization, those funds may  
6 be unavailable for the consumer’s use for other transactions.

7 Federal Reserve Board, Office of Thrift Supervision, and National Credit Union  
8 Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 29, 2009).

9 20. It means that when any *subsequent*, intervening transactions are initiated on a  
10 checking account, they are compared against an account balance that has already been  
11 reduced to account for any earlier debit card transactions. Thus, many subsequent  
12 transactions incur OD Fees due to the unavailability of the funds sequestered for those debit  
13 card transactions.

14 21. Still, despite keeping those sequestered funds off-limits for purposes of  
15 covering other transactions, Chase improperly charges OD Fees on those APPSN  
16 Transactions—even though the APPSN transactions *always* have sufficient available funds  
17 to be “covered.”

18 22. Indeed, the Consumer Financial Protection Bureau (“CFPB”) has expressed  
19 concern with this very issue, specifically calling the practice “deceptive” when:

20 A financial institution authorized an electronic transaction, which reduced a  
21 customer’s available balance but did not result in an overdraft at the time of  
22 authorization; settlement of a subsequent unrelated transaction that further  
23 lowered the customer’s available balance and pushed the account into  
24 overdraft status; and when the original electronic transaction was later  
25 presented for settlement, because of the intervening transaction and overdraft  
26 fee, the electronic transaction also posted as an overdraft and an additional  
27 overdraft fee was charged. Because such fees caused harm to consumers, one  
28

1 or more supervised entities were found to have acted unfairly when they  
2 charged fees in the manner described above. Consumers likely had no reason  
3 to anticipate this practice, which was not appropriately disclosed. They  
4 therefore could not reasonably avoid incurring the overdraft fees charged.  
5 Consistent with the deception findings summarized above, examiners found  
6 that the failure to properly disclose the practice of charging overdraft fees in  
7 these circumstances was deceptive. At one or more institutions, examiners  
8 found deceptive practices relating to the disclosure of overdraft processing  
9 logic for electronic transactions. Examiners noted that these disclosures  
10 created a misimpression that the institutions would not charge an overdraft fee  
11 with respect to an electronic transaction if the authorization of the transaction  
12 did not push the customer's available balance into overdraft status. But the  
13 institutions assessed overdraft fees for electronic transactions in a manner  
14 inconsistent with the overall net impression created by the disclosures.  
15 Examiners therefore concluded that the disclosures were misleading or likely  
16 to mislead, and because such misimpressions could be material to a reasonable  
17 consumer's decision-making and actions, examiners found the practice to be  
18 deceptive. Furthermore, because consumers were substantially injured or  
19 likely to be so injured by overdraft fees assessed contrary to the overall net  
20 impression created by the disclosures (in a manner not outweighed by  
21 countervailing benefits to consumers or competition), and because consumers  
22 could not reasonably avoid the fees (given the misimpressions created by the  
23 disclosures), the practice of assessing fees under these circumstances was  
24 found to be unfair.

17 Consumer Financial Protection Bureau, Winter 2015 "Supervisory Highlights."

19 23. There is no justification for these practices, other than to maximize Chase's  
20 overdraft fee revenue. APPSN Transactions only exist because intervening checking  
21 account transactions supposedly reduce an account balance. But Chase is free to protect its  
22 interests and either reject those intervening transactions or charge OD Fees on those  
23 intervening transactions—and it does the latter to the tune of millions of dollars each year.  
24 But Chase was not content with these millions in OD Fees. Instead, it sought millions *more*  
25 in OD Fees on these APPSN Transactions.  
26  
27  
28



1 24. Besides being deceptive, unfair, and unconscionable, these practices breach  
2 contract promises made in Chase’s adhesion contracts—contracts which fundamentally  
3 misconstrue and mislead consumers about the true nature of Chase’s processes and  
4 practices. These practices also exploit contractual discretion to gouge consumers.  
5

6 25. In plain, clear, and simple language, the checking account contract documents  
7 covering overdraft fees promise that Chase will only charge overdraft fees on transactions  
8 that have insufficient funds to “cover” that transaction.  
9

10 26. In short, Chase is not authorized by contract to charge OD Fees on transactions  
11 that have not overdrawn an account, but it has done so and continues to do so.  
12

13 **B. Mechanics of a Debit Card Transaction**

14 27. A debit card transaction occurs in two parts. First, authorization for the  
15 purchase amount is instantaneously obtained by the merchant from Chase. When a  
16 merchant physically or virtually “swipes” a customer’s debit card, the credit card terminal  
17 connects, via an intermediary, to Chase, which then verifies that the customer’s account is  
18 valid and that sufficient available funds exist to “cover” the transaction amount.  
19  
20

21 28. At this point, if the transaction is approved, Chase immediately decrements  
22 the funds in a consumer’s account and sequesters funds equal to the amount of the  
23 transaction; but it does not yet transfer the funds to the merchant.  
24

25 29. Indeed, the entire purpose of the immediate debit and hold of positive funds  
26 is to ensure that there are enough funds in the account to pay the transaction when it settles,  
27 as discussed in the Federal Register notice announcing revisions to certain provisions of  
28

1 the Truth in Lending Act regulations:

2 When a consumer uses a debit card to make a purchase, a hold may be placed  
3 on funds in the consumer’s account to ensure that the consumer has sufficient  
4 funds in the account when the transaction is presented for settlement. This is  
5 commonly referred to as a “debit hold.” During the time the debit hold remains  
6 in place, which may be up to three days after authorization, those funds may  
be unavailable for the consumer’s use for other transactions.

7 Federal Reserve Board, Office of Thrift Supervision, and National Credit Union  
8 Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 29, 2009).

9  
10 30. Sometime thereafter, the funds are actually transferred from the customer’s  
11 account to the merchant’s account. This is referred to in the banking industry as “posting”  
12 or “settling”—something which may occur several days after the transaction was first  
13 initiated.

14  
15 31. There is no change—no impact whatsoever—to the available funds in an  
16 account when posting or settling a transaction in the same amount for which it was initially  
17 authorized. That is because available funds amounts do not change for debit card  
18 transactions that settle in the same amount for which they were authorized.  
19

20 **C. Chase’s Deposit Account Agreement**

21  
22 32. Plaintiff has a Chase checking account, which is governed by Chase’s  
23 standardized Deposit Account Agreement.

24  
25 33. The standardized Deposit Account Agreement is a publicly available  
26 document that can be obtained online or at Chase’s branches or banking centers, where it  
27 is available to all current and prospective accountholders. Consumers, and the general  
28

1 public, rely on account agreements like Chase’s in making important financial decisions  
2 regarding to whom they would like to entrust their money. In addition, Chase  
3  
4 accountholders rely on the Consumer Deposit Account Agreement in making every day  
5 financial transactions and predicting which transactions will incur fees and for how much.

6 34. In plain, clear, and simple language, the Deposit Account Agreement  
7  
8 promises that Chase Bank immediately deducts funds, or places a hold on funds, at the very  
9 moment debit card transactions are initiated; and will only charge OD Fees on transactions  
10 with insufficient available funds to pay a given transaction:

11  
12 **Available balance:** Your previous day’s balance plus any  
13 pending credit transactions (excluding pending debit card  
14 purchase returns), such as ACH direct deposits minus:  
15 •**Pending charges such as debit card purchases, electronic**  
16 **payments or other transactions that we are legally**  
17 **obligated to pay or have already paid,** •Amount of deposits  
18 that are not yet available for withdrawal under our Funds  
Availability Policy, •Any holds on your balance, such as holds  
on funds to comply with court orders or other legal  
requirements.

19 Deposit Account Agreement, attached hereto as **Exhibit A**, at pg. 2 (4 of 30).

20 [...]

21 Withdrawals and transfers from your account

22 We may subtract from your balance the amount of any check or  
23 other item that you or any person you authorize[,] created or  
24 approved.

25 Ex. A at pg. 4 (6 of 30).

26 [...]

1           Overdrafts

2           **We may pay or decline to pay any item if your available**  
3           **balance is less than the amount of that item plus all other**  
4           **items received but not yet paid. We will decline any**  
5           **requested ATM withdrawal unless your available balance**  
6           **at the time is equal to or more than the amount of the**  
7           **requested withdrawal.** Even if we've paid overdraft items  
8           before, we are not required to do it in the future. Special rules  
9           for everyday debit card transactions are described in the  
10          Electronic Funds Transfer Service Terms...**We look at your**  
11          **balance only once to decide if the item would cause an**  
12          **overdraft.** Generally, for each business day, we will first add  
13          deposits to your account. Second, **we will subtract** wire  
14          transfers, everyday debit card transactions, online banking  
15          transactions, ATM withdrawals, teller cash withdrawals, and  
16          checks you wrote that are either cashed or deposited at a teller  
17          station by a Chase employee, **in the order in which they are**  
18          **authorized, withdrawn, cashed or deposited.**

19          Ex. A at pg. 7 (9 of 30).

20                 [...]

21                 We will charge a fee for any item presented on a business  
22                 day when your account is overdrawn, whether or not we pay  
23                 the item. If we pay it, we will charge an Insufficient Funds  
24                 Fee. If we return it, we will charge a Returned Item Fee. The  
25                 fee will be listed as a Returned Item Fee if we initially decide  
26                 to return the item but later decide to pay it.

27          Ex. A at pg. 7 (9 of 30).

28                 [...]

                  Overdraft Protection Overdraft Protection allows you to link  
                  one of your accounts as your backup account to your  
                  checking account to help pay an overdraft. If your checking  
                  account does not have enough money, we will use the  
                  available funds from your backup account to authorize or pay  
                  transactions.

                  Ex. A at pg. 7 (9 of 30).

1           35. The Deposit Agreement misleads current and prospective accountholders  
2 regarding Chase’s true debit card processing and OD Fee practices in at least four ways.

3  
4           36. **First**, Chase’s definition of “available balance” reflects that debit card  
5 transactions take place in two parts and that funds are immediately deducted from an  
6 available balance for “pending” debit card transactions. Indeed, available funds actually  
7 are sequestered at the moment a debit card transaction is approved by Chase Bank.  
8

9           37. Chase may thus not assess OD Fees on APPSN transactions, since by  
10 definition those transactions have sufficient available funds at the moment they are  
11 authorized and the entire time they are “pending.”  
12

13           38. **Second**, Chase states that “we may pay or decline to pay any item if your  
14 available balance is less than the amount of that item plus all other items received but not  
15 yet paid.” This is a representation to reasonable consumers that Chase decides whether or  
16 not a transaction is an “overdraft” transaction at the moment a debit card transaction is  
17 authorized. That is because Chase can decide to “pay or decline to pay” such a transaction  
18 only at the moment of authorization. Once it authorizes a debit card transaction, it must  
19 pay that transaction when it settles, no matter what.  
20  
21

22           39. In short, Chase promises that it will make overdraft fee determinations at the  
23 time of authorization. That means that APPSN Transactions rightly cannot incur overdraft  
24 fees.  
25

26           40. **Third**, Chase explicitly states that: “We look at your balance only once to  
27 decide if the item would cause an overdraft.” Because Chase necessarily “looks at [the]  
28

1 balance” at the time of authorization, Chase represents it will not later charge overdraft  
2 fees on a transaction authorized into positive funds.

3  
4 41. In reality, Chase’s actual practice is to assay the same debit card transaction  
5 twice to determine if the transaction overdraws an account—both at the time a transaction  
6 is authorized and at the time of settlement. Then Chase makes that determination again, at  
7 settlement.

8  
9 42. At the time of settlement, however, an available balance *does not change at*  
10 *all* for these transactions previously authorized into good funds. As such, Chase cannot  
11 then charge an OD Fee on such a transaction because the available balance has not been  
12 rendered insufficient due to the pseudo-event of settlement.

13  
14 43. Upon information and belief, something more is going on: at the moment a  
15 debit card transaction is getting ready to settle, Chase does something new and unexpected,  
16 during the middle of the night, during its nightly batch posting process. Specifically, Chase  
17 releases the hold it had placed on funds for the transaction for a split second, putting money  
18 back into the account, then re-debits the same transaction a second time.

19  
20  
21 44. This secret step allows it to charge overdraft fees on transactions that never  
22 should have gotten them—transactions that were authorized into sufficient funds, and for  
23 which Chase specifically set aside money to pay them.

24  
25 45. This discrepancy between Chase’s actual practices and the contract causes  
26 consumers to incur more OD Fees than they should.

1           46. **Fourth**, Chase promises it will “subtract” debit card transactions from  
2 accounts “in the order in which they are authorized.” But it does not do this for APPSN  
3 transactions. Instead, it allows intervening debit transactions to be withdrawn from an  
4 account’s available balance first. Indeed, these intervening, out-of-order debits are the  
5 precise reason there can be APPSN Transactions in the first place.  
6

7  
8           47. In sum, there is a vast discrepancy between Chase’s practices as described in  
9 the account documents and the Chase’s practices in reality. This gap is designed to and  
10 does deceive current and prospective account holders.  
11

12           48. Chase’s misrepresentations and omissions are ongoing, and negatively affect  
13 not only current account holders’ ability to manage their funds, but also deceive members  
14 of the general public who have no choice but to rely on Chase’s publicly available  
15 statements in making important decisions regarding who to bank with, what kinds of  
16 accounts to open, and what transactions to make. Current and prospective bank customers  
17 have a right to know what they can expect from the institutions they entrust with their  
18 money, especially if what they can expect are excessive overdraft fees on transactions that  
19 do not actually overdraw their accounts.  
20  
21

22           **D. Chase Abuses Contractual Discretion**  
23

24           49. Chase’s treatment of debit card transactions to charge overdraft fees is not  
25 simply a breach of the express terms of the numerous account documents. In addition,  
26 Chase exploits contractual discretion to the detriment of accountholders when it uses these  
27 policies.  
28

1 50. The terms, “hold” and “to cover” a transaction, are not defined in the account  
2 documents. Chase uses its discretion to define “hold” and “to cover” in a manner contrary  
3 to any reasonable, common sense understanding of those terms. In Chase’s implied  
4 definition, a transaction is not “covered” even if Chase sequesters sufficient available funds  
5 for that transaction.  
6

7  
8 51. Moreover, Chase uses its contractual discretion to cause APPSN Transactions  
9 to incur overdraft fees by knowingly authorizing later transactions that it allows to consume  
10 available funds previously sequestered for APPSN Transactions.  
11

12 52. Chase uses all of these contractual discretion points unfairly to extract  
13 overdraft fees on transactions that no reasonable consumer would believe could cause  
14 overdraft fees.  
15

16 **Plaintiff’s Debit Card Transactions**

17 53. On numerous occasions, Plaintiff was charged overdraft fees in connection  
18 with debit card transactions that settled on the day she was assessed the fee, despite the fact  
19 that positive funds were deducted immediately, prior to the day she was assessed the fee.  
20 At the time that the positive funds were deducted, Plaintiff had a positive balance, which  
21 would not have caused an OD Fee.  
22

23  
24 **CLASS ACTION ALLEGATIONS**

25 54. Plaintiff brings this action on behalf of herself and all others similarly situated.  
26 The Class includes:  
27  
28



1 All holders of a Chase checking account in California who, within the  
2 applicable statute of limitations preceding the filing of this lawsuit,  
3 were charged OD Fees on transactions that were authorized into a  
4 positive available balance (the “APPSN Class” or the “Class”).

5 55. Excluded from the Class are Defendant, their subsidiaries and affiliates, their  
6 officers, directors and member of their immediate families and any entity in which  
7 defendants have a controlling interest, the legal representatives, heirs, successors or assigns  
8 of any such excluded party, the judicial officer(s) to whom this action is assigned, and the  
9 members of their immediate families.  
10

11 56. Plaintiff reserves the right to modify or amend the definition of the proposed  
12 Class herein, and/or to add a Subclass(es) if necessary before this Court determines whether  
13 certification is appropriate.  
14

15 57. The questions here are ones of common or general interest such that there is a  
16 well-defined community of interest among the class members. These questions  
17 predominate over questions that may affect only individual class members because Chase  
18 has acted on grounds generally applicable to the class members.. Such common legal or  
19 factual questions include, but are not limited to:  
20

- 21 a) Whether Chase improperly charged OD Fees on APPSN Transactions;
- 22 b) Whether such conduct enumerated above violates the contract;
- 23 c) Whether such conduct is deceptive or in bad faith;
- 24 d) Whether Plaintiff and other members of the Class have sustained  
25 damages as a result of Chase wrongful business practices described  
26 herein, and the proper measure of damages; and  
27  
28

1 e) Whether Chase's fee disclosures are deceptive and misleading to both its  
2 Bank customers and the general public.

3 58. The parties are so numerous such that joinder is impracticable. Upon  
4 information and belief, and subject to class discovery, the Class consist of thousands of  
5 members or more, the identity of whom are within the exclusive knowledge of and can be  
6 ascertained only by resort to Chase's records. Chase has the administrative capability  
7 through its computer systems and other records to identify all members of the Class, and  
8 such specific information is not otherwise available to Plaintiff.  
9  
10

11 59. It is impracticable to bring Class members' individual claims before the Court.  
12 Class treatment permits a large number of similarly situated persons or entities to prosecute  
13 their common claims in a single forum simultaneously, efficiently and without the  
14 unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or  
15 contradictory judgments that numerous individual actions would engender. The benefits  
16 of the class mechanism, including providing injured persons or entities with a method for  
17 obtaining redress on claims that might not be practicable to pursue individually,  
18 substantially outweigh any difficulties that may arise in the management of this class  
19 action.  
20  
21  
22

23 60. Plaintiff's claims are typical of the claims of the other Class members in that  
24 they arise out of the same wrongful business practices by Chase, as described herein.  
25  
26  
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1           61. Plaintiff is more than an adequate representative of the Class because she has  
2 a Chase checking accounts and has suffered damages as a result of Chase's improper  
3 business practices. In addition:  
4

- 5           a) Plaintiff is committed to the vigorous prosecution of this action on  
6 behalf of herself, and all others similarly situated and have retained  
7 competent counsel experienced in the prosecution of class actions and,  
8 in particular, class actions on behalf of consumers against financial  
9 institutions;
- 10           b) There is no conflict of interest between Plaintiff and the unnamed Class  
11 members;
- 12           c) They anticipate no difficulty in the management of this litigation as a  
13 class action; and
- 14           d) Plaintiff's legal counsel have the financial and legal resources to meet  
15 the substantial costs and legal issues associated with this type of  
16 litigation.

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

19           63. Chase has acted or refused to act on grounds generally applicable to the class,  
20 thereby making appropriate final injunctive relief or corresponding declaratory relief with  
21 respect to the class as a whole.

22           64. All conditions precedent to bringing this action have been satisfied and/or  
23 waived.

24                           **DESCRIPTION OF PUBLIC INJUNCTIONS SOUGHT**

25           65. Plaintiff seeks a public injunction on behalf of herself and the public  
26 prohibiting Chase from making material omissions and misrepresentations to the public as  
27  
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1 to the nature and amount of the fees that it assesses on its customers.

2 66. Fees are one of the most important factors that consumers take into account  
3 when deciding whether to open a checking account, and which financial institution to bank  
4 with. The public has the right to a transparent marketplace in which banks are open and  
5 honest about the number, nature, and amount of fees they charge, and the circumstances  
6 under which those fees are assessed.  
7  
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9 67. The injunctive relief sought by Plaintiff will protect the public from Chase's  
10 deceitful marketing practices which lure customers in by understanding the amount and  
11 frequency it assesses OD Fees. It will prevent Chase from distorting the marketplace by  
12 representing that it charges fewer fees than it actually does.  
13

14 68. Plaintiff seeks to enjoin Chase from misrepresenting and/or omitting material  
15 information as to its fee assessment practices in the documents that it makes available to  
16 the public.  
17

18 **FIRST CAUSE OF ACTION**  
19 **Breach of Contract, Including Breach of the Implied Covenant**  
20 **of Good Faith and Fair Dealing**  
21 **(On behalf of Plaintiff and the Class)**

22 69. Plaintiff incorporates the preceding allegations by reference as if fully set  
23 forth herein.

24 70. Plaintiff and Chase contracted for checking account and debit card services,  
25 as embodied in the Account documents.  
26  
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28

1           71. Chase breached the contract when it charged overdraft fees on APPSN  
2 transactions.

3  
4           72. Plaintiff and members of the putative Class have performed all of the  
5 obligations on them pursuant to the Deposit Account Agreement.

6           73. Plaintiff and members of the putative Class have sustained monetary damages  
7 as a result of Defendant's breach.

8  
9           74. Under the laws of the State of California, where Chase does business, good  
10 faith is an element of every contract. Whether by common law or statute, all such contracts  
11 impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing,  
12 in connection with executing contracts and discharging performance and other duties  
13 according to their terms, means preserving the spirit – not merely the letter – of the bargain.  
14 Put differently, the parties to a contract are mutually obligated to comply with the substance  
15 of their contract in addition to its form. Evading the spirit of the bargain and abusing the  
16 power to specify terms constitute examples of bad faith in the performance of contracts.  
17  
18

19           75. Subterfuge and evasion violate the obligation of good faith in performance  
20 even when an actor believes their conduct to be justified. Bad faith may be overt or may  
21 consist of inaction, and fair dealing may require more than honesty. Examples of bad faith  
22 are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse  
23 of a power to specify terms, and interference with or failure to cooperate in the other party's  
24 performance.  
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1 76. Chase breached the covenant of good faith and fair dealing through its OD  
2 Fee policies and practices as alleged herein.

3  
4 77. Plaintiff and members of the Class have performed all, or substantially all, of  
5 the obligations imposed on them under the Deposit Account Agreement.

6 78. Plaintiff and members of the Class have sustained damages as a result of  
7 Chase's breach of the contract and breach of the covenant of good faith and fair dealing.  
8

9 **SECOND CAUSE OF ACTION**  
10 **Violation of California's Unfair Competition Law,**  
11 **Cal. Bus. & Prof. Code § 17200, *et seq.***  
12 **(On behalf of Plaintiff and the Class)**

13 79. Plaintiff incorporates the preceding allegations by reference as if fully set  
14 forth herein.

15 80. California Business & Professions Code § 17200 prohibits acts of "unfair  
16 competition," including any "unlawful, unfair or fraudulent business act or practice."  
17 Chase's conduct related to the imposition of overdraft fees violated each of this statute's  
18 three prongs.  
19

20 81. Chase committed fraudulent business acts and practices in violation of Cal.  
21 Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly misrepresented  
22 its OD Fee practices as described herein. Chase's representations are likely to mislead the  
23 public with regard to when Chase imposes overdraft fees and when it does not.  
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1 82. Plaintiff relied on Chase's misrepresentations to her detriment. Had she  
2 known that Chase would charge OD Fees on APPSN transactions, Plaintiff would not have  
3 banked at Chase and/or would not have opted-in to Chase's overdraft services.  
4

5 83. As a direct and proximate result of Chase's unfair and deceptive practices,  
6 Plaintiff and the Class members have suffered and will continue to suffer actual damages.  
7

8 84. As a result of its unfair and deceptive conduct, Chase has been unjustly  
9 enriched and should be required to disgorge its unjust profits and make restitution to  
10 Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.  
11

12 85. In addition, Chase's conduct continues to deceive the general public. Chase's  
13 misrepresentations and omissions in its publicly available account documents and  
14 marketing materials are likely to deceive current and prospective accountholders making  
15 corresponding public injunctive relief necessary.  
16

17 86. Plaintiff also seeks an award of attorneys' fees and costs under Cal. Code of  
18 Civ. Proc. § 1021.5.  
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands that a judgment is entered against Defendant for  
22 herself and the Class members as follows:  
23

- 24 (a) Declaring Chase's OD Fee policies and practices to be wrongful,  
25 unfair, and a breach of contract;  
26 (b) A public injunction that enjoins Chase from continuing to  
27 misrepresent its OD Fee policies in its publicly available account  
28 documents and marketing materials;

- (c) Restitution of all relevant OD Fees paid to Chase by Plaintiff and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
- (d) Disgorgement of the ill-gotten gains derived by Chase from its misconduct;
- (e) Actual damages in an amount according to proof;
- (f) Statutory, punitive, and exemplary damages, as permitted by law;
- (g) Pre-judgment interest at the maximum rate permitted by applicable law;
- (h) An order on behalf of the general public enjoining Chase from continuing to employ unfair methods of competition and commit unfair and deceptive acts and practices alleged in this complaint and any other acts and practices proven at trial;
- (i) Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- (j) Such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands, on behalf of herself and all other similarly situated class members, a trial by jury on all issues raised in this complaint that are so triable as a matter of right.

DATED: September 24, 2020

Respectfully submitted by:

/s/ Scott Edelsberg

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**EDELSBERG LAW, PA**



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