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11  
12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**  
14

15 PANGNHIA VUE, individually, and on  
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 PENTAGON FEDERAL CREDIT UNION,  
and DOES 1 through 100, inclusive,

20 Defendants.

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

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

21  
22  
23 **CLASS ACTION COMPLAINT**

24 Plaintiff Pangnhia Vue, on behalf of herself and all persons similarly situated brings this  
25 class action complaint against Pentagon Federal Credit Union (“PenFed,” PCU” or “Credit  
26 Union”), and alleges the following:

27 ///

28 ///

**INTRODUCTION**

1  
2 1. When consumers open an account with their credit union, they have to enter into a  
3 standard contract written by the credit union and its lawyers. All the credit union has to do is honor  
4 the contract it wrote and comply with the terms it dictated.

5 2. PCU promises its customers that if their account balance drops too low to cover a  
6 particular item such as a check, debit, or electronic bill payment, PCU will charge the customer a  
7 single \$30 insufficient funds fee (“NSF Fee”) per item. But as Ms. Vue and consumers all over the  
8 country have discovered, PCU does not abide by this promise. Instead, PCU routinely charges its  
9 customers multiple NSF Fees for the same item, driving their account balances deeper into negative  
10 territory.

11 3. PCU’s customers have been injured by the Credit Union’s improper practices to the  
12 tune of millions of dollars bilked from their accounts in violation PCU’s clear contractual  
13 commitments.

14 4. Ms. Vue, on behalf of herself and two Class of similarly situated consumers, seeks  
15 to end PCU’s abusive and predatory practices and force it to refund all of these improper charges.  
16 She asserts claims for breach of contract; breach of the covenant of good faith and fair dealing; and  
17 a violation of state consumer protection law; and/or unjust enrichment, and seeks damages,  
18 restitution, and injunctive relief, as set forth more fully below.

**PARTIES**

19  
20 5. Pangnhia Vue is a citizen of the State of California and holds a PCU account.

21 6. Defendant Pentagon Federal Credit Union is engaged in the business of providing  
22 retail banking services to consumers, including Plaintiff and members of the putative Class. PCU  
23 has its headquarters and its principal place of business in Alexandria, Virginia, and is a citizen of  
24 the Commonwealth of Virginia. It has more than \$19 billion in assets.

**VENUE AND JURISDICTION**

25  
26 7. This Court has jurisdiction over the subject matter of this action, among other  
27 reasons, pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds  
28 \$5,000,000, exclusive of interest and costs, and is a class action in which at least one member of

1 the class is a citizen of a different State than Defendant. The number of members of the proposed  
2 Class in aggregate exceeds 100. 28 U.S.C. § 1332(d)(5)(B).

3 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a  
4 substantial part of the events and/or omissions giving rise to the Plaintiff's claims occurred in this  
5 District.

6 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

7 **I. PCU CHARGES MORE THAN ONE NSF FEE ON THE SAME ITEM**

8 9. PCU's Membership Disclosures ("Deposit Agreement") and Fee Schedule  
9 (collectively "Account Documents") allow it to charge a *single* \$30 NSF Fee or a *single* \$30 OD  
10 Fee when an item is returned for insufficient funds or paid despite insufficient funds.

11 10. PCU breaches its contract by charging more than one \$30 NSF Fee on the same  
12 item, since the contract explicitly states—and reasonable consumers understand—that the same  
13 item can only incur a single NSF or OD Fee.

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

19 12. PCU's Deposit Agreement does not say that PCU repeatedly charges customers  
20 multiple NSF fees on a single item. To the contrary, the Deposit Agreement indicates it will only  
21 charge a single NSF Fee or OD Fee on an item.

22 **A. Plaintiff's Experience.**

23 13. In support of her claims, Plaintiff offers examples of fees that should not have been  
24 assessed against her account. As alleged below, PCU: (a) reprocessed previously declined items;  
25 and (b) charged an additional fee upon reprocessing, for a total assessment of *\$60 in fees on each*  
26 *item*.

1 14. On May 6, 2021, Plaintiff attempted a payment via ACH. PCU rejected payment of  
2 that item due to insufficient funds in Plaintiff’s account and charged her a \$30 NSF Fee for doing  
3 so. Plaintiff does not dispute this initial fee, as it is allowed by PCU’s Deposit Agreement.

4 15. Unbeknownst to Plaintiff, and without her request to PCU to reprocess the item,  
5 however, six days later on May 12, 2021, PCU processed the same item yet again, with PCU  
6 labeling the transaction a RETRY PYMT on her statements. Again, PCU returned the item unpaid  
7 and charged Plaintiff *another* \$30 NSF Fee for doing so.

8 16. In sum, PCU assessed Plaintiff \$60 in fees in its effort to process a single payment.

9 17. Plaintiff understood the payment to be a single item as is laid out in PCU’s contract,  
10 capable at most of receiving a single NSF Fee (if PCU returned it) or a single OD Fee (if PCU paid  
11 it).

12 18. The same fact pattern occurred on May 7 and May 13, 2021. Plaintiff believes this  
13 also occurred on other occasions, but discovery will be necessary of all of Plaintiff’s account  
14 statements.

15 **B. The Imposition of Multiple NSF Fees on a Single Item Violates PCU’s Express**  
16 **Promises and Representations**

17 19. PCU’s Account Documents state that the Credit Union will assess a single fee of  
18 \$30 for an item that is returned due to insufficient funds.

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

- 21 Returned ACH (Originated at another financial institution), Check, or
- 22 Preauthorized Debit
- 23 • Non-sufficient Funds..... 30.00

24 Fee Schedule, Ex. A (emphasis added).

25 21. This promise is further defined in the Deposit Agreement when PCU promises to  
26 only assess one fee per “item.”  
27  
28

1           **A fee will be assessed for non-sufficient funds** or uncollected funds (deposits on  
2 hold); refer to the Service Fees available at PenFed.org for the amount of this fee.  
3           **This fee applies to withdrawals by means of a check, ACH debit, or an**  
4           **electronic debit. This fee will be assessed should we decline to pay the item or**  
5           **pay the item, creating a negative balance on my account.** PenFed in its sole  
6 discretion will decide whether to pay an item thus creating a negative balance on my  
7 account. My account may be subject to other fees and charges. Service Fees are  
8 available online at PenFed.org or by telephone at 800-247-5626.

6           ...

7           **At PenFed's sole discretion, each check or debit item will either be paid,**  
8           thereby bringing my account to a negative status, **or the item will be returned**  
9           **unpaid.** My account will be subject to the normal non-sufficient funds and  
10 returned-item charges then in effect.

10          Deposit Agreement, Ex. B, at 5, 23 (emphasis added).

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

14           23.       Even if PCU reprocesses an instruction for payment, it is still the same item. The  
15 Credit Union’s reprocessing is simply another attempt to effectuate an accountholder’s original  
16 order or instruction.

17           24.       Further, the Deposit Agreement goes on to specifically discuss the type of  
18 transaction that Plaintiff undertook: a pre-authorized transfer. With respect to pre-authorized  
19 transfers, the Deposit Agreement promises:  
20

21                   **PREAUTHORIZED TRANSFERS. Your account will be charged a fee for**  
22                   **each pre-authorized withdrawal which is not paid because of nonsufficient**  
23                   **funds** or a fee for each pre-authorized withdrawal not paid because of uncollected  
24 funds.

25          Ex. B. at 13 (emphasis added).

26           25.       As alleged herein, Plaintiff took only a single action to make a single transfer; she  
27 therefore created may be charged only a single fee.  
28

1           26.     In sum, PCU promises that one \$30 NSF Fee or one \$30 OD Fee will be assessed  
2 per item, and this must mean all iterations of the same instruction for payment. As such, PCU  
3 breached the contract when it charged more than one fee per item.

4           27.     A reasonable consumer would understand that PCU's Account Documents permit it  
5 to assess an NSF Fee only once per item.

6           28.     Taken together, the representations and omissions identified above convey to  
7 customers that all submissions for payment of the same transaction will be treated as the same  
8 "item," which the Credit Union will either pay (resulting in an overdraft item) or return (resulting  
9 in a returned item) when it decides there are insufficient funds in the account. Nowhere does PCU  
10 disclose that it will treat each reprocessing of a check or ACH payment as a separate item, subject  
11 to additional fees, nor do PCU customers ever agree to such fees.

12           29.     Customers reasonably understand, based on the language of the Account  
13 Documents, that the Credit Union's reprocessing of checks or ACH payments are simply additional  
14 attempts to complete the original order or instruction for payment, and as such, will not trigger  
15 additional NSF Fees. In other words, it is always the same item.

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

18                   "Items and transactions (such as, for example, checks and electronic  
19 transactions/payments) returned unpaid due to insufficient/non-sufficient ("NSF") funds  
20 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.**"

21                   <https://www.cpb.bank/media/2776/fee-001.pdf>. (last visited April 27, 2021).

22           31.     For further example, Klein Bank, which prior to its acquisition in 2019 by Old  
23 National Bank, engaged in the same abusive practices as Defendant, stated as follows in its  
24 banking agreement:

25                   [W]e will charge you an NSF/Overdraft Fee each time: (1) a Bill Payment (electronic or  
26 check) is submitted to us for payment from your Bill Payment Account when, at the time  
27 of posting, your Bill Payment Account is overdrawn, would be overdrawn if we paid the  
28 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

1 and conditions governing your Bill Payment Account. **We will charge an**  
2 **NSF/Overdraft Fee as provided in this section regardless of the number of times an**  
3 **item is submitted or resubmitted to us for payment, and regardless of whether we**  
4 **pay the item or return, reverse, or decline to pay the bill payment.**

5 *Consumer and Small Business Online Access Agreement*, Klein Bank ¶ H, [https://www.klein](https://www.kleinbankonline.com/bridge/disclosures/ib/disclose.html)  
6 [bankonline.com/bridge/disclosures/ib/disclose.html](https://www.kleinbankonline.com/bridge/disclosures/ib/disclose.html) (last accessed September 25, 2019 and  
7 March 17, 2020) (emphasis added).

8 32. Air Academy Federal Credit Union contracts for its NSF fee as:

9 “\$32.00 **per presentment.**”

10 See, <https://www.aafcu.com/fees.html> (emphasis added) (last visited on or about April 23, 2021).

11 33. Community Bank, N.A. unambiguously contracts on this issue:

12 **You may be charged more than one Overdraft or NSF Fee if a**  
13 **merchant submits a single transaction multiple times after it has been**  
14 **rejected or returned.**

15 See, [https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-](https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-FINAL-1.14.2020.pdf)  
16 [FINAL-1.14.2020.pdf](https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-FINAL-1.14.2020.pdf) (emphasis added) (last visited on or about April 23, 2021).

17 34. Delta Community Credit Union contracts unambiguously as follows:

18 “\$35 **per presentment.**”

19 See, <https://www.deltacommunitycu.com/home/fees.aspx> (emphasis added) (last visited on or  
20 about April 23, 2021). Further, in its Account Contract, Delta unambiguously states as follows

21 The Bank reserves the right to charge you an overdraft/insufficient funds  
22 fee if you write a check or initiate an electronic transaction that, if posted,  
23 would overdraw your Checking Account. **Note that you may be charged**  
24 **an NSF fee each time a check or ACH is presented to us, even if it was**  
25 **previously submitted and rejected.**

26 See, [https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-](https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-agreements.aspx)  
27 [agreements.aspx](https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-agreements.aspx) (emphasis added) (last visited on or about April 23, 2021).

28 35. USE Credit Union contracts as follows:

“Overdraft/Non-sufficient Funds (NSF): Applies to checks, Bill Pay, ACH, ATM/POS  
and other electronic debits that are paid or returned. **Fees are charged per presentment,**  
**meaning the same item is subject to multiple fees if presented for payment multiple**  
**times.**”

[https://www.usecu.org/files/Schedule\\_of\\_Fees.pdf](https://www.usecu.org/files/Schedule_of_Fees.pdf) (emphasis added) (last visited April 26, 2021)

1 36. First Financial Bank contracts unambiguously:

2 Merchants or payees may present an item multiple times for payment if the  
3 initial or subsequent presentment is rejected due to insufficient funds or  
4 other reason (representation). **Each presentment is considered an item  
and will be charged accordingly.**

5 See, <https://www.bankatfirst.com/content/dam/bankatfirst/legal/special-handling-charges.pdf>  
6 (emphasis added) (last visited on or about April 27, 2021).

7 37. First Hawaiian Bank unambiguously contracted in 2020 as follows:

8 You agree that **multiple attempts may be made to submit a returned  
9 item for payment and that multiple fees may be charged to you as a  
result of a returned item and resubmission.**

10 See,

11 [https://www.fhb.com/en/assets/File/Home\\_Banking/FHB\\_Online/Terms\\_and\\_Conditions\\_of\\_FH](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FH)  
12 [B\\_Online\\_Services\\_RXPI.pdf](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FH) (emphasis added) (last visited on or about March 17, 2020).

13 38. First Northern Credit Union unambiguously contracts its NSF in its Fee

14 Schedule as follows:

15 “\$29.00 **per each presentment and any subsequent representation(s).**” See,

16 [https://www.fncu.org/feeschedule/?scpage=1&scupdated=1&scorder=-click\\_count](https://www.fncu.org/feeschedule/?scpage=1&scupdated=1&scorder=-click_count)

17 (emphasis added) (last visited on or about April 23, 2021).

18 39. Further, First Northern in its Account Contract, unambiguously contracted

19 its NSF Fee as of 2020 as follows:

20 **You further agree that we may charge a NSF fee each time an item is  
21 presented for payment even if the same item is presented for payment  
multiple times. For example, if you wrote a check to a merchant who  
submitted the payment to us and we returned the item (resulting in a NSF  
22 fee), the merchant may re-present the check for payment again. If the  
second and any subsequent presentments are returned unpaid, we may  
23 charge a NSF fee for each time we return the item. You understand  
this means you could be charged multiple NSF fees for one check that  
you wrote as that check could be presented and returned more than once.  
24 Similarly, if you authorize a merchant (or other individual or entity) to  
electronically debit your account, such as an ACH debit, you understand  
25 there could be multiple submissions of the electronic debit request  
which could result in multiple NSF fees**

26 See,

27 [https://www.fncu.org/SecureAsset.aspx?Path=/7/Member\\_Agreement\\_November\\_1\\_2019.pdf](https://www.fncu.org/SecureAsset.aspx?Path=/7/Member_Agreement_November_1_2019.pdf)  
28 (emphasis added) [last visited on or about March 17, 2020].



1 40. Glendale Federal Credit Union unambiguously contracts its NSF fee as,  
2 “\$30 **per presentment.**”

3 See, [https://www.glendalefcu.org/\\_kcms-doc/2001/58294/Fee-Schedule.pdf](https://www.glendalefcu.org/_kcms-doc/2001/58294/Fee-Schedule.pdf). (emphasis added)  
4 (last visited on or about April 26, 2021).

5 41. Liberty Financial contracts its NSF fee unambiguously as:  
6 “\$27.00 **per presentment.**”

7 See, <https://liberty.financial/about/fee-schedule/> (emphasis added) (last visited on or about April  
8 23, 2021).

9 42. Members First Credit Union contracts unambiguously:

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

18 See, [http://www.membersfirstfl.org/files/mfcufl/1/file/Membership\\_and\\_Account\\_Agreement.pdf](http://www.membersfirstfl.org/files/mfcufl/1/file/Membership_and_Account_Agreement.pdf)  
19 (emphasis added) (last visited on or about April 23, 2021).

20 43. Meriwest Credit Union unambiguously contracts its fee as:

21 “\$35.00/item **per presentment**”.

22 [https://www.meriwest.com/sites/www.meriwest.com/files/media/consumer\\_feesched.pdf](https://www.meriwest.com/sites/www.meriwest.com/files/media/consumer_feesched.pdf)  
23 (emphasis added) (last visited on or about April 23, 2021).

24 44. Partners 1st Federal Credit Union contracts unambiguously:

25 Consequently, because **we may charge a fee for an NSF item each time  
26 it is presented, we may charge you more than one fee for any given  
27 item. Therefore, multiple fees may be charged to you as a result of a  
28 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.**

29 See, [https://s3.us-east-  
30 1.amazonaws.com/assets.partners1stcu.org/uploads/PDFs/Consumer\\_Account\\_Agreement.pdf](https://s3.us-east-1.amazonaws.com/assets.partners1stcu.org/uploads/PDFs/Consumer_Account_Agreement.pdf)  
31 (emphasis added) (last visited on or about April 23, 2021)

1 45. RBC Bank unambiguously contracts:

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

5 See, [https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-](https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf)  
6 [Accounts.pdf](https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf) (emphasis added) (last visited on or about April 23, 2021).

7 46. Regions Bank contracts unambiguously:

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

16 See, [https://www.regions.com/virtualdocuments/Deposit\\_Agreement\\_6\\_1\\_2018.pdf](https://www.regions.com/virtualdocuments/Deposit_Agreement_6_1_2018.pdf) (emphasis  
17 added) (last visited on or about April 23, 2021).

18 47. Tyndall Credit Union Bank contracts its NSF fee as:

19 “\$20.00 **per presentment** (maximum 5 per day).”

20 See, [https://tyndall.org/member\\_center/document\\_center/fee\\_schedule](https://tyndall.org/member_center/document_center/fee_schedule) (emphasis added) (last  
21 visited on or about April 23, 2021).

22 48. PCU provides no such disclosure, and in so doing, breaches its contracts with  
23 accountholders, engages in bad faith conduct, and deceives its accountholders.

24 **C. The Imposition of Multiple NSF Fees on a Single Item Breaches PCU’s Duty of**  
25 **Good Faith and Fair Dealing.**

26 49. Parties to a contract are required not only to adhere to the express conditions in the  
27 contract, but also to act in good faith when they are vested with a discretionary power over the other  
28 party. In such circumstances, the party with discretion is required to exercise that power and  
discretion in good faith. This creates an implied promise to act in accordance with the parties’  
reasonable expectations and means that the Credit Union is prohibited from exercising its discretion  
to enrich itself and gouge its customers. Indeed, the Credit Union has a duty to honor transaction

1 requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising  
2 its discretion to pile on ever greater penalties. Here—in the adhesion agreements PCU foisted on  
3 Plaintiff and its other customers—PCU has provided itself numerous discretionary powers affecting  
4 customers’ bank accounts. But instead of exercising that discretion in good faith and consistent  
5 with consumers’ reasonable expectations, the Credit Union abuses that discretion to take money  
6 out of consumers’ accounts without their permission and contrary to their reasonable expectations  
7 that they will not be charged multiple fees for the same transaction.

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

13 51. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and  
14 other customers—by charging more than one NSF Fee on a single item, PCU breaches the  
15 reasonable expectation of Plaintiff and other customers and in doing so violates the implied  
16 covenant to act in good faith.

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

19 **D. The Imposition of Multiple Fees on a Single Item Is Deceptive and Violative**  
20 **of California Consumer Protection Law.**

21 53. In marketing and promotions, PCU describes itself as a consumer-friendly, low-fee  
22 credit union.

23 54. Amidst a slew of banks and credit unions all competing for consumers’ business,  
24 PCU advertises its accounts as an attractive alternative to accounts at larger, more impersonal  
25 banks, which may involve numerous hidden fees.

26 55. On its website, PCU promises: “Money in, money out. When it comes to routine  
27 banking, you need a checking account that offers the ease of use you need without sucking you dry  
28

1 with added fees. A good checking account is designed to handle all the financial tasks you need on  
2 a routine basis.” See <https://www.penfed.org/learn/what-to-expect-from-your-checking-account>.

3 56. PCU further promises, “Keeping your checking account at a credit union helps you  
4 make the most of even this basic financial resource. ‘As a credit union CEO, my mission is to pay  
5 the most I can on deposits and charge the least on our loans to our member owners,’ said PenFed  
6 Credit Union President and CEO James Schenck. ‘Credit unions exist to maximize value to their  
7 members, not a group of profit-seeking investors.’” See <https://www.penfed.org/learn/what-to-expect-from-your-checking-account>  
8

9 57. PCU specifically advertises its Access America checking accounts as an “account  
10 that earns you more.” See <https://www.penfed.org/accounts/access-america-checking>

11 58. But PCU never discloses that it uses secret, fee-maximizing policies designed to  
12 strip its members of their hard-earned funds. PCU fails to inform consumers that, unlike other banks  
13 (like Chase), it will assess multiple insufficient funds fees on the same item, each and every time it  
14 is re-processed.

15 59. Had Plaintiff known about PCU’s true fee practices, she would not have chosen to  
16 bank with PCU.

17 **CLASS ACTION ALLEGATIONS**

18 60. Plaintiff brings this case, and each of Plaintiff’s respective causes of action, as a class  
19 action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3) on behalf of the  
20 following class:

21 All persons who, within the applicable statute of limitations period, were charged  
22 more than one NSF Fees for the same item in a PCU account.

23 61. Excluded from the Class are: (1) any entity in which Defendant has a controlling  
24 interest; (2) officers or directors of Defendant; (3) this Court and any of its employees assigned to  
25 work on the case; and (4) all employees of the law firms representing Plaintiff and the Class  
26 Members.  
27  
28

1           62. Plaintiff reserves the right to modify or amend the definition of the proposed Class  
2 and/or to add a Subclass(es) if necessary before this Court determines whether certification is  
3 appropriate.

4           63. This action has been brought and may be properly maintained on behalf of each  
5 member of the Class under Federal Rule of Civil Procedure 23.

6           64. **Numerosity of the Class (Federal Rule of Civil Procedure 23(a)(1))** – The  
7 parties are numerous such that joinder is impracticable. Upon information and belief, and subject  
8 to class discovery, the Class consist of thousands of members or more, the identities of whom are  
9 within the exclusive knowledge of and can be ascertained only by resort to PCU's records. PCU  
10 has the administrative capability through its computer systems and other records to identify all  
11 members of the Class, and such specific information is not otherwise available to Plaintiff.

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

20           66. Upon information and belief, Defendant has databases, and/or other  
21 documentation, of its customers' transactions and account enrollment, including electronically  
22 stored information. These databases and/or documents can be analyzed by an expert to ascertain  
23 which of Defendant's account holders has been harmed by its practices and thus qualifies as a  
24 Class Member. Further, the Class definition identifies groups of unnamed plaintiffs by describing  
25 a set of common characteristics sufficient to allow a member of that group to identify herself or  
26 herself as having a right to recover. Other than by direct notice through mail or email, alternative  
27 proper and sufficient notice of this action may be provided to the Class Members through notice  
28 published in newspapers or other publications.

1           67.    **Commonality (Federal Rules of Civil Procedure, Rule 23(a)(2))** – The  
2 questions here are ones of common or general interest such that there is a well-defined  
3 community of interest among the members of the Class. The legal elements of a breach of  
4 contract claim and an unjust enrichment claim are substantially similar in all states from which  
5 inclusion of class members will be sought, or sub-classes may be created, such that certification  
6 will be appropriate. Further, in its Account Agreement, which is attached as Exhibit B, on  
7 information and belief, Defendant contends that uniform laws should be applied to class members  
8 regardless of the state of their citizenship, including the NACHA regulations which apply to all  
9 class members regardless of their state of citizenship. These questions predominate over  
10 questions that may affect only individual Class members because PCU has acted on grounds  
11 generally applicable to the Class. Such common legal or factual questions include, but are not  
12 limited to:

- 13           a. Whether PCU improperly charged NSF Fees;
- 14           b. Whether any of the conduct enumerated above violates the contract;
- 15           c. Whether any of the conduct enumerated above violates the covenant of good faith  
16           and fair dealing;
- 17           d. Whether any of the conduct enumerated above constitutes unjust enrichment; and
- 18           e. The appropriate measure of damages.

19           68.    **Typicality (Federal Rules of Civil Procedure, Rule 23(a)(3))** – Plaintiff’s claims  
20 are typical of all of the Class Members’ claims. The evidence and the legal theories regarding  
21 Defendant’s alleged wrongful conduct committed against Plaintiff and all of the Class Members  
22 are substantially the same because all of the relevant agreements between Defendant and its  
23 customers, including the Fee Schedule and the Deposit Account Agreement, were identical as to  
24 all relevant terms, and also because, *inter alia*, the challenged practices of charging customers for  
25 improper fees are uniform for Plaintiff and all Class Members. Accordingly, in pursuing its own  
26 self-interest in litigating these claims, Plaintiff will also serve the interests of the other Class  
27 Members.

28           69.    **Adequacy (Federal Rules of Civil Procedure, Rule 23(a)(4))** – Plaintiff is more

1 than an adequate representatives of the Class in that they had a PCU account and suffered  
2 damages as a result of Defendant's improper business practices. In addition: Plaintiff is  
3 committed to the vigorous prosecution of this action on behalf of themselves and all others  
4 similarly situated and have retained competent counsel experienced in the prosecution of class  
5 actions and, in particular, class actions on behalf of consumers against financial institutions; there  
6 is no conflict of interest between Plaintiff and the unnamed Class Members; they anticipate no  
7 difficulty in the management of this litigation as a class action; and, Plaintiff's legal counsel has  
8 the financial and legal resources to meet the substantial costs and legal issues associated with this  
9 type of litigation.

10 70. **Predominance and Superiority (Federal Rules of Civil Procedure, Rule**  
11 **23(b)(3))** – The matter is properly maintained as a class action under Rule 23(b)(3) because the  
12 common questions of law or fact identified herein and to be identified through discovery  
13 predominate over questions that may affect only individual Class Members. Further, the class action  
14 is superior to all other available methods for the fair and efficient adjudication of this matter.  
15 Because the injuries suffered by the individual Class Members are relatively small, the expense and  
16 burden of individual litigation would make it virtually impossible for Plaintiff and Class Members to  
17 individually seek redress for Defendant's wrongful conduct. Even if any individual person or  
18 group(s) of Class Members could afford individual litigation, it would be unduly burdensome to the  
19 courts in which the individual litigation would proceed. The class action device is preferable to  
20 individual litigation because it provides the benefits of unitary adjudication, economies of scale, and  
21 comprehensive adjudication by a single court. In contrast, the prosecution of separate actions by  
22 individual Class Members would create a risk of inconsistent or varying adjudications with respect to  
23 individual Class Members that would establish incompatible standards of conduct for the party (or  
24 parties) opposing the Class and would lead to repetitious trials of the numerous common questions of  
25 fact and law. Plaintiff knows of no difficulty that will be encountered in the management of this  
26 litigation that would preclude its maintenance as a class action. As a result, a class action is superior  
27 to other available methods for the fair and efficient adjudication of this controversy. Absent a class  
28 action, Plaintiff and the Class Members will continue to suffer losses, thereby allowing Defendant's

1 violations of law to proceed without remedy and allowing Defendant to retain the proceeds of their  
2 ill-gotten gains.

3 71. This particular forum is desirable for this litigation because Plaintiff resides in this  
4 District, and the claims arose from activities which occurred in this District. Plaintiff does not foresee  
5 significant difficulties in managing the class action in that the major issues in dispute are susceptible to  
6 class proof.

7 72. Plaintiff anticipates the issuance of notice, setting forth the subject and nature of the instant  
8 action, to the proposed Class Members. Upon information and belief, Defendant's own business records  
9 and/or electronic media can be utilized for the contemplated notices. To the extent that any further notices  
10 may be required, Plaintiff anticipates using additional media and/or mailings.

11 73. This matter is properly maintained as a class action pursuant to Rule 23(b) of the  
12 Federal Rules of Civil Procedure, in that:

13 a. Without class certification and determination of declaratory, injunctive,  
14 statutory and other legal questions within the Class format, prosecution of separate  
15 actions by individual members of the Class will create the risk of:

16 1. Inconsistent or varying adjudications with respect to individual  
17 members of the Class which would establish incompatible standards of conduct  
18 for the parties opposing the Class; or

19 2. Adjudication with respect to individual members of the Class,  
20 which would as a practical matter be dispositive of the interests of the other  
21 members not parties to the adjudication or substantially impair or impede their  
22 ability to protect their interests. The parties opposing the Class have acted or  
23 refused to act on grounds generally applicable to each member of the Class,  
24 thereby making appropriate final injunctive or corresponding declaratory relief  
25 with respect to the Class as a whole.

26 b. Common questions of law and fact exist as to the members of the Class  
27 and predominate over any questions affecting only individual members, and a class  
28



1 action is superior to other available methods of the fair and efficient adjudication of the  
2 controversy, including consideration of:

- 3 1. The interests of the members of the Class in individually  
4 controlling the prosecution or defense of separate actions;
- 5 2. The extent and nature of any litigation concerning controversy  
6 already commenced by or against members of the Class;
- 7 3. The desirability or undesirability of concentrating the litigation of  
8 the claims in the particular forum; and
- 9 4. The difficulties likely to be encountered in the management of a  
10 class action.

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

12 **CAUSES OF ACTION**

13 **COUNT I**

14 **BREACH OF CONTRACT**

15 **(On Behalf of Plaintiff and the Class)**

16 75. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing  
17 paragraphs as if fully set forth herein.

18 76. Plaintiff and PCU contracted for account services, as embodied in the relevant  
19 account documents.

20 77. Defendant mischaracterized in the Account Documents its true NSF Fee practices  
21 and breached the express terms of the Account Documents.

22 78. No contract provision authorizes Defendant to charge more than one NSF Fee on  
23 the same item.

24 79. Defendant has breached its contracts with Plaintiff and the Class through its NSF  
25 fee policies and practices as alleged herein.

26 80. Plaintiff and members of the putative Class have performed all of the obligations on  
27 them pursuant to the Credit Union's agreements.  
28

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

3 **COUNT II**  
4 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**  
5 **(On Behalf of Plaintiff and the Class)**

6 82. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing  
7 paragraphs as if fully set forth herein.

8 83. Plaintiff and PCU contracted for account services, as embodied in the Deposit  
9 Agreement and Fee Schedule.

10 84. Under California law and the states wherein PCU does business, a covenant of good  
11 faith and fair dealing is implied in every contract. The covenant of good faith and fair dealing  
12 constrains Defendant's discretion to abuse self-granted contractual powers.

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

15 86. Good faith and fair dealing, in connection with executing contracts and discharging  
16 performance and other duties according to their terms, means preserving the spirit—not merely the  
17 letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply  
18 with the substance of their contract in addition to its form. Evading the spirit of the bargain and  
19 abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

20 87. Subterfuge and evasion violate the obligation of good faith in performance even  
21 when an actor believes her conduct to be justified. A lack of good faith may be overt or may consist  
22 of inaction, and fair dealing may require more than honesty. Other examples of violations of good  
23 faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify  
24 terms, and interference with or failure to cooperate in the other party's performance.

25 88. PCU breached the covenant of good faith and fair dealing through its NSF fee  
26 policies and practices as explained herein.

27 89. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.  
28

1 90. Plaintiff and members of the putative Class have performed all of the obligations  
2 imposed on them pursuant to the Deposit Agreement.

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

5 **COUNT III**  
6 **UNJUST ENRICHMENT**  
7 **(In the Alternative to COUNT I and COUNT II)**  
8 **(On Behalf of Plaintiff and the Class)**

9 92. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing  
10 paragraphs as if fully set forth herein.

11 93. This Count is brought solely in the alternative to Plaintiff's breach of contract and  
12 breach of the covenant of good faith and fair dealing claims. Plaintiff acknowledges that her breach  
13 of contract claim cannot be tried along with unjust enrichment.

14 94. To the detriment of Plaintiff and the Class, Defendant has been, and continues to be,  
15 unjustly enriched as a result of its wrongful conduct alleged herein.

16 95. Plaintiff and the Class conferred a benefit on Defendant when they paid Defendant  
17 the fees that were not disclosed or allowed for in the in the Account Documents.

18 96. Defendant unfairly, deceptively, unjustly, and/or unlawfully accepted said benefits,  
19 which under the circumstances, would be unjust to allow Defendant to retain.

20 97. Defendant's unjust enrichment is traceable to, and resulted directly and proximately  
21 from, the conduct alleged herein.

22 98. Plaintiff and the Class, therefore, seek disgorgement of all wrongfully obtained fees  
23 received by Defendant as a result of its inequitable conduct as more fully stated herein.

24 **COUNT IV**  
25 **Money Had and Received**  
26 **(On Behalf of the Plaintiff and the Class)**

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

100. Defendant has obtained money from Plaintiff and the class members by the exercise  
of undue influence, menace or threat, compulsion or duress, and/or mistake of law and/or fact.



1 from Defendant's unfair and deceptive practices relating to the imposition of the improper fees  
2 outweighs the utility, if any, of those practices.

3 108. Defendant intentionally violated the UCL by engaging in its APPSN overdraft fee  
4 and multiple NSF Fee practices to collect millions of dollars in such fees that were not agreed to  
5 by the parties in the Fee Schedule and Deposit Account Agreement, and which fee practices were  
6 not authorized by Plaintiff and Class Members. Defendant knew it was not permitted to do this.

7 109. Plaintiff and the Class Members suffered ascertainable loss as a result of  
8 Defendant's multiple NSF Fee and Overdraft Fee practices, which necessarily flowed directly from  
9 Defendant's deceit in its scheme to systematically assess such fees against its account holders.

10 110. Plaintiff and all Class Members justifiably relied on Defendant's deceptive  
11 representations they would be assessed fees only as provided in the Class Period Fee Schedule and  
12 Account Agreement.

13 111. Defendant's unfair business practice alleged herein are immoral, unethical,  
14 oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff and the Class  
15 Members. Plaintiff and the Class Members have been damaged by Defendant's deceptive practices.  
16 As a result of Defendant's violations of the UCL, Plaintiff and members of the Class have paid,  
17 and/or will continue to pay improper multiple NSF Fees and OD Fees, and thereby have suffered  
18 and will continue to suffer actual damages.

19 **COUNT VI**

20 **(Violation of the California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.)**

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

23 113. Defendant's Account Contract is a transaction under Civil Code § 1761(e). By  
24 entering into the subject transactions with Defendant, Plaintiff and Class Members are consumers  
25 as that term is defined in Civil Code § 1761(d).

26 114. Defendant's provision of a debit card is a 'service' is defined in Civil Code §  
27 1761(b), and Defendant's bank accounts represent a financial good under Civil Code § 1761(a).  
28

1 115. Defendant has violated Civil Code §§ 1770(a)(5), (9), and (14), through the acts  
2 alleged herein, thereby entitling Plaintiff and members of the class to relief under Civil Code §  
3 1780 by, *inter alia*:

- 4 • Representing that goods or services have characteristics which they do not have or that  
5 a person has a status, affiliation or connection which he or she does not have, in violation  
6 of § 1770(a)(5);
- 7 • Representing goods or services with intent not to sell them as advertised, in violation of  
8 § 1770(a)(9); and,
- 9 • Representing that a transaction confers or involves rights, remedies or obligations which  
10 it does not have or involve, or which are prohibited by law, in violation of § 1770(a)(14).

11 116. Defendant's violations of Civil Code § 1770 described above present a continuing  
12 threat to class members and members of the public in that Defendant is continuing to engage in  
13 these practices, is continuing to refuse to refund amounts paid by consumers, and will not cease  
14 until an injunction is issued by the Court. Plaintiff and the members of the class are also entitled to  
15 an award of attorneys' fees and costs against Defendant pursuant to the provisions of Civil Code §  
16 1780(d).

17 117. By letter dated July 7, 2021, Plaintiff will have mailed notice to Defendant as  
18 directed in Civil Code § 1782, to notify Defendant of its violations of the CLRA and demand that  
19 Defendant provide remedies to rectify their conduct. If Defendant fails to give or agree, within a  
20 reasonable time, a sufficient remedy as set forth in California Civil Code § 1782(c) for the above-  
21 mentioned violations of law, Plaintiff will seek leave to amend this complaint to add a prayer for  
22 relief for damages under the CLRA, including putative damages, but do not seek such damages  
23 until appropriate time after service of the letter has lapsed.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of the Class, demands a jury trial on  
26 all claims so triable and judgment as follows:

- 27 A. Certifying the proposed Class, appointing the Plaintiff as representative of the Class,  
28 and appointing counsel for Plaintiff as lead counsel for the Class;

- 1 B. Declaring that PCU's policies and practices as described herein constitute a breach  
2 of contract and a breach of the covenant of good faith and fair dealing or unjust enrichment;  
3 C. Enjoining PCU from the wrongful conduct as described herein;  
4 D. Awarding restitution of all fees at issue paid to PCU by Plaintiff and the Class as a  
5 result of the wrongs alleged herein in an amount to be determined at trial;  
6 E. Compelling disgorgement of the ill-gotten gains derived by PCU from its  
7 misconduct;  
8 F. Awarding actual and/or compensatory damages in an amount according to proof;  
9 G. Awarding pre-judgment interest at the maximum rate permitted by applicable law;  
10 H. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in  
11 connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to  
12 applicable law and any other basis; and  
13 I. Awarding such other relief as this Court deems just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this  
16 Class Action Complaint that are so triable.

17 Dated: July 7, 2021

18  
19 Respectfully submitted,

20 **THE KICK LAW FIRM, APC**

21  
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