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5
6 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

7 MARY ELLEN BOWERS, on behalf of
herself and all others similarly situated,

8 Plaintiff,

9 v.

10 BANNER BANK,

11 Defendant.

CASE NO:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

12 Plaintiff, Mary Ellen Bowers, individually and on behalf of the class of
13 persons preliminarily defined below, makes the following allegations based upon
14 information and belief, except as to allegations specifically pertaining to Plaintiff,
which are based on personal knowledge.

15 **NATURE OF THE ACTION**

16 1. Plaintiff brings this action on behalf of herself and a class of all
17 similarly situated consumers against Defendant Banner Bank (“Banner” or
18 “Defendant”) over the improper assessment and collection of two or more \$30 fees
19 on a single item returned for insufficient funds in breach of Banner’s contracts and
20

1 its duty of good faith and fair dealing, and the Washington Consumer Protection
2 Act, RCW 19.86.010, et seq.

3 2. Banner misleadingly and deceptively misrepresents each of the above
4 practices, including in its own account contracts. Banner also omits material facts
5 pertaining to each of the above practices, including in its account contracts.

6 3. This is a civil action seeking monetary damages, restitution, and
7 declaratory and injunctive relief.

8 4. As described herein, Defendant's practices violate Washington
9 statutory and common law, as well as the Defendant's own form contracts.

10 5. Defendant's improper scheme to extract funds from account holders
11 has victimized Plaintiff and hundreds of other similarly situated consumers. Unless
12 enjoined, Defendant will continue to engage in these schemes and will continue to
13 cause substantial injury to its consumers.

14 **PARTIES**

15 6. Plaintiff is an individual and resident of Portland, Oregon.

16 7. Defendant Banner Bank is headquartered in Walla Walla,
17 Washington, has over \$14 billion in assets and maintains nearly 200 locations in
18 four states, including Washington.

1 **JURISDICTION AND VENUE**

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

7 9. Venue is proper in this district pursuant to 28 U.S.C. §1391 because
8 Defendant is subject to personal jurisdiction here and conducts business in
9 Washington and because a substantial part of the events or omission giving rise to
10 the claims asserted herein occurred in this district.

11 **BACKGROUND FACTS**

12 **I. BANNER ASSESSES TWO OR MORE FEES ON THE SAME ITEM**
13 **RETURNED FOR INSUFFICIENT FUNDS**

14 10. Plaintiff has a personal checking account with Banner, which is
15 governed by Banner’s “Deposit Account Disclosures,” attached as **Exhibit A** (the
16 “Account Agreement”) and the “Personal Accounts Schedule of Fees,” attached as
17 **Exhibit B** (the “Fee Schedule,” together with the Account Agreement, the
18 “Account Documents”).

19 11. Plaintiff’s checking account with Banner was at all relevant times
20 governed by Banner’s Account Documents, which are standardized form contracts

1 for deposit accounts, the material terms of which are drafted by Banner, amended
2 by Banner from time to time at its convenience and complete discretion, and
3 imposed by Banner on all of its deposit account customers.

4 12. The Account Agreement allows Banner to take certain steps when an
5 account holder attempts a transaction but does not have sufficient funds to cover it.
6 Banner may (a) authorize the transaction and charge a single \$30 Overdraft Fee; or
7 (b) reject the item and charge a single \$30 “Return Item” Fee (“RI Fee”). Ex. A. at
8 9.

9 13. However, Banner assesses two or more fees on the same item returned
10 for insufficient funds in violation of the Account Documents.

11 14. Plaintiff does not dispute Banner’s right to reject an item and charge
12 a single Overdraft Fee or RI Fee, but Defendant unlawfully maximizes its already
13 profitable fee assessment practices by charging multiple fees on the same item in
14 violation of the express terms of its Account Documents.

15 15. Unbeknownst to consumers, each time Defendant reprocesses an
16 electronic payment transaction, ACH transaction, or check for payment after it was
17 initially rejected for insufficient funds, Defendant chooses to treat it as a new and
18 unique item that is subject to yet another fee. But Defendant’s Account Documents
19 never disclose that this counterintuitive and deceptive result could be possible and,
20 in fact, promise the opposite.

1 16. The Account Documents indicate that only a *single* RI Fee or a *single*
2 Overdraft Fee will be charged on an item, however many times an item is
3 reprocessed with no request from the customer to do so.

4 17. An electronic payment item reprocessed after an initial return for
5 insufficient funds, especially through no action by the customer, cannot and does
6 not fairly become a new, unique item for fee assessment purposes.

7 18. This abusive practice is not universal in the financial services industry.
8 Indeed, major banks like Chase—the largest consumer bank in the country—do not
9 undertake the practice of charging more than one fee on the same item when it is
10 reprocessed. Instead, Chase charges one fee even if an item is resubmitted for
11 payment multiple times.

12 19. Defendant’s Account Documents never disclose its practice of
13 charging multiple fees on the same item returned for insufficient funds. To the
14 contrary, its Account Documents indicate it will only charge a single fee on an
15 item.

16 **A. Plaintiff’s Experience**

17 20. Plaintiff offers several examples of fees that should not have been
18 assessed against her checking account. As alleged below, Defendant: (a)
19 reprocessed a previously declined item; and (b) charged a fee upon reprocessing.
20

1 21. On or around April 12, 2019, a payment was attempted from
2 Plaintiff's Banner account.

3 22. Defendant rejected payment of that item due to insufficient funds in
4 Plaintiff's account and on April 12, 2019, charged Plaintiff a \$30 RI Fee for doing
5 so. Plaintiff does not dispute this initial fee, as it is allowed by Defendant's Account
6 Documents.

7 23. Unbeknownst to Plaintiff and without her request to Defendant to
8 reprocess the item, on April 15, 2019, Defendant processed the same item *two*
9 *additional times*, rejecting the item each time due to insufficient funds and charging
10 Plaintiff *another two* \$30 RI Fee that same day on the same item.

11 24. *In total, Banner charged Plaintiff \$90 in RI Fees to process a single*
12 *item.*

13 25. On or around April 5, 2019, three separate payments were attempted
14 from Plaintiff's Banner account.

15 26. Defendant rejected each of these three items due to insufficient funds
16 in Plaintiff's account and on April 5, 2019, charged Plaintiff three \$30 RI Fees for
17 doing so. Plaintiff does not dispute these initial fees, as they are allowed by
18 Defendant's Account Documents.

19 27. Unbeknownst to Plaintiff and without her request to Defendant to
20 reprocess the item, on April 8, 2019, Defendant processed the same three items

1 again, and again rejected the items due to insufficient funds and charged Plaintiff
2 *another three* \$30 RI Fees that same day.

3 28. *In total, Banner charged Plaintiff \$180 in RI Fees to process three*
4 *items.*

5 29. On or around April 1, 2019, a payment was attempted from Plaintiff's
6 Banner account.

7 30. Defendant rejected payment of that item due to insufficient funds in
8 Plaintiff's account and on April 1, 2019, charged Plaintiff a \$30 RI Fee for doing
9 so. Plaintiff does not dispute this initial fee, as it is allowed by Defendant's Account
10 Documents.

11 31. Unbeknownst to Plaintiff and without her request to Defendant to
12 reprocess the item, on April 4, 2019, Defendant processed the same item again, and
13 again rejected the item due to insufficient funds and charged Plaintiff *another* \$30
14 RI Fee that same day.

15 32. *In total, Banner charged Plaintiff \$60 in RI Fees to process a single*
16 *item.*

17 33. Banner also assessed multiple fees on the same item on or around
18 April 15, 2019, April 16, 2019, April 19, 2019, April 22, 2019, April 23, 2019 and
19 April 26, 2019.
20

1 34. *In April 2019 alone, Banner charged Plaintiff a total of \$570 in RI*
2 *Fees.*

3 35. Plaintiff understood each of these payments to be a single item as is
4 laid out in Defendant’s Account Documents, capable at most of receiving a single
5 RI Fee (if Defendant returned it) or a single Overdraft Fee (if Defendant paid it).

6 36. The improper fees charged by Banner were not “errors” but rather
7 were intentional charges made by Banner as part of its standard processing of
8 transactions.

9 37. Plaintiff therefore had no duty to report the fees as “errors” because
10 they were not “errors,” but were systematically and intentionally assessed fees
11 according to Banner’s standard practices.

12 38. Moreover, any such reporting would have been futile as Defendant
13 had made a decision to charge the fees in this specific manner to maximize profits
14 at the expense of customers.

15 39. Despite Plaintiff having no duty to do so, even when Plaintiff did
16 complain to Defendant about the fees, Defendant made clear that it would do
17 nothing to change its fee practices.

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1 **B. The Imposition of Two or More Fees on a Single Item Returned for**
2 **Insufficient Funds Violates Banner’s Express Promises and**
3 **Representations.**

4 40. The Account Documents provide the general terms of Plaintiff’s
5 relationships with Defendant, and therein Defendant makes explicit promises and
6 representations regarding how transactions will be processed, as well as when fees
7 may be assessed.

8 41. The Account Agreement states that “If a check, item or transaction
9 (other than an ATM or everyday debit card transaction) is presented when the
10 available balance is not sufficient in your account at the end of the day to pay it,
11 we may, at our discretion, pay the item (creating an overdraft) or return the item
12 for insufficient funds (NSF).” Ex. A at 9

13 42. The Fee Schedule states:

14 Overdraft or Returned Item
15 (per item, based on available balance) . . . \$30.00

16 Ex. B at 1 (asterisk omitted).

17 43. The words “check,” “item,” and “transaction” are used in their
18 singular forms, indicating that no more than a single fee may be assessed on the
19 same item.
20

1 44. An item is the same item no matter how many times it is re-presented
2 by a merchant. Indeed, more than one fee is impossible for items paid into
3 overdraft, which can only possibly be paid one time.

4 45. In short, these types of transactions and fees covered by the Account
5 Documents can only occur once, and there is no warning that a certain type of
6 transaction or fee can happen more than once.

7 46. The same item on an account cannot conceivably become a new one
8 each time it is rejected for payment then reprocessed, especially when—as here—
9 Plaintiff took no action to resubmit them.

10 47. There is zero indication anywhere in the Account Documents that the
11 same item is eligible to incur multiple fees.

12 48. Even if Banner reprocesses an instruction for payment, it is still the
13 same item. Its reprocessing is simply another attempt to effectuate an account
14 holder’s original order or instruction.

15 49. Reasonable consumers understand any given authorization for
16 payment to be one, singular “item,” as that term is used in the Account Documents.

17 50. Taken together, the representations and omissions identified above
18 convey to Banner members that all submissions for payment of the same item will
19 be treated as the same item, which Banner will either authorize (resulting in a single
20 Overdraft Fee on the item) or reject (resulting in a single RI Fee on the item).

1 Furthermore, Banner members never agree to allow Banner to treat each
2 reprocessing of a check or electronic transaction as a separate item, subject to
3 additional fees.

4 51. Banner members reasonably understand, based on the language of the
5 Account Documents, that Banner's reprocessing of an item is simply an additional
6 attempt to complete the original order or instruction for payment and as such will
7 not trigger additional fees. In other words, the item is always the same item no
8 matter how many times it is reprocessed.

9 52. Banks and credit unions like Banner that employ this abusive practice
10 know how to plainly and clearly promise to consumers that they will assess
11 multiple fees on the same item.

12 53. Parkside Credit Union in Westland, Oregon, states:

13 If the Credit Union returns the item, you will be assessed an NSF Fee.
14 Note that the Credit Union has no control over how many times an
15 intended payee may resubmit the same check or other item to us for
16 payment. In the event the same check or other item is presented for
17 payment on more than one occasion, **your account will be subject to
18 an additional charge** on each occasion that the item is presented for
19 payment.

20 *Membership and Account Agreement*, Parkside Credit Union 21 (Jan. 30, 2020),
<https://cutt.ly/XySm9IY> (emphasis added).

54. First Citizens Bank, a major institution in the Carolinas, engages in
the same abusive practice as Banner, but at least expressly states:

1 Because we may charge a service fee for an NSF item each time it
2 is presented, we may charge you more than one service fee for any
3 given item. All fees are charged during evening posting. When we
4 charge a fee for NSF items, the charge reduces the available balance
5 in your account and may put your account into (or further into)
6 overdraft.

7 *First Citizens Bank Deposit Account Agreement*, First Citizens Bank,
8 <https://cutt.ly/sySEfL9> (last accessed June 29, 2020) (emphasis added).

9 55. First Hawaiian Bank engages in the same abusive practices as Banner,
10 but its customers agree to those practices:

11 YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO
12 SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT
13 MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT
14 OF A RETURNED ITEM AND RESUBMISSION.

15 *Terms and Conditions of FHB Online Services*, First Hawaiian Bank 40,
16 <https://cutt.ly/7ySnDON> (last accessed June 29, 2020) (emphasis added).

17 56. Consumers Credit Union in Kalamazoo, Michigan, states in its
18 member services guide:

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

Member Services Guide, Consumers Credit Union 29 (Nov. 2019),
<https://cutt.ly/iySmfs2>.

1 57. First Financial Bank in Ohio, aware of the commonsense meaning of
2 “item,” clarifies the meaning of that term to its accountholders:

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

7 *Special Handling/Electronic Banking Disclosures of Charges*, First Financial Bank
8 2 (Dec. 2019), <https://cutt.ly/sySnHdz>.

9 58. Central Pacific Bank, a leading bank in Hawai’i, states in its fee
10 schedule under the “MULTIPLE NSF FEES” subsection:

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

17 *Miscellaneous Fee Schedule*, Central Pacific Bank 1 (Oct. 24, 2019),
18 <https://cutt.ly/RySnLTS>.

19 59. Banner makes no such agreement with its members in the Account
20 Documents, and therefore breaches its Account Documents when it assesses
multiple fees on the same item returned for insufficient funds.

II. THE IMPOSITION OF THESE IMPROPER FEES BREACHES BANNER’S DUTY OF GOOD FAITH AND FAIR DEALING

60. Parties to a contract are required not only to adhere to the express
conditions of the contract but also to act in good faith when they are invested with

1 a discretionary power over the other party. This creates an implied duty to act in
2 accordance with account holders' reasonable expectations and means that the bank
3 or credit union is prohibited from exercising its discretion to enrich itself and gouge
4 its customers. Indeed, the bank or credit union has a duty to honor transaction
5 requests in a way that is fair to its customers and is prohibited from exercising its
6 discretion to pile on even greater penalties on its account holders.

7 61. Here—in the adhesion agreements Banner foisted on Plaintiff and its
8 other customers—Banner has provided itself numerous discretionary powers
9 affecting customers' accounts. But instead of exercising that discretion in good
10 faith and consistent with consumers' reasonable expectations, Banner abuses that
11 discretion to take money out of consumers' accounts without their permission and
12 contrary to their reasonable expectations that they will only be charged one RI Fee
13 or one Overdraft Fee.

14 62. Banner abuses its discretion in its own favor—and to the prejudice of
15 Plaintiff and its other customers—when it assesses fees in this manner. By always
16 assessing these fees to the prejudice of Plaintiff and other customers, Banner
17 breaches their reasonable expectations and, in doing so, violates its duty to act in
18 good faith. This is a breach of Banner's implied covenant to engage in fair dealing
19 and to act in good faith.

1 63. It was bad faith and totally outside Plaintiff’s reasonable expectations
2 for Banner to use its discretion in this way.

3 64. When Banner charges improper fees in this way, Banner uses its
4 discretion to interpret the meaning of key terms such as “sufficient funds,”
5 “available balance,” “account balance,” and “item” (none of which are actually
6 defined in the Account Documents) in an unreasonable way that violates common
7 sense and reasonable consumers’ expectations. Banner uses its contractual
8 discretion to set the meaning of those terms to choose a meaning that directly causes
9 more fees.

10 **CLASS ACTION ALLEGATIONS**

11 65. Description of the Class: Plaintiff brings this class action on behalf of
12 herself and the Class of persons defined as follows:

13 All Banner Bank accountholders who, during the applicable statute
14 of limitations, were assessed an Overdraft Fee or a Return Item Fee
15 on an item that had previously been assessed a Return Item Fee
16 (“Multiple Fee Class” or the “Class”).

17 66. Excluded from the Class are Defendant’s officers, directors, affiliates,
18 legal representatives, employees, successors, subsidiaries, and assigns. Also
19 excluded from the Class are any judge, justice, or judicial officer presiding over
20 this matter and the members of their immediate families and judicial staff.

1 67. The time period for the Class is the number of years immediately
2 preceding the date on which this Complaint was filed as allowed by the applicable
3 statute of limitations, going forward into the future until such time as Banner
4 remedies the conduct complained of herein.

5 68. Numerosity: The members of the proposed Class are so numerous that
6 individual joinder of all members is impracticable. The exact number and identities
7 of the members of the proposed Class are unknown at this time and can be
8 ascertained only through appropriate discovery. Plaintiff estimates the number of
9 members in the Class to be in the thousands.

10 69. Common Questions of Law and Fact Predominate: There are many
11 questions of law and fact common to Plaintiff and the Class, and those questions
12 substantially predominate over any questions that may affect individual Class
13 members. Common questions of law and fact include:

- 14 a. whether Banner imposed more than one fee on the same item
15 returned for insufficient funds;
- 16 b. whether Banner violated the terms of its contract through its fee
17 practices as alleged herein;
- 18 c. whether Banner violated its duty of good faith and fair dealing
19 with Plaintiff and other members of the proposed Class by
20 engaging in the fee practices alleged herein;

1 d. Whether Banner violated the Washington Consumer Protection
2 Act, RCW 19.86.010 *et seq.*;

3 e. the proper method or methods by which to measure damages;
4 and

5 f. the declaratory and injunctive relief to which Class members
6 are entitled.

7 70. Typicality: Plaintiff's claims are typical of the claims of the members
8 of the Class. Plaintiff and all members of the Class have been similarly affected by
9 Banner's actions.

10 71. Adequacy of Representation: Plaintiff will fairly and adequately
11 represent and protect the interests of the Class. Plaintiff has retained counsel with
12 substantial experience in prosecuting complex and consumer class action litigation.
13 Plaintiff and her counsel are committed to vigorously prosecuting this action on
14 behalf of the Class and have the financial resources to do so.

15 72. Superiority of Class Action: Plaintiff and the members of the Class
16 suffered, and will continue to suffer, harm as a result of Defendant's unlawful and
17 wrongful conduct. A class action is superior to other available methods for the fair
18 and efficient adjudication of the present controversy. Individual joinder of all
19 members of the Class is impractical. Even if individual Class members had the
20 resources to pursue individual litigation, it would be unduly burdensome to the

1 courts in which the individual litigation would proceed. Individual litigation
2 magnifies the delay and expense to all parties in the court system of resolving the
3 controversies engendered by Defendant's common course of conduct. The class
4 action device allows a single court to provide the benefits of unitary adjudication,
5 judicial economy, and the fair and equitable handling of all class members' claims
6 in a single forum. The conduct of this action as a class action conserves the
7 resources of the parties and of the judicial system and protects the rights of the
8 Class members.

9 73. Risk of Inconsistent or Varying Adjudication: Class action treatment
10 is proper, and this action should be maintained as a class action because the risks
11 of separate actions by individual members of the Class would create a risk of: (a)
12 inconsistent or varying adjudications with respect to individual Class members
13 which would establish incompatible standards of conduct for the Banner as the
14 parties opposing the Class; and/or (b) adjudications with respect to individual Class
15 members would, as a practical matter, be dispositive of the interests of other Class
16 members not party to the adjudication or would substantially impair or impede their
17 ability to protect their interests.

18 74. Action Generally Applicable to Each Class as a Whole: Banner, as the
19 party opposing the Class, has acted or refused to act on grounds generally
20

1 applicable to the Class, thereby making appropriate final injunctive relief or
2 corresponding declaratory relief with respect to each Class as a whole.

3 **FIRST CLAIM FOR RELIEF**

4 **Breach of Contract, Including Breach of the Covenant of Good Faith and Fair**
5 **Dealing**
6 **(On Behalf of Plaintiff and the Multiple Fee Class)**

7 75. Plaintiff realleges and incorporates by reference all the foregoing
8 allegations as if they were fully set forth herein.

9 76. All contracts entered by Plaintiff and the Multiple Fee Class are
10 identical or substantively identical because Banner's form contracts were used
11 uniformly.

12 77. Plaintiff and members of the Multiple Fee Class have performed all,
13 or substantially all, of the obligations imposed on them under the contract.

14 78. Banner has breached the express terms of its own agreements as
15 described herein.

16 79. Banner abused the discretion it granted to itself when it charged
17 multiple fees on the same item returned for insufficient funds.

18 80. Banner also abused the discretion it granted to itself by defining key
19 terms in a manner that is contrary to reasonable account holders' expectations.

20 81. In these and other ways, Banner violated its duty of good faith and fair
dealing.

1 82. Banner willfully engaged in the foregoing conduct for the purpose of
2 (1) gaining unwarranted contractual and legal advantages; and (2) unfairly and
3 unconscionably maximizing fee revenue from Plaintiff and other members of the
4 Multiple Fee Class.

5 83. Plaintiff and members of the Multiple Fee Class have sustained
6 damages as a result of Banner’s breaches of contract, including breaches of contract
7 through violations of the covenant of good faith and fair dealing.

8 84. Plaintiff and the members of the Multiple Fee Class are entitled to
9 declaratory and injunctive relief to prevent Banner from continuing to engage in
10 the foregoing conduct.

11 **SECOND CLAIM FOR RELIEF**
12 **Violations of the Washington Consumer Protection Act, RCW 19.86.010, et**
13 **seq.**
(On Behalf of Plaintiff and the Multiple Fee Class)

14 85. Plaintiff incorporates by reference the preceding paragraphs.

15 86. Washington’s Consumer Protection Act, RCW Ch. 19.86 (“CPA”),
16 protects both consumers and competitors by promoting fair competition in
17 commercial markets for goods and services.

18 87. To achieve that goal, the CPA prohibits any person from using “unfair
19 methods of competition or unfair or deceptive acts or practices in the conduct of
20 any trade or commerce” RCW 19.86.020.

1 88. Plaintiff and members of the Class are “persons” as defined in RCW
2 19.86.010(1).

3 89. Defendant Banner is a “person” as defined in RCW 19.86.010(1).

4 90. As alleged herein, Banner’s routine policies and practices of
5 improperly charging multiple fees violates the CPA because it is unfair and
6 deceptive.

7 91. Banner’s policies and practices are deceptive and unfair because
8 Banner misleadingly and actively omits material facts and deceptively
9 misrepresents the above practices, including in its own account documents.

10 92. Banner’s conduct was deceptive. By failing to honestly disclose its
11 true fee practices and policies to consumers, Banner made affirmative
12 misrepresentations and omissions of material fact, and thus, engaged in deceptive
13 acts or practices.

14 93. Banner conduct was also unfair. Banner’s improper fee practices was
15 and is likely to cause substantial injury to consumers in the form of improper fees.
16 Consumers could not reasonably avoid these fees which were not outweighed by
17 countervailing benefit.

18 94. Had Plaintiff and members of the Class been aware that they were
19 going to be charged fees in the manner Banner assessed them, Plaintiff and
20

1 members of the Class would not have entered into such transactions and would not
2 have incurred such fees.

3 95. As a direct and proximate result of Banner's unfair and deceptive acts
4 and practices in violation of the CPA, Plaintiff and members of the Class have
5 incurred more fees than they should have, and have suffered injury to their business
6 or property in the form of monetary damages for which Banner is liable.

7 96. Banner's unfair and deceptive acts and practices occur in trade or
8 business and have had, and to continue to have, the capacity to deceive a substantial
9 portion of the public. Banner's common courses of unfair and deceptive acts and
10 practices impact the public interest because Banner provides financial services to
11 thousands of consumers in the State of Washington, who are affected by Banner's
12 unfair and deceptive acts and practices.

13 97. Plaintiff and members of the Class seek actual damages plus interest
14 on damages at the legal rate, as well as all other just and proper relief afforded by
15 the CPA. As redress for Banner's repeated and ongoing violations, Plaintiff and
16 members of the Class are entitled to, *inter alia*, actual damages, treble damages,
17 attorney's fees, and injunctive relief.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff on her own behalf and on behalf of the Class
20 respectfully request that the Court:

1 (a) Certify this case as a class action, designating Plaintiff as class
2 representative and designating the undersigned as Class Counsel;

3 (b) Award Plaintiff and the Class actual and statutory damages in an
4 amount to be proven at trial;

5 (c) Award Plaintiff and the Class restitution in an amount to be proven at
6 trial;

7 (d) Award Plaintiff and the Class pre-judgment interest in the amount
8 permitted by law;

9 (e) Award Plaintiff and the Class attorneys' fees and costs as permitted
10 by law;

11 (f) Declare Banner's practices outlined herein to be unlawful and a breach
12 of contract;

13 (g) Enjoin Banner from engaging in the practices outlined herein;

14 (h) Grant Plaintiff and the Class a trial by jury;

15 (i) Grant leave to amend these pleadings to conform to evidence
16 produced at trial; and

17 (j) Grant such other relief as the Court deems just and proper.

18 **JURY DEMAND**

19 Plaintiff demands trial by jury.

20 //

1 DATED this 28th day of August, 2020.

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3 TOUSLEY BRAIN STEPHENS PLLC

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15 Martin F. Schubert (*pro hac vice application*
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4838-2636-9481, v. 1