

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

JO-ANNE FILIPKOWSKI, individually, :  
and on behalf of others similarly situated, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
BETHPAGE FEDERAL CREDIT :  
UNION and DOES 1 through 100, :  
 :  
Defendants. :

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**CLASS ACTION COMPLAINT**

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Plaintiff Jo-Anne Filipkowski (“Plaintiff”), by her attorneys, hereby brings this class and representative action against Bethpage Federal Credit Union and DOES 1 through 100 (collectively “Bethpage” or “Defendant”).

**NATURE OF THE ACTION**

1. All allegations herein are based upon information and belief except those allegations which pertain to Plaintiff or her counsel. Allegations pertaining to Plaintiff or her counsel are based upon, *inter alia*, Plaintiff’s or her counsel’s personal knowledge, as well as Plaintiff’s or her counsel’s own investigation. Furthermore, each allegation alleged herein either has evidentiary support or is likely to have evidentiary support, after a reasonable opportunity for additional investigation or discovery.

2. This is a class and representative action brought by Plaintiff to assert claims in her own right, and in her capacity as the class representative of all other persons similarly situated, and in her capacity as a private attorney general on behalf of the members of the general public. Bethpage wrongfully charged Plaintiff and the Class Members fees related to their checking

accounts.

3. This class action seeks monetary damages, restitution, and injunctive relief due to, *inter alia*, Bethpage's policy and practice to maximize the fees it imposes on members. The conduct has the common denominator of breaching its members' contracts and violating laws so as to maximize Bethpage's fee income, including but not limited to, assessing an overdraft fee or NSF fee on transactions when there was enough money in the checking account to cover (pay for) the transactions presented for payment; imposing more than one NSF fee, or an NSF fee followed by overdraft fee, on the same electronic item or check; charging fees which were neither disclosed nor authorized by the Account Contract or Fee Schedule; enrolling its members into what it calls its "Courtesy Pay" program pertaining to these fees in violation of Regulation E, including but not limited to by offering other services beyond the coverage of ATM and non-recurring debit card transactions and by not describing the overdraft fee service in which it actually engages; violating its own Funds Availability Policy ("FAP") in a manner which increased fees imposed on members; and, charging its members for transferring money from the savings account to the checking account when there was no negative balance to avoid in the checking account. The charging of such fees breaches Bethpage's contracts with its members, who include Plaintiff and the members of the Class.

4. The charging for such fees also violates federal law. Bethpage failed to follow basic prerequisites in its overdraft fee system as required by Regulation E (12 C.F.R. §§1005.17 *et seq.*) of the Electronic Fund Transfer Act (15 U.S.C.A. §§ 1693 *et seq.*), which include, *inter alia*, providing a separate overdraft fee contract that describes the actual overdraft and non-sufficient funds practice used by Bethpage, which may be rejected by the customer, and only collecting fees in the manner described by the fee contract. Regulation E prohibits Bethpage from assessing overdraft fees for automated teller machine (ATM) and non-recurring debit card transactions (12 C.F.R. §1005.17(b)(1)(i)) if it does not meet the Regulation E prerequisites, but Bethpage did charge overdraft fees without meeting the Regulation E prerequisites.

**PARTIES**

5. Plaintiff Jo-Anne Filipkowski is a resident of North Babylon, New York and was a member of Bethpage at all times relevant to the class action allegations.

6. Based on information and belief, Defendant Bethpage Federal Credit Union is and has been a federally chartered credit union with its headquarters located in Bethpage, New York. Bethpage has assets of more than \$9.2 billion, over 405,000 members, and 38 branches. It is a “financial institution” within the meaning of Regulation E (12 C.F.R. § 1005.2(i)).

7. Without limitation, defendants DOES 1 through 100, include agents, partners, joint ventures, subsidiaries and/or affiliates of Bethpage and, upon information and belief, also own and/or operate Bethpage branch locations. Each of defendants DOES 1 through 100 is a “financial institution” within the meaning of Regulation E (12 C.F.R. § 1005.2(i)). As used herein, where appropriate, the term “Bethpage” is also inclusive of Defendants DOES 1 through 100.

8. Plaintiff is unaware of the true names of defendants DOES 1 through 100. Defendants DOES 1 through 100 are thus sued by fictitious names, and the pleadings will be amended as necessary to obtain relief against defendants DOES 1 through 100 when the true names are ascertained, or as permitted by law or by the Court.

9. There exists, and at all times herein mentioned existed, a unity of interest and ownership between the named defendants (including DOES) such that any corporate individuality and separateness between the named defendants has ceased, and that the named defendants are *alter egos* in that the named defendants effectively operate as a single enterprise, or are mere instrumentalities of one another.

10. At all material times herein, each defendant was the agent, servant, co-conspirator and/or employer of each of the remaining defendants, acted within the purpose, scope, and course of said agency, service, conspiracy and/or employment and with the express and/or implied knowledge, permission, and consent of the remaining defendants, and ratified and approved the acts of the other defendants. However, each of these allegations are deemed

alternative theories whenever not doing so would result in a contradiction with the other allegations.

11. Whenever reference is made in this Complaint to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives who was actively engaged in the management, direction, control, or transaction of Defendant's ordinary business and affairs.

12. As to the conduct alleged herein, each act was authorized, ratified or directed by Defendant's officers, directors, or managing agents.

#### **VENUE AND JURISDICTION**

13. This Court has subject matter jurisdiction over this case, among other reasons, pursuant to 28 U.S.C. § 1331 and § 1332(d).

14. Venue is proper in this District, among other reasons, pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is a resident of this District.

#### **FACTUAL ALLEGATIONS**

15. Bethpage offers its consumer banking customers a checking account. One of the features of a Bethpage checking account is a debit card, which can be used for a variety of transactions including the purchasing of goods and services. In addition to receiving a debit card, other features of a Bethpage checking account include the ability to write checks; withdraw money from ATMs; schedule Automated Clearing House (ACH) transactions (certain recurring payments); and other types of transactions that debit from a checking account.

16. In connection with its processing of debit transactions (debit card, ATM, check, ACH, and other similar transactions), Bethpage assesses what it calls "POS Courtesy Pay Usage Fees"; "Uncollected Funds Charge External Withdrawal (Paid)"; "Uncollected Funds Charge External Withdrawal (Returned)"; "Insufficient Funds Charge External Withdrawal (Paid)"; "Insufficient Funds Charge External Withdrawal (Returned)"; "Insufficient Funds Charge CK (Paid)"; "Insufficient Funds Charge CK (Returned)"; and, "Overdraw Protection Withdraw"

fees. As alleged further below, these fees either were not at all permitted to be charged by any Bethpage contract during the class periods, or were charged in breach of the contracts, or were charged without required disclosure or predicate compliance with law.

17. Overdraft fees and Insufficient Funds fees (“NSF fees”) constitute the primary fee generators for banks and credit unions. According to a banking industry market research company, Moebs Services, in 2018 alone, banks generated an estimated \$34.5 billion from overdraft fees. While credit unions portray themselves to customers as more overdraft and fee friendly than banks, a 2015 study conducted by Moebs Services confirmed that the median overdraft fees charged by credit unions are not statistically significantly less than the median overdraft fees charged by banks. For credit unions such as Bethpage, overdraft fees and NSF fees are a major source of revenue and a profit center.

18. Since 2000, the average dollar amount of a checking account transaction has become much lower because customers, and especially younger customers, use debit cards instead of cash or credits cards for everyday purchases. That has translated to the average amount of overdraft transactions are lower than in 2000. However, while the average overdraft transaction is substantially lower and provides much less risk and exposure to the bank, the average cost of overdraft fees per transaction has gone up from \$15 in 2000 to \$29 in 2018.

19. The high cost of an overdraft fee is also usually unfairly punitive. In a 2012 study, more than 90% of customers who were assessed overdraft fees overdrew their account by mistake. (May 2012 Pew Charitable Trust report entitled “Overdraft America: Confusion and Concerns about Bank Practices”, at p. 4). More than 60% of the transactions that resulted in a large overdraft fee were for less than \$50. (June 2014 Pew Charitable Trust report entitled “Overdrawn”, at p. 8). More than 50% of those who were assessed overdraft fees do not recall opting into an overdraft program (*id.* at p. 5), and more than two-thirds of customers would have preferred the financial institution decline their transaction rather than paying the transaction into overdraft and charging a very large fee (*id.* at p. 10).

20. Unfortunately, the customers who are assessed these fees are the most vulnerable

customers. Younger, lower-income, and non-white account holders are among those who were more likely to be assessed overdraft fees. (*Id.* at p. 1). A 25-year-old is 133% more likely to pay an overdraft penalty fee than a 65-year-old. (*Id.* at p. 3). More than 50% of the customers assessed overdraft fees earned under \$40,000 per year. (*Id.* at p. 4). Non-whites are 83% more likely to pay an overdraft fee than whites. (*Id.* at p. 3).

21. As a result of banks and credit unions taking advantage of millions of customers through the unfair practice of charging overdraft fees through methodologies that maximize the possible number of expensive overdraft fees to be charged, there has been a substantial amount of litigation over the past few years. The rulings of these cases have predominantly fallen in favor of consumers, forcing the banks and credit unions to repay their customers significant amounts of wrongfully collected overdraft fees.

22. The federal government has also stepped in to provide additional protections to customers with respect to abusive overdraft policies. In 2010, the Federal Reserve Board enacted regulations giving financial institutions the authority to charge overdraft fees on ATM and one-time debit card transactions only if the institution first obtained the affirmative consent of the customer to do so. (12 C.F.R. § 1005.17 (Regulation E's "Opt-In Rule")). On information and belief, Bethpage calls its Regulation E program "Courtesy Pay."

23. To qualify as affirmative consent for the Regulation E program, the Opt-In Contract must include, but is not limited, to the following:

- The customer must be provided the overdraft policy, including the dollar amount of any fees that will be charged for an overdraft, and the maximum number of fees that can be assessed on any given day (if there is no maximum, that fact must be stated);
- The financial institution must state whether alternatives, such as linking the checking account to a secondary account or line of credit, are available.
- The opt-in consent must be obtained separately from other consents and

acknowledgements;

- The consent cannot serve any purpose other than opting into the overdraft program;
- The consent cannot be a pre-selected checked box;
- The financial institution may not provide different terms for the account depending on whether the customer opted in to the overdraft program.

24. If the financial institution does not obtain proper, affirmative consent from the customer that meets all of the requirements of Regulation E's Opt-in Rule, including fulfilling each of the above requirements, then it is not permitted to charge overdraft fees on ATM and one-time debit card transactions. On information and belief, although formal discovery will be required to confirm this, Bethpage did not fulfill these Regulation E prerequisites. The requirements which it did not fulfill, on information and belief, include, *inter alia*, 1. covering payment, for a fee, of checks and ACH transactions which exceeded the balance in the account for those members who opted into Bethpage's Regulation E Courtesy Pay program but not for those members who did not opt in, and, 2. in its actual Courtesy Pay Contract document, failing to even remotely correctly describe, at least until February 11, 2020, the program pursuant to which Bethpage actually assessed these overdraft fees.

25. There are three balances in an account: the "balance;" the "collected available balance;" and, the "artificial available balance." The "balance" (sometimes called the "actual balance" or "ledger balance") is the money in the account, without deductions for holds on pending transactions or on deposits. It is the official balance of the account. It is the balance provided to the customer in monthly statements, which is the official record of activity in the account. It is the balance used to determine interest on deposits and any minimum balance requirements. Further, based on information and belief, it is the balance which is used by Defendant Bethpage to report its deposits to regulators, shareholders and the public. It is the balance provided to regulators in call reports and reserve reports. It is the balance used in financial reports to shareholders and the balance used for internal financial reporting. It is the

balance used by credit reporting agencies in providing credit ratings of Bethpage.

26. The “collected available balance” is the “balance” less holds placed on certain deposits pursuant to the financial institution’s “Funds Availability Policy” (“FAP”). Regulation CC (12 CFR part 229) establishes maximum permissible hold periods for checks and other deposits and all financial institutions are required by it to have an FAP.

27. The “artificial available balance” is a completely different calculation than the “collected available balance.” Although the “artificial available balance” has the words “available balance” in it like the “collected available balance” does, the “artificial available balance” is an accounting gimmick which takes the “collected available balance” and then further deducts from it pending debit card transactions which have not yet posted (and which might or might not ever post), meaning the money is still in the account of the credit union member.

28. Another accounting gimmick used by some financial institutions, which on information and belief financial institutions such as Defendant may use, is an “approve positive – post negative” (“APPN”) method of calculation. Using APPN, the Defendant places an immediate hold on funds in the balance, to cover the debit transaction in question. The funds placed on hold to cover the transaction are sufficient to fully cover the transaction in question even under whatever accounting gimmick the Defendant is using at the time of the transaction. Therefore, the debit is “approved positive.” These funds are then set aside by the Defendant and not counted by Defendant as existing for any other transactions when determining whether to assess an overdraft or NSF fee on other transactions, even though the funds remain in the member’s account at all times. However, a financial institution using this gimmick will then nonetheless charge an overdraft fee if at the time the transaction in question “posts,” the balance according to Defendant’s accounting gimmick has become negative. In other words, even though Defendant has set aside the specific funds at issue in the subject transaction at the time of the authorization of the debit card transaction – a time when even Defendant admits the account was not negative – and by setting the funds aside the Defendant does not allow those set-aside

funds to be used for any other purposes -- nonetheless the Defendant still charges an overdraft or NSF fee on that same non-negative transaction for which it is holding funds if intervening transactions have brought the balance down to a level at which the posting of the held transaction would now bring the balance into the negative under the financial institution's calculations.

29. Upon information and belief, Bethpage collects overdraft and NSF fees based on the "artificial available balance" and/or the "approve positive – post negative" calculation without contracting to this practice with its members in its contracts. There is no requirement to use such a calculation, and during the class period Bethpage had no authority or statement in any of its contracts with its members prior to the effective date of the Account Agreement of October 20, 2017 ("The New Account Contract") that it would use the "artificial available balance" calculation for purposes of assessing overdraft fees. Not only is the practice of using the "artificial available balance" calculation to determine whether a transaction results in an overdraft or NSF fee is contrary to Bethpage's contracts with its members during the class period, but such practices have resulted in Bethpage improperly charging unlawful overdraft and NSF fees.

30. Bethpage entered into a written contract with Plaintiff and the other Class Members titled "Membership Account Information" listed as effective September 1, 2014 ("The Operative Account Contract"). Nowhere does The Operative Account Contract state that for purposes of calculating whether to impose an overdraft or NSF fee the bank would make deductions from a customer's balance for pending debit card transactions or for holds on deposits. Rather, the contract states in a section entitled "Payments and Overdrafts" on page 9 only that, "Bethpage is under no obligation to pay a check which exceeds the collected balance in your checking account, but Bethpage may, at its election, choose to pay such a check or checks even if such payment creates an overdraft in the account. Nowhere in the Account Contract is "collected balance" defined. Rather, at the end of that same paragraph on page 9, The Operative Account Contract only states, "Please refer to the enclosed fee schedule for current fees." But there is no "fee schedule" enclosed in The Operative Account Contract.

Further, nowhere does The Operative Account Contract state that “collected balance” means deductions will be made from the “balance” for holds on deposits. And certainly nowhere does The Operative Account Contract state, or even hint, that deductions will be made from the “balance” for pending debit card transactions for purposes of assessing whether or not to impose an overdraft fee. Further, there is no mention or definition whatsoever of an NSF fee, only of an overdraft fee.

31. It is undisputable that the Account Contract never states anywhere that holds will be placed on funds in the account for pending debit card transactions, and that those funds will be subtracted from the member’s “balance” to instead create an “artificial available balance” for the purpose of determining overdraft or NSF fees. Nowhere does The Operative Account Contract state that the “artificial available balance” would be used to determine the “collected balance” for purposes of assessing overdraft fees. It is further undisputable that nowhere does The Operative Account Contract define “collected balance” in any manner, let alone as an “artificial available balance” which deducts pending debit card transactions.

32. At best for Bethpage, although Plaintiff disputes it, there might be an arguable ambiguity in The Operative Account Contract as to whether Bethpage might have been allowed to use the “collected available balance” rather than the “balance” for purposes of assessing overdraft and NSF fees, since it does state that an overdraft occurs when there is less money than the “collected balance”, although this is an industry term not familiar to consumers. But under no circumstances is there even an implication that Bethpage could use the “artificial available balance,” meaning an additional unannounced deduction for pending debit card transactions.

33. Further, on information and belief, Bethpage did not comply with its own “funds availability policy” (“FAP”) on deposits in determining the “collected balance.” Specifically, Bethpage states at page 14 of its Account Contract that deposits made at its ATMs would be made available the same day, at least for the first \$200:

**ATM Deposit Availability**

The first \$200 of all funds deposited at an ATM will be available on the day of deposit. The balance will be made available in accordance with the local schedule disclosed below.

On information and belief, Bethpage did not comply with this contractual term of its FAP, as well as other portions of its FAP, and this resulted in fees which should not have been charged Plaintiff and class members. Discovery of Bethpage's databases will be required to confirm this. On information and belief, other violations by Bethpage of its FAP include but are not limited to assessing overdraft and NSF fees when a deposit was made available the same day per its own FAP but deducting debits ahead of it.

34. As stated, a second contract was also required for Bethpage to collect overdraft fees on certain types of transactions. Specifically, Bethpage was required by Regulation E to obtain affirmative consent from Plaintiff and the Class Members through a separate contract for any Regulation E fees. On information and belief, Bethpage called its Regulation E overdraft fee program "Courtesy Pay." The contract pertaining to the Courtesy Pay program governs the terms under which Bethpage may assess Plaintiff and the Class Members overdraft fees for ATM and non-recurring debit card transactions, and in addition to obtaining the members' affirmative agreement to the contract before being allowed to charge overdraft fees for these debit card and ATM transactions, the contract must accurately explain the actual overdraft program, and also must comply with other requirements. On information and belief, Bethpage did not comply with Regulation E's requirements.

35. The importance of Regulation E is highlighted by the fact that the Consumer Financial Protection Bureau's study of actual practices found that: 1) ATM and debit card transactions are by far the most frequent transactions that occur; 2) overdraft fee policies entail expensive fees at very little risk to the financial institutions; and 3) opted-in accounts have seven times as many overdrafts that result in fees as not opted-in accounts.<sup>1</sup>

36. Bethpage's Regulation E Opt-In Contract is a separate document entitled, "What You Need to Know About Overdrafts and Overdraft Fees." ("Opt-In Contract".) It defines an

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<sup>1</sup> [http://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf)

"overdraft" as follows: "An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway." The Opt-In Contract makes clear to the customer opting-in pursuant to Regulation E that this definition applies to non-recurring debit card and ATM transactions, as well as non-Regulation E transactions, including ACH and check transactions. This promise means that Bethpage is not authorized to assess an overdraft fee—because an overdraft has not occurred—unless there is not enough money in the customer's account to cover the transaction, and that this promise applies for all transactions. This language does not in any way state that there will be deductions made from the "balance" in the member's account arising from holds placed on pending debit card transactions to create a different "artificial available balance", nor does the language state holds placed on deposits would lower the "balance" in the account and create a "collected available balance" for purposes of allowing an overdraft fee to be assessed. Furthermore, because, *inter alia*, the Opt-In Contract does not describe Bethpage's actual overdraft practice, the Opt-In Contract fails to comply with the requirements of Regulation E. The Opt-In Contract nonetheless contains promises to which Bethpage is contractually bound.

37. In fact, on information and belief, Bethpage charges overdraft and NSF fees on certain transactions when the balance contains as much or more money than has been requested, but the "artificial available balance" or "collected available balance" does not. Bethpage's practice of charging overdraft and NSF fees, even when there is enough money in the account to cover a transaction presented for payment, is inconsistent with how The Operative Account Contract and Opt-In Contract expressly describe the circumstances under which overdraft fees are assessed.

38. The Opt-In Contract used by Bethpage also violated Regulation E's predicate requirements in other respects, and hence Bethpage was not allowed to charge overdraft fees on ATM withdrawals or non-recurring debit card transactions whatsoever since it failed first to comply with Regulation E as required before being allowed to charge such fees. For example, Regulation E states the consent for the Opt-In Contract must be obtained separately from other

consents and acknowledgements, and Regulation E also states the Opt-In Contract cannot serve any purpose other than opting into the Regulation E overdraft program. Yet in violation of this, on information and belief, Bethpage’s Opt-In Contract also served the purpose of Bethpage paying overdrafted checks and ACH transactions for those of its members who elected to opt-in to the Regulation E overdraft coverage, but not for those members who did not. This is prohibited by Regulation E, and therefore means proper consent was not obtained by Bethpage for any Regulation E transaction. Evidence that Bethpage did this includes the fact that its Operative Fee Schedule indicated the payment of these types of transaction under its Courtesy Pay Program, which is what Bethpage called its Regulation E program:

Courtesy Pay Overdraft Check.....	\$30
Courtesy Pay Overdraft POS (per item).....	\$10
Courtesy Pay Overdraft ACH.....	\$30
NSF/Return item (per item).....	\$30

39. Because it failed to provide the full and accurate disclosures to Plaintiff required by Regulation E, Bethpage failed to obtain Plaintiff’s fully informed consent as required by Regulation E in order for Bethpage to be authorized to charge such overdraft fees. Because Bethpage was not legally authorized to enroll Plaintiff into the program for non-recurring debit card and ATM transactions, Bethpage violated Regulation E when it assessed any overdraft fees against Plaintiff for non-recurring debit card and ATM transactions.

40. Bethpage also had an improper practice of charging multiple NSF fees for the same electronic item at least while its Fee Schedule dated December 2013 (“Effective Fee Schedule”) up to the date its new fee schedule dated October 2019 (“New Fee Schedule”) became effective. Bethpage charged a \$30 fee during the class periods when an electronic item was first processed for payment and Bethpage determined that there supposedly was not enough money in the account to cover the item (a practice that on information and belief uses the wrong “balance” to make the determination as described above). Bethpage then charged an *additional* NSF fee if the same item was presented for processing again, even though the account holder took no action to resubmit the transaction for payment. But, as stated, there was no authority in

the Operative Account Contract to charge an NSF fee whatsoever, only a reference to the Effective Fee Schedule. To the extent Bethpage will argue this was adequate contractual authority to charge not only an overdraft fee, but also an NSF fee, the Fee Schedule in effect at all times during the class period makes clear that the charge allowed for an NSF fee was “per item” and not “per each presentation of the item”:

Courtesy Pay Overdraft Check.....	\$30
Courtesy Pay Overdraft POS (per item).....	\$10
Courtesy Pay Overdraft ACH.....	\$30
NSF/Return item (per item).....	\$30

(Effective Fee Schedule) “Item” means a single electronic transaction. A “re-presentation” or a “retry” of the same “item” does not change it into a new or different “item.” It is still the same “item” being presented by the same merchant in the same dollar amount, not a new “item.” An electronic “item” reprocessed after an initial return for insufficient funds, especially through no action by the customer, cannot and does not fairly become a new, unique additional “item” for additional fee assessment purposes.

41. Further, this practice of charging multiple NSF fees for one item also breaches Bethpage’s New Account Agreement which states it is effective October 20, 2017 (“New Account Contract”), and which states the following about these fees:

If you do not have enough money in your Available Balance at the time an ACH payment is posted to your account, there will be an overdraft. If we pay the ACH, you will be charged **a** Courtesy Pay **fee**. If we decline to pay **it**, then it will be returned unpaid and you will be charged **a** non-sufficient funds (NSF) **fee**. – Checks – The checks you wrote are also presented to us for processing in batches. If you do not have enough money in your Available Balance at the time a check is posted to your account, then there will be **an** overdraft. Again, if we pay the check anyway, then you will be charged **a** Courtesy Pay **fee**. If we decline to pay **it**, then **it** will be returned unpaid and you will be charged **a** non-sufficient funds (NSF) **fee**.

(Emphasis added)

42. As can be seen, the New Account Contract is written in the singular throughout. It states “**a** non-sufficient funds **fee**” will be charged. It states, “If we decline to pay **it**.” “It” is

the “ACH item” or the “check.” Bethpage’s reference to the fee is singular in its use of the word “a” and also singular in its use of the word “fee.” It does not say “multiple” instead of saying “a,” and it does not say “fees” instead of saying “fee.” The wording is all in the singular. Further, nowhere does Bethpage’s New Account Contract state that multiple presentments of the same “item” allow it to charge multiple fees for that same “item.” Nowhere does the New Account Contract state that the NSF fee would be “for each presentment of the “item” or “per presentment of the item.” It does not even have an adjective such as “debit” in front of the word “transaction” to arguably create an ambiguity on this issue. And The Operative Account Contract, as opposed to the New Account Contract, had no authorization for charging any fee whatsoever on an NSF item, only a reference to go see the included Fee Schedule (which was not included) which stated it would be “per item” and did not state “per each presentment of the item.”

43. The Operative Fee Schedule for the class period is also in stark contrast to the New Fee Schedule which replaced it in or about October 2019. With the New Fee Schedule, Bethpage clearly demonstrates it understands it had not been allowed to charge more than one NSF for the same item up until then and therefore now for the first time stated as follows:

*\*Items returned unpaid (e.g., checks, ACH, bill payments, recurring debits) that are re-presented again for payment will be charged additional insufficient or uncollected funds fees if available funds in your account are still insufficient or uncollected when re-presented. Please see your Consumer Member Account Agreement for additional information about when fees may be charged and for all other Terms and Conditions governing your accounts. Business Members should refer to the Business Member Account Agreement and to the Business Account Schedule of Fees for business product fee information.*

44. Of note, unlike Defendant, many financial institutions that do engage in this same or similar abusive practice of charging repeat NSF fees for the same item at least identify the balance it is based on, and at a minimum state this fact in their Account Contracts and/or Fee Schedules. They typically use the terminology such as “per presentment” or “per each presentment” to make this clear, and often also add far more in explaining this practice to avoid the term being ambiguous.

45. The following are some examples from other banks and credit unions that make clear what Bethpage was contractually required to do, if it was going to engage in charging multiple \$30 NSF fees for the same item.

46. Air Academy Federal Credit Union contracts for its NSF fee as follows:  
“\$32.00 **per presentment.**”

See, <https://www.aafcu.com/fees.html> (emphasis added) [last visited on or about March 17, 2020].

47. Central Pacific Bank contracts unambiguously:

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

See, <https://www.cpb.bank/media/1618/fee-001-rev-10-24-2019-misc-fee-schedule.pdf> (emphasis added) [last visited on or about March 17, 2020].

48. Community Bank, N.A. unambiguously contracts:

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

See, <https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-FINAL-1.14.2020.pdf> (emphasis added) [last visited on or about March 17, 2020].

49. Delta Community Credit Union contracts as follows:

“\$30 **per presentment.**”

See, <https://www.deltacommunitycu.com/home/fees.aspx> (emphasis added) [last visited on or about March 17, 2020]. Further, in its Account Contract, Delta unambiguously states as follows:

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

See, <https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-agreements.aspx> (emphasis added) [last visited on or about March 17, 2020].

50. First Financial Bank contracts unambiguously:

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

See, [https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking\\_Disclosure\\_of\\_Charges.pdf](https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf) (emphasis added) [last visited on or about March 17, 2020].

51. First Hawaiian Bank unambiguously contracts:

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

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

52. First Northern Credit Union lists its NSF fee as “\$22.00 **per each presentment and any subsequent representation(s).**”

See, [https://www.fncu.org/feeschedule/?scpage=1&scupdated=1&scorder=-click\\_count](https://www.fncu.org/feeschedule/?scpage=1&scupdated=1&scorder=-click_count) (emphasis added) [last visited on or about March 17, 2020].

Further, in its Account Contract, First Northern unambiguously states as follows:

You further agree that **we may charge a NSF fee each time an item is 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 fee), the merchant may re-present the check for payment again. If the second and any subsequent presentments are returned unpaid, **we may 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. **Similarly,** if you authorize a merchant (or other individual or entity) to electronically debit your account, such as an ACH debit, **you understand there could be multiple submissions of the electronic debit request which could result in multiple NSF fees**

See, [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) (emphasis added) [last visited on or about March 17, 2020].

53. Glendale Federal Credit Union lists its NSF fee as “\$30 **per**

**presentment.**”

See, <https://glendalefcu.org/pdf/fees.pdf> (emphasis added) [last visited on or about March 17, 2020].

54. Klein Bank contracts unambiguously:

[W]e will charge you an NSF/Overdraft Fee each time: (1) a Bill Payment (electronic or check) is submitted to us for payment from your Bill Payment Account when, at the time of posting, your Bill Payment Account is overdrawn, would be overdrawn if we paid the item (whether or not we in fact pay it) or does not have sufficient available funds; or (2) we return, reverse, or decline to pay an item for any other reason authorized by the terms and conditions governing your Bill Payment Account. **We will charge an NSF/Overdraft Fee as provided in this section regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the bill payment.**

See, <https://kleinbankonline.com/bridge/disclosures/ib/disclose.html> (emphasis added) [last visited on or about March 17, 2020].

55. Liberty Financial contracts its NSF fee unambiguously as:

“\$27.00 **per presentment.**”

See, <https://liberty.financial/about/fee-schedule/> (emphasis added) [last visited on or about March 17, 2020].

56. Los Angeles Federal Credit Union contracts its NSF fee unambiguously as:

“\$29 **per presentment.**”

See, [https://www.lafcu.org/pdf/currentfees\\_bus.pdf](https://www.lafcu.org/pdf/currentfees_bus.pdf) (emphasis added) [last visited on or about March 17, 2020].

57. Members First Credit Union contracts unambiguously:

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

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)  
(emphasis added) [last visited on or about March 17, 2020].

58. Meriwest Credit Union contracts its fee as:

“\$35.00/item **per presentment**”.

See, [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)  
(emphasis added) [last visited on or about March 17, 2020].

59. Partners 1<sup>st</sup> Federal Credit Union contracts unambiguously:

Consequently, because **we may charge a fee for an NSF item each time it is presented, we may charge you more than one fee for any given item.** 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.

See, [https://www.partners1stcu.org/uploads/page/Consumer\\_Account\\_Agreement.pdf](https://www.partners1stcu.org/uploads/page/Consumer_Account_Agreement.pdf) (emphasis added) [last visited on or about March 17, 2020].

60. RBC Bank unambiguously contracts:

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

See, <https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf> (emphasis added) [last visited on or about March 17, 2020].

61. Regions Bank contracts unambiguously:

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

See, [https://www.regions.com/virtualdocuments/Deposit\\_Agreement\\_6\\_1\\_2018.pdf](https://www.regions.com/virtualdocuments/Deposit_Agreement_6_1_2018.pdf)  
(emphasis added) [last visited on or about March 17, 2020].

62. Tyndall Federal Credit Union lists its NSF fee as:

“\$28.00 **per presentment** (maximum 5 per day).”

See, [https://tyndall.org/member\\_center/document\\_center/fee\\_schedule](https://tyndall.org/member_center/document_center/fee_schedule) (emphasis added) [last visited on or about March 17, 2020].

63. USE Credit Union contracts unambiguously :

**“Fees are charged per presentment, meaning the same item is subject to multiple fees if presented for payment multiple times.”**

See, [https://www.usecu.org/home/Files/static/documents/Schedule\\_of\\_Fees.pdf](https://www.usecu.org/home/Files/static/documents/Schedule_of_Fees.pdf) (emphasis added) [last visited on or about March 17, 2020].

64. Unlike these other financial institutions, Bethpage did no such thing until October 2019 with the New Fee Schedule. If Bethpage wanted to engage in this abusive practice, it was at least required to state and contract so, as these other financial institutions all do. All of these quotations show that banks and credit unions know how to make a contract if they want to charge more than one fee for the same “item,” and they differentiate between an “item” and the “repeat presentment of the item” when calculating NSF fees. Bethpage’s change to its own contracts with the October 2019 New Fee Schedule shows that Bethpage understands that their prior contracts did not allow it to charge multiple NSF fees for the same item. Only with the New Fee Schedule in October 2019 does Bethpage for the first time state that it will assess an NSF fee each time the same item is “re-presented.”

65. Bethpage’s practice of charging multiple NSF fees for a single electronic transaction is particularly egregious because, as described, Bethpage assesses such fees using an improper calculation of the balance available in a member’s account (the “artificial available balance” and/or on an “approved positive-post negative” calculation) after holding the authorized funds, causing additional confusion and ambiguity. On information and belief, Bethpage therefore often charges an overdraft or NSF fee improperly, and that improper \$30 deduction from a member’s balance further decreases the “balance,” generating even more improper NSF or overdraft fees.

66. Further, on information and belief, Bethpage also charged fees which it had no contractual right to charge, fees which were not authorized or properly disclosed or even mentioned by The Operative Account Contract or its Effective Fee Schedule. These included:

- an “Uncollected Funds Charge External Withdrawal (Paid)”, which Defendant charged Plaintiff at least on September 29, 2014, in the amount of \$30;
- an “Uncollected Funds Charge External Withdrawal (Returned)”, which Defendant charged Plaintiff at least on November 13, 2018, in the amount of \$30;
- an “Uncollected Funds Charge CK (Paid)”, which Defendant charged Plaintiff at least on June 22, 2016, in the amount of \$30;
- an “Insufficient Funds Charge External Withdrawal (Paid)”, which Defendant charged Plaintiff at least on September 3, 2015, in the amount of \$30;
- an “Insufficient Funds Charge External Withdrawal (Returned)” which Defendant charged Plaintiff at least on September 20, 2016, in the amount of \$30;
- an “Insufficient Funds Charge CK (Paid)”, which Defendant charged Plaintiff at least on September 28, 2015, in the amount of \$30; and,
- an “Insufficient Funds Charge CK (Returned)”, which Defendant charged Plaintiff at least on November 16, 2016, in the amount of \$30.

67. 12 CFR § 707.3(a) requires that a credit union like Bethpage make its disclosures pertaining to fees, “...clearly and conspicuously, in writing, and in a form the member or potential member may keep.” Furthermore, 12 CFR Appendix C to Part 707 - Official Staff Interpretations, is the means by which the staff of the Office of General Counsel of the National Credit Union Administration issues official staff interpretations of Part 707 of the NCUA Rules. Regarding the Official Staff Interpretation pertaining to this requirement about disclosure of fees, the Official Staff Interpretation requires that the terminology regarding the fees also must be consistent: “3. Consistent terminology. A credit union must use the same terminology to describe terms or features that are required to be disclosed. For example, if a credit union

describes a monthly fee (regardless of account activity), as a “monthly service fee” in account opening disclosures, the periodic statements and change-in-terms notices must use the same terminology so that members and potential members can readily identify the fee.” 12 CFR Appendix C to Part 707, 707.3(a)3. Furthermore, these Official Staff Interpretations also require that these, “Disclosures must be presented in a format that allows members and potential members to readily understand the terms of their account.” 12 CFR Appendix C to Part 707, 707.3(a) 2. The descriptions used by Bethpage not only do not even remotely comply with these requirements, but are next to impossible to understand by any reasonable person, and were made even more confusing because they were imposed based on a balance in the account not described by Bethpage as the one which would be used to assess fees.

68. To the extent Bethpage attempts to argue an “Insufficient Funds Charge External Withdrawal (Returned)” fee is supposed to mean under the “Effective Fee Schedule” an NSF Fee, not only is the terminology different and inconsistent, and not “clear,” but Bethpage also does not state any such fees would be charged for ACH items, only, arguably, for checks. Further, the Effective Fee Schedule states the charge would be “per item” and not “per each presentment of the item.”

69. To the extent that charging an “Insufficient Funds Charge External Withdrawal (Returned)” fee was permitted at all before the New Fee Schedule became effective, it certainly was not permitted to be charged more than once for the same “item.” Yet Plaintiff was charged such a fee more than once for the same item numerous times, including but not limited to on September 20, 2016, when she was charged \$30 for an item and then on September 22, 2016, when she was again charged \$30 for the same item, and then again on September 26, 2016, when she was charged \$30 a third time for the same item, this last time the item being paid. This is

also an example of Defendant improperly charging a fee twice for not paying the same item, and then charging a fee a third time for the same item but this time paying it, rather than paying it the first time and charging only one fee.

70. An example of Defendant charging Plaintiff a fee as a result of Defendant's practice of using the "artificial available balance" occurred on September 28, 2015, when Plaintiff had \$41.11 in her checking account and spent \$20 thereby reducing her balance to a positive \$21.11. Despite this, because of an artificial hold that Defendant had placed on a pending debit card transaction, Defendant pretended that the balance was not positive and imposed a \$30 fee on Plaintiff, even though she at all times she had enough money in the account to cover the transaction. Another example occurred on October 6, 2014, when Plaintiff had a balance of \$536.19 and paid \$512, leaving her a positive balance of \$24.19. Nonetheless, in breach of the Operative Account Contract and the Operative Opt-In Contract, Defendant pretended the balance was negative at that time and charged a \$30 fee for that transaction. Furthermore, this is an example of a transaction which already had been approved when it was a positive balance even under Defendant's accounting gimmick on October 3, and the money set aside specifically for that transaction and not allowed to be used for anything else, but nonetheless a fee was charged when paid on October 6. Defendant also charged Plaintiff a "Courtesy Pay Usage Fee" during the class period when her balance was positive and, on information and belief, this occurred at least on June 22, 2016, when Plaintiff was assessed a \$10 "POS Courtesy Pay Usage Fee" even though, based on information and belief, her balance was positive at the time that transaction was authorized.

71. Bethpage also improperly charged a fee it called an "Overdraw Protection Withdraw" Fee. The purpose of this \$5 fee was supposed to be to prevent a negative balance

which would lead to an overdraft or NSF fee from occurring by transferring money from a member's savings account to the checking account. However, Bethpage would transfer such money from the savings account to the checking account, and charge the \$5 fee, even when the balance in the checking account was not negative. Defendant did this to Plaintiff at least on May 9, 2015, April 24, 2017, and March 30, 2017, and each time Defendant charged Plaintiff \$5 for transferring the money from the savings account to the checking account even though the checking account was not in a negative balance.

72. On information and belief, the above are just a few examples, and Plaintiff believes that Defendant's database will reveal numerous other and different examples of the improper charging of such fees by Defendant. A review of Defendant's database will be required to determine all such fees.

73. Plaintiff and the Class Members have performed all conditions, covenants, and promises required by each of them in accordance with the terms and conditions of the contracts. Plaintiff did not and could not have, exercising reasonable diligence, discovered both that she had been injured and the actual cause of that injury until she met with her attorneys in or about March 2020. While Plaintiff understood that she was assessed fees, she did not understand the cause of those fees until about March 2020 because Defendant hid its actual practice from its members by describing a different practice in its contracts. It also mis-labeled fees, did not describe them "clearly and conspicuously", and used terminology inconsistently, making it next to impossible for a reasonable person to understand which fees applied to which transactions or were authorized, or that Defendant had violated obscure federal laws, including Regulation E. This not only reasonably delayed discovery, but Defendant's affirmative representations and actions also equitably toll any statute of limitations, and also additionally equitably estop

Defendant.

74. Moreover, the assessment and unilateral taking of improper overdraft or NSF fees further reduces the balance and amount of funds in the account, resulting in and aggressively causing subsequent, otherwise non-overdraft transactions to be improperly treated as transactions for which Bethpage assesses further overdraft or NSF fees. This practice was deemed to be deceptive and substantially harmful to customers by the CFPB, which made the following conclusions in its studies:

Examiners also observed at one or more institutions the following sequence of events after the institutions switched balance-calculation methods: a financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

(*Infra*, Supervisory Highlights, Winter 2015, a pp. 8-9.)

75. Plaintiff and class members were harmed by these practices when they were assessed such fees when they should not have been. A complete evaluation of Bethpage's records is necessary to determine the full extent of Plaintiff's harm from this practice.

### **CLASS ACTION ALLEGATIONS**

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

77. Plaintiff bring this case, and each of her respective causes of action, as a class action pursuant to Federal Rule of Civil Procedure 23(a)(b)(1), (b)(2) and (b)(3) on behalf of the following classes.

**Class One: The Account Balance Class:**

**All United States residents who have or have had accounts with Bethpage who incurred an overdraft fee or NSF fee when the balance in the checking account was sufficient to cover the transaction at issue during the period beginning six years preceding the filing of this Complaint and ending one day before the effective date of the February 11, 2020, Regulation E Opt-In Contract (“New Opt-In Contract”)**

**The Account Balance Sub-Class:**

**All United States residents who have or have had accounts with Bethpage who incurred an overdraft fee or NSF fee when the balance in the checking account was sufficient to cover the transaction at issue during the period beginning six years preceding the filing of this Complaint and ending one day before the effective date of the October 20, 2017, Consumer Member Account Agreement (New Account Contract).**

**Class Two: The Regulation E Class:**

**All United States residents who have or have had accounts with Bethpage who incurred an overdraft fee or overdraft fees for ATM or non-recurring debit card transaction(s) during the period beginning August 15, 2010 and ending one day before the effective date of the February 11, 2020, Regulation E Opt-In Contract (“New Opt-In Contract”)**

**Class Three: The Repeat NSF Class:**

All United States residents who have or have had accounts with Bethpage who incurred an NSF fee more than once for the same item during the period beginning six years preceding the filing of this Complaint and ending one day before the effective date of the October 2019 New Fee Schedule.

**Class Four: The Unauthorized Fees Class:**

All United States residents who have or have had accounts with Bethpage who incurred an “Uncollected Funds Charge External Withdrawal (Paid)”, an “Uncollected Funds Charge External Withdrawal (Returned)”, an “Uncollected Funds Charge CK (Paid)”, an “Insufficient Funds Charge External Withdrawal (Paid)”, an “Insufficient Funds Charge External Withdrawal (Returned)”, an “Insufficient Funds Charge CK (Paid)”, or, an “Insufficient Funds Charge CK (Returned)”, during the period beginning six years preceding the filing of this Complaint and ending one day before the effective date of the October 2019 New Fee Schedule.

**Class Five: The Improper FAP and “Overdraw Protection Withdraw” Fee Class:**

All United States residents who have or have had accounts with Bethpage who incurred a fee as a result of a breach by Defendant of Its Funds Availability Policy or as a result of being charged an “Overdraw Protection Fee” when the balance in the checking account was not negative beginning six years preceding the filing of this Complaint and ending on the day class certification is granted.

78. Excluded from the Classes are: (1) any entity in which Defendant has a controlling interest; (2) officers or directors of Defendant; (3) this Court and any of its employees assigned to work on the case; and (4) all employees of the law firms representing

Plaintiff and the Class Members.

79. This action has been brought and may be properly maintained on behalf of each member of the Class pursuant to Federal Rule of Civil Procedure 23.

80. **Numerosity** – The members of the Class are so numerous that a joinder of all members would be impracticable. While the exact number of Class Members is presently unknown to Plaintiff, and can only be determined through appropriate discovery, Plaintiff believe that the Classes are likely to include thousands of members based on the fact that Bethpage has approximately \$9.2 billion in assets and has over 405,000 members.

81. Upon information and belief, Defendants have databases, and/or other documentation, of its customers' transactions and account enrollment. These databases and/or documents can be analyzed by an expert to ascertain which of Bethpage's members have been harmed by its practices and thus qualify as Class Members. Further, the Class definition identifies groups of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover. Other than by direct notice by mail or email, alternatively proper and sufficient notice of this action may be provided to the Class Members through notice published in newspapers or other publications.

82. **Commonality** – This action involves common questions of law and fact. The questions of law and fact common to both Plaintiff and the Class Members include, but are not limited to, the following:

- a. Whether the Operative Account Contract contracted for Defendant to deduct pending debit card transactions from the balance when determining whether to assess a fee;

b. Whether the Operative Opt-In Contract contracted for Defendant to deduct pending debit card transactions and holds on deposits from the balance when determining whether to assess a fee;

c. Whether, pursuant to the Operative Account Contract, Defendant contracted that it would charge more than one NSF fee for the same item each time that same item was re-presented;

d. Whether, pursuant to the Effective Fee Schedule, Defendant contracted it would charge more than one NSF for the same item, charging an NSF each time the same item was re-presented, or whether this was unambiguously presented for the first time only in the October 2019 New Fee Schedule;

e. Whether, pursuant to the Effective Fee Schedule, Defendant contracted it would charge for the fees it assessed despite the fees not being listed;

f. Whether Defendant abided by its Funds Availability Policy;

g. Whether Defendant charged to transfer money from savings to checking when the balance in the checking account was not negative;

h. Whether the contracts are ambiguous on what fees will be charged under what circumstances;

i. Whether Defendant complied with Regulation E.

83. **Typicality** – Plaintiff's claims are typical of all members of the Class. The evidence and the legal theories regarding Defendant's alleged wrongful conduct committed against Plaintiff and all of the Class Members are substantially the same because all of the relevant agreements between Defendant and its customers, including the Operative Account

Contract and Effective Fee Schedule, were identical as to all relevant terms, and also because, *inter alia*, the challenged practices of charging customers for overdraft fees or NSF fees when there were sufficient funds in the accounts to pay for the transactions at issue, and of assessing multiple NSF fees for the same electronic item, and charging fees not authorized, are uniform for Plaintiff and all Class Members. Accordingly, in pursuing her own self-interest in litigating her claims, Plaintiff will also serve the interests of the other Class Members.

84. **Adequacy** – Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff has retained competent counsel experienced in class action litigation to ensure such protection. There are no material conflicts between the claims of the representative Plaintiff and the members of the Class that would make class certification inappropriate. Plaintiff and her counsel intend to prosecute this action vigorously.

85. **Predominance and Superiority** – The matter is properly maintained as a class action under Federal Rule of Civil Procedure 23(b)(3) because the common questions of law or fact identified herein and to be identified through discovery predominate over questions that may affect only individual Class Members. Further, the class action is superior to all other available methods for the fair and efficient adjudication of this matter. Because the injuries suffered by the individual Class Members are relatively small, the expense and burden of individual litigation would make it virtually impossible for Plaintiff and Class Members to individually seek redress for Defendant's wrongful conduct. Even if any individual person or group(s) of Class Members could afford individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and comprehensive adjudication by a single court. In contrast, the prosecution of separate actions by

individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for the party (or parties) opposing the Class and would lead to repetitious trials of the numerous common questions of fact and law. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Plaintiff and the Class Members will continue to suffer losses, thereby allowing Defendant's violations of law to proceed without remedy and allowing Defendant to retain the proceeds of their ill-gotten gains.

86. Plaintiff does not believe that any other Class Members' interest in individually controlling a separate action is significant, in that Plaintiff has demonstrated above that her claims are typical of the other Class Members and that she will adequately represent the Class. This particular forum is a desirable forum for this litigation because both Defendant resides in this District. Plaintiff does not foresee significant difficulties in managing the class action in that the major issues in dispute are susceptible to class proof.

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

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

- a. Without class certification and determination of declaratory, injunctive,

statutory and other legal questions within the Class format, prosecution of separate actions by individual members of the Class will create the risk of:

1. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class; or
  2. Adjudication with respect to individual members of the Class, which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests. The parties opposing the Class have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.
- b. Common questions of law and fact exist as to the members of the Class and predominate over any questions affecting only individual members, and a class action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:
1. The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
  2. The extent and nature of any litigation concerning controversy already commenced by or against members of the Class;
  3. The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

4. The difficulties likely to be encountered in the management of a class action.

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**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

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

90. Plaintiff and each of the Class Members entered into The Operative Account Contract and Opt-In Contract with Defendant covering the subject of fees related to class members' checking accounts. These contracts were drafted by and is binding upon Defendant.

91. Nowhere did the contracts state that Bethpage would assess an additional NSF fee every time the same electronic item was re-presented for processing or submitted as a "re-try." Bethpage wrongfully treated a "re-try" as a new and separate "item" in violation of the terms of the contracts, and also contradicted its own Effective Fee Schedule which stated the fee would be "per item" not "per each presentment of an item." Further, in the contracts Defendant promised that it would assess a fee only when the transaction caused the balance to fall below zero. Additionally, the operative contracts governed which fees could be charged and under which circumstances, and Bethpage breached these contracts by charging fees not permitted or properly disclosed by the contracts.

92. Plaintiff and the Class Members have performed all conditions, covenants, and promises required by each of them on their part to be performed in accordance with the terms and conditions of the contracts, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

93. Defendant breached the express and implied terms of the contracts and Effective

Fee Schedule by, *inter alia*, charging improper fees.

94. As a proximate result of Defendant's breaches of contracts, Plaintiff and the Class Members have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

**SECOND CAUSE OF ACTION**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

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

96. Plaintiff and each of the Class Members entered into contracts with Defendant covering the subject of overdraft and NSF transactions and other checking account related fees transactions, which have been identified herein, as well as the Operative Fee Schedule. The contracts were drafted by and are binding upon Defendant.

97. In the documents, Bethpage promised that it would only assess a fee when the balance was below zero, and would only assess "a fee" (singular) when it determined a member did not have enough money in his or her account to cover an "item," not multiple NSF "fees" for the same "item." Defendant also promised that it would not charge fees in a manner different than specified in these documents, or charge other additional fees for which there was no contract to charge. Defendant also did not comply with its funds availability policy and sweep from savings to checking in a good faith manner.

98. Good faith is an element of every contract. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Thus, the parties to a contract are mutually obligated to comply with the substance of their

contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms, constitute examples of bad faith in the performance of contracts.

99. The material terms of the contracts therefore included the implied covenant of good faith and fair dealing, whereby Defendant covenanted that it would, in good faith and in the exercise of fair dealing, deal with Plaintiff and each Class member fairly and honestly and do nothing to impair, interfere with, hinder, or potentially injure Plaintiff's and the Class Members' rights and benefits under the contracts.

100. Plaintiff and the Class Members have performed all conditions, covenants, and promises required by each of them on their part to be performed in accordance with the terms and conditions of the contract, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

101. Defendant breached the implied covenant of good faith and fair dealing based, *inter alia*, on its practices of assessing multiple NSF fees for the same electronic item, and of assessing NSF or overdraft fees when there was enough money in the account to cover the transaction, and charging fees in addition to those contracted for and in a manner not contracted for which increased the fees it charged. Defendant could easily have avoided acting in this manner by simply changing the programming in its software to charge only an NSF "per item" as its own Fee Schedule stated it would do, and to charge overdraft fees and NSF fees only when there really was a "negative balance" as its account agreement stated, and to charge its other fees correctly as well. Instead, Defendant unilaterally elected to and did program its software to create accounting gimmicks which would maximize its overdraft and NSF fees. In so doing, and in implementing its checking fees programs for the purpose of increasing and maximizing overdraft fees, Defendant executed its contractual obligations in bad faith, depriving Plaintiff and

the Class Members of the full benefit of the contracts.

102. As a proximate result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiff and the Class Members have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment/Restitution)**

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

104. As a result of the wrongful misconduct alleged above, Defendant unjustly received millions of dollars in overdraft and NSF fees.

105. Because Plaintiff and the Class Members paid the erroneous fees assessed by Defendant, Plaintiff and the Class Members have conferred a benefit on Defendant, albeit undeservingly. Defendant has knowledge of these benefits, as well as the wrongful circumstances under which the moneys were conveyed, and yet has voluntarily accepted and retained the benefit conferred. Should it be allowed to retain such funds, Defendant would be unjustly enriched. Therefore, Plaintiff and the Class Members seek relief as set forth in the Prayer below.

**FOURTH CAUSE OF ACTION**  
**(Money Had and Received)**

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

107. 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.

108. As a result, Defendant has in its possession money which, in equity, belongs to Plaintiff and the Class Members, and thus, this money should be refunded to Plaintiff and the Class Members. Therefore, Plaintiff and the Class Members seek relief as set forth in the Prayer below.

**FIFTH CAUSE OF ACTION**  
**(Violation of Electronic Fund Transfers Act (Regulation E)**  
**C.F.R. § 1005 et seq. (authority derived from 15 U.S.C. § 1693 et seq.))**

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

110. By charging overdraft fees on ATM and nonrecurring transactions, Defendant violated Regulation E (12 C.F.R. §§1005 *et seq.*), whose “primary objective” is “the protection of consumers” (§1005.1(b)) and which “carries out the purposes of the [Electronic Fund Transfer Act (15 U.S.C. §§1693 *et seq.*), the “EFTA”] (§1005.1(b)), whose express “primary objective” is also “the provision of individual consumer rights” (15 U.S.C. §1693(b)).

111. Specifically, the charges violated what is known as the “Opt-In Rule” of Reg E. (12 C.F.R. §1005.17.) The Opt-In Rule states: “a financial institution ... *shall not assess a fee or charge ... pursuant to the institution’s overdraft service, unless the institution: (i) [p]rovides the consumer with a notice in writing [the opt-in notice]... describing the institution’s overdraft service” and (ii) “[p]rovides a reasonable opportunity for the consumer to affirmatively consent” to enter into the overdraft program (Id.) The notice “shall be clear and readily understandable.” (12 C.F.R. §205.4(a)(1).) To comply with the affirmative consent requirement, a financial institution must provide a segregated description of its overdraft practices that is accurate, non-misleading and truthful and that conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide its customers a reasonable opportunity to opt-in after receiving the description. The affirmative consent must be provided in a way mandated by 12 C.F.R. § 1005.17, and the financial institution must provide confirmation of the opt-in in a manner that conforms to 12 C.F.R. § 1005.17.*

112. The intent and purpose of this Opt-In Contract is to “assist customers in understanding how overdraft services provided by their institutions operate ... by explaining the institution’s overdraft service ... in a clear and readily understandable way”—as stated in the Official Staff Commentary (74 Fed. Reg. 59033, 59035, 59037, 5940, 5948), which is “the CFPB’s official interpretation of its own regulation,” “warrants deference from the courts unless ‘demonstrably irrational,’” and should therefore be treated as “a definitive interpretation” of Reg E. *Strubel v. Capital One Bank (USA)*, 2016 U.S. Dist. LEXIS 41487, \*11 (S.D. N.Y. 2016) (quoting *Chase Bank USA v. McCoy*, 562 U.S. 195, 211 (2011)) (so holding for the CFPB’s Official Staff Commentary for the Truth In Lending Act’s Reg Z).

113. Bethpage failed to comply with Regulation E, 12 C.F.R. § 1005.17, which requires affirmative consent before a financial institution is permitted to assess overdraft fees against customers’ accounts through an overdraft program for ATM and non-recurring debit card transactions. Bethpage has failed to comply with the 12 C.F.R. § 1005.17 opt-in requirements, including *inter alia* failing to provide its customers with a valid description of the overdraft program which meets the strictures of 12 C.F.R. § 1005.17, and by providing the additional action of covering non-Regulation E transactions for those who opted in to the Regulation E overdraft program.

114. As a result, Bethpage has harmed Plaintiff and the Class. Due to Bethpage’s violation of Regulation E (12 C.F.R. § 1005.17), Plaintiff and members of the Class are entitled to actual and statutory damages, as well as attorneys’ fees and costs of suit.

#### **SIXTH CAUSE OF ACTION**

##### **(For Violation of New York General Business Law § 349)**

115. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein. By the actions alleged above, Defendant has engaged in deceptive acts or practices against Plaintiff and the Class members in violation of New York General Business Law § 349. The practices were deceptive because, *inter alia*, Defendant promised Plaintiff and

the Class members, including in The Operative Account Contract, that it would only assess fees where the transaction at issue exceeded the actual amount of money in the customer's account, but instead charged fees when the account contained sufficient money to pay for the transaction in question. For those members who agreed to the terms of the Opt-In Contract, they did not provide affirmative consent to enter into the overdraft program because the Opt-In Contract did not accurately describe the overdraft program. That is because the Opt-In Contract indicated that an overdraft would only occur if there was not enough money in the account to complete the transaction, while overdrafts were actually based on a subset of the account from which funds had been deducted due to recent deposits or pending transactions. This practice caused harm in that imposed fees on members when such fees should not have been imposed. Defendant also engaged in a deceptive act or practice when it charged fees for items which it had no authority to charge, which either were not described "clearly and conspicuously" or with "consistent terminology", or even were not set forth at all in either the Effective Fee Schedule or The Operative Account Contract or the Opt-In Contract, or which used labels and terminology which were inconsistent and confusing. Defendant also engaged in a deceptive act or practice because it had a program by which it transferred money from its members' savings accounts into the members' checking accounts to prevent an overdraft or NSF fee from occurring if the checking account does not have enough money in it to cover the transaction. However, Defendant would transfer the money from the savings account to the checking account and charge a fee for the transfer even when there was no possible negative balance. By operating a program for consideration of transferring money from the savings account into the checking account so as to avoid fees which would otherwise result from a negative balance, but then charging the fees despite not needing the transfer to avoid a negative balance, Defendant cost class members

damages in the form of fees which should not have been charged. Defendant also engaged in a deceptive act or practice because it would charge more than one NSF fee on the same item. Not only would it cost Defendant nothing to reject an item, and impose a fee for doing so, but Defendant then would subsequently reject the same item again although it had not been requested by a member to be processed again, and Defendant then would charge an additional fee for that same item if it was rejected again. This practice was materially deceptive as a consumer does not expect to be charged a fee more than once for the same rejected item. Plaintiffs suffered harm from these practices when they were assessed wrongful fees.

116. Under § 349(h) Plaintiff and the Class are entitled to damages and other relief in a form and amount to be determined by a court of law.

### **EIGHTH CAUSE OF ACTION**

#### **(Negligence)**

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

118. In the alternative, to the extent that all or any of above-described conduct was not intentional or contractual, it was negligent and below the standard of care and a dereliction of duties for the directors and officers of SEFCU to establish and implement, or allow to be established and implemented, an overdraft fee or NSF fee program which, *inter alia*, 1. deviated from the terms of its contracts and fee schedules with its members.

119. As a result of such negligence, Plaintiffs and class members were substantially damaged in an amount to be proven at trial and seek relief as set forth in the Prayer below.

### **PRAYER**

WHEREFORE, Plaintiff and the Class pray for judgment as follows:

1. For an order certifying this action as a class action;

2. For compensatory damages on all applicable claims and in an amount to be proven at trial;
3. For an order requiring Defendant to disgorge, restore, and return all monies wrongfully obtained together with interest calculated at the maximum legal rate;
4. For statutory damages;
5. For treble damages;
6. For an order enjoining the wrongful conduct alleged herein;
7. For costs;
8. For pre-judgment and post-judgment interest as provided by law;
9. For attorneys' fees under the Electronic Fund Transfer Act, the common fund doctrine, and all other applicable law; and
10. For such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Class Members demand a trial by jury on all issues so triable.

Dated: April 9, 2020

Respectfully submitted,

WILENTZ, GOLDMAN & SPITZER, P.A.

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\**Pro Hac Vice* applications to be submitted

Attorneys for Plaintiff Jo-Anne Filipkowski and the  
Putative Class

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

### I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

### DEFENDANTS

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

### FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

