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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN DIEGO**

20 ELISA CHRISTENSEN, on behalf of herself
21 and all others similarly situated,

22 Plaintiff,

23 v.

24 ZIONS BANCORPORATION d/b/a
25 CALIFORNIA BANK & TRUST,

26 Defendant.

Case No. 37-2021-00047436-CU-BC-CTL

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Elisa Christensen, on behalf of herself and all persons similarly situated, brings this
3 class action complaint against Zions Bancorporation d/b/a California Bank & Trust (“CB&T,” the
4 “Bank,” or “Defendant”) and alleges the following:

5 **INTRODUCTION**

6 1. This case challenges CB&T’s routine practices of assessing more than one insufficient
7 funds fee (“NSF Fee”) or overdraft fee (“OD Fee”) on the same transaction. CB&T’s customers have
8 been injured by the Bank’s improper practices to the tune of millions of dollars bilked from their
9 accounts in violation of CB&T’s clear contractual commitments.

10 2. Plaintiff, on behalf of herself and a class of similarly situated consumers, seeks to end
11 CB&T’s abusive and predatory practices, and force it to refund all of these improper charges. Plaintiff
12 asserts claims for breach of contract, including breach of the covenant of good faith and fair dealing,
13 and violation of unfair competition laws. Plaintiff seeks damages, restitution, and injunctive relief, as
14 set forth more fully below.

15 3. When assessed in compliance with contractual terms, NSF and OD fees are technically
16 legal, but they have a crushing impact on persons living paycheck to paycheck. This is why the
17 financial services industry is increasingly moving away from such fees.

18 4. For example, Ally Bank, one of the nation’s largest consumer banks, recently stopped
19 assessing overdraft fees altogether. Diane Morais, Ally Bank’s president of consumer and commercial
20 banking, said that one reason is because these fees disproportionately affect people who are living
21 paycheck to paycheck, and Black and Latino households. *Overdraft Fees Are Getting the Boot at Ally*
22 *Financial*, The Wall Street Journal (June 2, 2021), [https://www.wsj.com/articles/overdraft-fees-are-](https://www.wsj.com/articles/overdraft-fees-are-getting-the-boot-at-ally-financial-11622631600)
23 [getting-the-boot-at-ally-financial-11622631600](https://www.wsj.com/articles/overdraft-fees-are-getting-the-boot-at-ally-financial-11622631600) (last accessed September 29, 2021).

24 5. A recent Washington Post article discussed predatory overdraft fees, labeling NSF fees
25 like those California Bank & Trust imposes as “indefensible” because “the customer gets hit with
26 multiple charges for the same item. *I bought my kids dinner – and saw firsthand how overdraft fees*
27 *punish the poor*, The Washington Post (October 1, 2021), <https://www.washingtonpost.com/outlook/i->
28

1 [bought-my-kids-dinner--and-saw-firsthand-how-overdraft-fees-punish-the-](#)
2 [poor/2021/09/30/32383c40-216e-11ec-b3d6-8cdebe60d3e2_story.html](#) (last accessed October 8,
3 2021). The banks “are charging a fee for doing literally nothing.... [T]his is like asking a friend if I can
4 borrow \$20, only to have him take \$10 out of my wallet for turning down my request.” *Id.*

5 **PARTIES**

6 6. Plaintiff is a citizen and resident of Pine Mountain Club, Kern County, California.

7 7. Defendant Zions Bancorporation d/n/a California Bank & Trust is engaged in the
8 business of providing retail banking services to consumers and businesses, including to Plaintiff and
9 members of the putative Class, which includes the issuance of debit cards for use by its customers in
10 conjunction with their checking accounts. CB&T operates banking centers, and thus conducts
11 business, throughout the State of California. Its headquarters are in this county.

12 **JURISDICTION AND VENUE**

13 8. Venue is proper in this District pursuant to CCP § 395(b) because Defendant is
14 headquartered and located in San Diego, California which is in San Diego County.

15 9. This court has personal jurisdiction over CB&T because CB&T is headquartered in this
16 county. Defendant also regularly and systematically provides retail banking services throughout the
17 State of California, including in this county, and provides retail banking services to its customers,
18 including members of the putative Class.

19 **FACTUAL BACKGROUND**

20 **I. CB&T Improperly Charges Multiple Fees on The Same Transaction.**

21 10. CB&T’s August 2020 Deposit Account Agreement (“Deposit Agreement”), attached as
22 Exhibit A hereto, and 2020 Personal Service Charge Information (“Fee Schedule”), attached as Exhibit
23 B hereto (collectively, “Account Documents”), allow CB&T to charge a *single* \$36 NSF Fee or a
24 *single* \$36 OD Fee when a transaction is returned for insufficient funds or paid despite insufficient
25 funds.

1 11. CB&T breaches its Account Documents by charging more than one \$36 NSF Fee
2 and/or OD Fee on the same transaction since the contract explicitly states—and reasonable consumers
3 understand—that the same transaction can only incur a single NSF or OD Fee.

4 12. CB&T’s abusive practices are not standard within the financial services industry.
5 Indeed, major banks like Wells Fargo, do *not* charge more than one NSF Fee per item, even if that
6 item is resubmitted for payment multiple times. And while some other banks engage in the same
7 practices as CB&T, their members agree to terms authorizing the fee practice.

8 13. Until recently when Zions updated its disclosures, Zions’ Account Documents did not
9 say that Zions may repeatedly charge customers multiple fees on a single transaction. To the contrary,
10 the Account Documents indicate Zions will only charge a single NSF Fee or OD Fee on a transaction.

11 **A. Plaintiff’s Experiences.**

12 14. In support of her claim, Plaintiff offers examples of fees that should not have been
13 assessed against her checking account. As alleged below, CB&T: (a) reprocessed previously declined
14 transactions; and (b) charged an additional fee upon reprocessing.

15 15. For example, in May 2019, September 2019, December 2019, February 2020, May
16 2020, and June 2020, amongst other instances, Plaintiff was charged NSF Fees and OD Fees on
17 transactions which were resubmitted by the merchant for payment without Plaintiff’s request to
18 reprocess the transactions. Each merchant request for payment was for a single transaction and, as is
19 laid out in CB&T’s August 2020 Account Documents, should be subject to, at most, a single NSF Fee
20 (if CB&T returned it) or a single OD Fee (if CB&T paid it).

21 **B. The Imposition of Multiple Fees on a Single Transaction Violates CB&T’s Express**
22 **Promises and Representations.**

23 16. CB&T’s 2020 August Account Documents state that the Bank will assess a single fee
24 of \$36 for a transaction that is returned due to insufficient funds.

25 17. According to the November 2020 Fee Schedule, at most a *single* fee will be assessed
26 “per check” or “per ACH” when a “transaction” is returned or paid into overdraft:

27 **INSUFFICIENT FUNDS – Fee is charged:**

- 1 • Per check, ACH, or wire transaction posted against insufficient funds, whether the bank
2 pays or returns the transaction.
- 3 • Per ATM or one-time debit transaction paid against insufficient funds if you have
4 opted-in to our Debit Card Overdraft Service.
- Per multiple-use debit card transaction paid against insufficient funds.
- Per non-debit card withdrawal transaction paid against insufficient funds.

5 Fee Schedule, Ex. B, p. 1.

6 18. The same check, ACH, or other electronic payment on an account is not a new
7 “transaction” each time it is rejected for payment then reprocessed, especially when—as here—
8 Plaintiff took no action to resubmit the transaction.

9 19. Even if CB&T reprocesses an instruction for payment, it is still the same transaction.
10 The Bank’s reprocessing is simply another attempt to effectuate an accountholder’s original order or
11 instruction.

12 20. As alleged herein, Plaintiff took only a single action to make a single payment; she
13 therefore created only one transaction and may be charged only a single fee.

14 21. As the disclosures described above show, Plaintiff never agreed that CB&T may assess
15 multiple NSF Fees or OD Fees for a transaction that was returned for insufficient funds and later
16 reprocessed one or more times and returned again.

17 21. In sum, CB&T promises that one \$36 NSF Fee or one \$36 OD Fee will be assessed per
18 item, and this must mean all iterations of the same instruction for payment. As such, CB&T breached
19 the contract when it charged more than one fee per transaction.

20 22. A reasonable consumer would understand that CB&T’s Account Documents permit it
21 to assess an NSF Fee or OD Fee only once per “transaction.”

22 23. Taken together, the representations and omissions identified above convey to customers
23 that all submissions for payment of the same transaction will be treated as the same “transaction,”
24 which the Bank will either pay (resulting in an overdraft item) or return (resulting in a returned
25 transaction) when it decides there are insufficient funds in the account. Nowhere do CB&T and its
26
27
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1 customers agree that CB&T will treat each reprocessing of a check or ACH payment as a separate
2 transaction, subject to additional fees.

3 24. Customers reasonably understand, based on the language of the Account Documents,
4 that the Bank’s attempts to reprocess checks or ACH payments are simply additional attempts to
5 complete the original order or instruction for payment, and as such, will not trigger additional NSF
6 Fees or OD Fees. In other words, it is always the same transaction. Banks like CB&T that employ this
7 abusive multiple fee practice know how to plainly and clearly disclose it. Indeed, other banks and
8 credit unions that engage in this abusive practice require their accountholders to expressly authorize
9 it—something CB&T never did until recently.

10 25. Recently, CB&T updated its Deposit Agreement to disclose its multiple fee assessment
11 practice for the first time, stating:

12 Re-Presentation of Items – Insufficient Funds Fee. Any items that have been previously
13 returned and are re-presented to us for payment will be recognized as a new item. These
14 items may be assessed an Insufficient Funds Fee (NSF) each time they are presented
15 and returned for insufficient funds when your available balance cannot cover the
16 transaction.

17 26. Prior to making this change, CB&T’s Deposit Agreement had no such clarification and
18 instead its account documents promised consumers the opposite.

19 27. CB&T’s new disclosure brings it in line with other financial institutions who clearly
20 disclose the practice.

21 28. For example, First Hawaiian Bank engages in the same abusive practices as CB&T, and
22 discloses it in its online banking agreement, in all capital letters, as follows:

23 **YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A**
24 **RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY BE**
25 **CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND**
26 **RESUBMISSION.**

27 *Terms and Conditions of FHB Online Services*, First Hawaiian Bank 40, <https://bit.ly/2KWMvTg> (last
28 accessed Jan. 28, 2021) (emphasis added).

29 29. Klein Bank similarly states in its online banking agreement:

1 [W]e will charge you an NSF/Overdraft Fee each time: (1) a Bill Payment (electronic
2 or check) is submitted to us for payment from your Bill Payment Account when, at the
3 time of posting, your Bill Payment Account is overdrawn, would be overdrawn if we
4 paid the item (whether or not we in fact pay it) or does not have sufficient available
5 funds; or (2) we return, reverse, or decline to pay an item for any other reason
6 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.**

7 *Consumer Account Terms and Conditions*, Klein Bank 4 (Jan. 2013), <https://bit.ly/2KVCkhI> (emphasis
8 added).

9 30. Central Pacific Bank, a leading bank in Hawai'i, states in its deposit account under the
10 "MULTIPLE NSF FEES" subsection:

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

15 *Miscellaneous Fee Schedule*, Central Pacific Bank 1 (Jan. 4, 2021),
16 <https://www.cpb.bank/media/2776/fee-001.pdf> (last accessed June 4, 2021).

17 31. BP Credit Union likewise states: "We may charge a fee each time an item is submitted
18 or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned
19 item and resubmission(s) of the returned item." *Membership and Account Agreement*, BP Federal
20 Credit Union, ¶ 14(a), <https://www.bpfcu.org/images/docs/membership-agreement.pdf> (last accessed
21 June 4, 2021).

22 32. Regions Bank likewise states:

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

1 *Deposit Agreement*, Regions Bank 18 (2018), <https://bit.ly/2L0vx6A> (last accessed June 4, 2021).

2 33. Andrews Federal Credit Union states:

3 You understand and agree that a merchant or other entity may make multiple attempts
4 to resubmit a returned item for payment. Consequently, because we may charge a
5 service fee for an NSF item each time it is presented, we may charge you more than one
6 service fee for any given item. Therefore, multiple fees may be charged to you as a
7 result of a returned item and resubmission regardless of the number of times an item is
8 submitted or resubmitted to use for payment, and regardless of whether we pay the item
or return, reverse, or decline to pay the item. When we charge a fee for NSF items, the
charge reduces the available balance in your account and may put your account into (or
further into) overdraft.

9 *Terms & Conditions*, Andrews Federal Credit Union 17 (Aug. 2020), ¶ 6, <https://bit.ly/3iXEdHb> (last
10 accessed June 4, 2021).

11 34. Consumers Credit Union states:

12 Consequently, because we may charge a service fee for an NSF item each time it is
13 presented, we may charge you more than one service fee for any given item. Therefore,
14 multiple fees may be charged to you as a result of a returned item and resubmission
15 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.

16 *Member Services Guide*, Consumers Credit Union 5 (Apr. 2020), ¶ 11a, <https://bit.ly/3iVM1ta> (last
17 accessed June 4, 2021).

18 35. Wright Patt Credit Union states:

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

23 *Important Account Information*, Wright Patt Credit Union 13 (July 2020), ¶ 6.1, (last accessed June 4,
24 2021).

25 36. Railroad & Industrial Federal Credit Union states:

26 Consequently, because we may charge an NSF fee for an NSF item each time it is
27 presented, we may charge you more than one NSF fee for any given item. Therefore,
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1 multiple fees may be charged to you as a result of a returned item and resubmitted to us
2 for payment, and regardless of whether we pay the item or return, reverse, or decline to
3 pay the item.

4 *Important Account Information for Our Members*, Railroad & Industrial Federal Credit Union, p. 2,
5 (Aug. 1, 2019), <https://bit.ly/3t5ehhF> (last accessed June 4, 2021).

6 37. Partners 1st Federal Credit Union states:

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

12 *Consumer Membership & Account Agreement*, Partners 1st Federal Credit Union, p. 11 (Sept. 15,
13 2019), <https://bit.ly/39pDZWb> (last accessed March 2, 2021).

14 38. Members First Credit Union states:

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

21 *Membership and Account Agreement*, Members First Credit Union of Florida 3, <https://bit.ly/39rRJ2Y>
22 (last accessed March 2, 2021).

23 39. Community Bank, N.A. states:

24 We cannot dictate whether or not (or how many times) a merchant will submit a
25 previously presented item. You may be charged more than one Overdraft or NSF Fee if
26 a merchant submits a single transaction multiple times after it has been rejected or
27 returned.

28 *Overdraft and Unavailable Funds Practices Disclosure*, Community Bank 5 (Nov. 12, 2019),
<https://bit.ly/3iY9dH2> (last accessed June 4, 2021).

40. RBC Bank states:

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.

1 *Service Agreement for Personal Accounts*, RBC Bank 13 (Sept. 17, 2014), <https://bit.ly/3otUtko> (last
2 accessed June 4, 2021).

3 41. Diamond Lakes Credit Union states,

4 Your account may be subject to a fee for each item regardless of whether we pay or
5 return the item. We may charge a fee each time an item is submitted or resubmitted for
6 payment; therefore, you may be assessed more than one fee as a result of a returned
7 item and resubmission(s) of the returned item.

7 *Membership and Account Agreement*, Diamond Lakes Federal Credit Union, <https://bit.ly/39o2P94>
8 (last accessed June 4, 2021).

9 42. Parkside Credit Union states,

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

14 *Membership and Account Agreement*, Parkside Credit Union 21 (Jan. 30, 2020), <https://bit.ly/3aaXfpG>
15 (last accessed March 2, 2021).

16 43. CB&T provides no such disclosure, and by not doing so, deceives its accountholders.

17 **C. The Imposition of Multiple Fees on a Single Transaction Breaches CB&T's Duty**
18 **of Good Faith and Fair Dealing.**

19 44. Parties to a contract are required not only to adhere to the express conditions in the
20 contract, but also to act in good faith when they are vested with a discretionary power over the other
21 party. This is the law of California and nearly all states. Further, as to bank transactions, the Uniform
22 Commercial Code (“UCC”)—which has been adopted by all states—mandates good faith and fair
23 dealing. As such, when a party such as CB&T gives itself discretion to act, the party with discretion is
24 required to exercise that power and discretion in good faith. This creates an implied promise to act in
25 accordance with the parties’ reasonable expectations and means that the Bank is prohibited from
26 exercising its discretion to enrich itself and gouge its customers. Indeed, the Bank has a duty to honor
27 transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from
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1 exercising its discretion to pile on ever greater penalties. Here—in the adhesion agreements CB&T
2 foisted on Plaintiff and its other customers—CB&T has provided itself numerous discretionary powers
3 affecting customers’ bank accounts. But instead of exercising that discretion in good faith and
4 consistent with consumers’ reasonable expectations, the Bank abuses that discretion to take money out
5 of consumers’ accounts without their permission and contrary to their reasonable expectations that
6 they will not be charged multiple fees for the same transaction.

7 45. CB&T exercises its discretion in its own favor—and to the prejudice of Plaintiff and its
8 other customers—when it defines “transaction” in a way that directly leads to more NSF or OD Fees.
9 Further, CB&T abuses the power it has over customers and their bank accounts and acts contrary to
10 their reasonable expectations under the Account Documents. This is a breach of the Bank’s implied
11 covenant to engage in fair dealing and act in good faith.

12 46. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and other
13 customers—by charging more than one fee on a single transaction, CB&T breaches the reasonable
14 expectation of Plaintiff and other customers and in doing so violates the implied covenant to act in
15 good faith.

16 47. It was bad faith and totally outside Plaintiff’s reasonable expectations for CB&T to use
17 its discretion to assess multiple NSF Fees and/or OD Fees for a single attempted payment.

18 **II. CB&T Fraudulently Conceals Its Practices from Accountholders**

19 48. Not only did CB&T misrepresent the truth about its fee practices in its account contract,
20 CB&T also fraudulently concealed its fee practices from its customers, such as Plaintiff.

21 49. Specifically, CB&T issued monthly statements to its accountholders that disguised and
22 made it difficult to discover its multiple fee practice.

23 50. Pursuant to federal law, Regulation E of the Electronic Funds Transfer Act, those
24 monthly statements are the primary disclosure a bank provides its accountholders regarding the
25 assessment of overdraft or NSF Fees on an account.

26 51. However, the design of CB&T’s bank statements made it difficult for Plaintiff to
27 discover the truth about CB&T’s practices.

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1 52. For example, CB&T bank statements are formatted to separately list debits, credits, and
2 bank fees, which makes difficult for a reasonable consumer to correlate transactions with any
3 corresponding bank fees. *See* Ex. C. As a result, CB&T makes it difficult to determine from the
4 statements that it even assesses multiple fees on the same item when it is resubmitted for payment
5 multiple times.

6 43. As shown in the redacted bank statement provided to Plaintiff, at Exhibit C, it is not
7 clear, nor will it become clear through a reasonable investigation, that CB&T assessed multiple fees on
8 the same “So Calif Edison” transaction when it was resubmitted for payment multiple times.

9 44. CB&T designs its statements in this manner to make it difficult for reasonable
10 consumers like Plaintiff to discover CB&T true multiple NSF and OD fee practice.

11 45. Plaintiff did not and could not discover CB&T’s improper fee assessment practices, as
12 described herein, on the bank statements issued by CB&T.

13 46. Indeed, despite diligently checking her statements each month and monitoring her bank
14 account, Plaintiff was unable to identify that a breach had occurred until July 2021 when she consulted
15 with her attorneys, who are experienced in identifying these fee practices.

16 **CLASS ACTION ALLEGATIONS**

17 47. Definition of the Class: Plaintiff brings this action on behalf of herself and on behalf of
18 all others similarly situated. The Class includes:

19 All persons in the State of California who, within the applicable statute of limitations
20 period, were charged multiple fees for the same transaction in a CB&T checking
21 account.

22 48. The time period for the Class is the number of years immediately preceding the date on
23 which this Complaint was filed as allowed by the applicable statute of limitations, until such time as
24 CB&T disseminated its new account agreement disclosing the practice for the first time

25 49. Excluded from the Class are CB&T and its subsidiaries, affiliates, and any entities in
26 which it has a controlling interest, and each of the officers, directors, immediate family members, legal
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1 representatives, heirs, successors, or assigns of any such excluded party, the judicial officer(s) to
2 whom this action is assigned, and the members of their immediate families.

3 50. Plaintiff reserves the right to modify or amend the definition of the proposed Class
4 and/or to add a sub-class if necessary, before this Court determines whether certification is
5 appropriate.

6 51. Common Questions of Law and Fact Predominate. The questions here are ones of
7 common or general interest such that there is a well-defined community of interest among the
8 members of the Class. These questions predominate over questions that may affect only individual
9 Class members because CB&T has acted on grounds generally applicable to the Class. Such common
10 legal or factual questions include, but are not limited to:

- 11 a) Whether CB&T improperly charged multiple fees on a transaction;
- 12 b) Whether any of the conduct enumerated above violates the parties' contract;
- 13 c) Whether any of the conduct enumerated above violates the covenant of good faith and
14 fair dealing; and
- 15 d) The appropriate measure of damages.

16 52. Numerosity: The members of the proposed Class are numerous such that joinder is
17 impracticable. Upon information and belief, and subject to class discovery, the Class consist of
18 thousands of members or more, the identities of whom are within the exclusive knowledge of and can
19 be ascertained only by resort to CB&T's records. CB&T has the administrative capability through its
20 computer systems and other records to identify all members of the Class, and such specific
21 information is not otherwise available to Plaintiff.

22 53. Superiority of Class Action and Risk of Inconsistent or Varying Adjudication. Plaintiff
23 and the members of the Class suffered, and will continue to suffer, harm as a result of CB&T's
24 unlawful and wrongful conduct. A class action is superior to other available methods for the fair and
25 efficient adjudication of the present controversy. It is impracticable to bring Class members'
26 individual claims before the Court. Individual joinder of all members of the Class is impractical. Even
27 if individual Class members had the resources to pursue individual litigation, it would be unduly
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1 burdensome to the courts in which the individual litigation would proceed. Class treatment permits a
2 large number of similarly situated persons or entities to prosecute their common claims in a single
3 forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort,
4 expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions
5 would engender. The benefits of the class mechanism, including providing injured persons or entities
6 with a method for obtaining redress on claims that might not be practicable to pursue individually,
7 substantially outweigh any difficulties that may arise in the management of this class action. Class
8 action treatment is proper, and this action should be maintained as a class action because the risks of
9 separate actions by individual members of the Class would create a risk of: (a) inconsistent or varying
10 adjudications with respect to individual Class members which would establish incompatible standards
11 of conduct for CB&T as the party opposing the Class; and/or (b) adjudications with respect to
12 individual Class members would, as a practical matter, be dispositive of the interests of other Class
13 members not party to the adjudication or would substantially impair or impeded their ability to protect
14 their interests.

15 54. Typicality. Plaintiff's claims are typical of the claims of the other members of the Class
16 in that they arise out of the same wrongful business practices by CB&T, as described herein.

17 55. Adequacy of Representation. Plaintiff is a more than an adequate representative of the
18 Class in that Plaintiff has a CB&T checking account and has suffered damages as a result of CB&T's
19 contract violations, CB&T's violations of the covenant of good faith and fair dealing. In addition:

- 20 a) Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and
21 all others similarly situated and has retained competent counsel experienced in the
22 prosecution of class actions and, in particular, class actions on behalf of consumers
23 against financial institutions;
- 24 b) There is no conflict of interest between Plaintiff and the unnamed members of the
25 Class;
- 26 c) Plaintiff anticipates no difficulty in the management of this litigation as a class action;
27 and
- 28 d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial
costs and legal demands associated with this type of litigation.

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

3 57. CB&T has acted or refused to act on grounds generally applicable to each of the Class,
4 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to
5 the Class as a whole.

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

7 **FIRST CAUSE OF ACTION**
8 **Breach of Contract, including Breach of the Covenant of Good Faith and Fair Dealing**
9 **(On Behalf of Plaintiff and the Class)**

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

12 60. Plaintiff and CB&T contracted for checking account services, as embodied in the 2020
13 Deposit Agreement and Fee Schedule.

14 61. Defendant mischaracterized in the 2020 Account Documents its true NSF Fee and OD
15 Fee practices and breached the express terms of the Account Documents.

16 62. No contract provision authorizes Defendant to charge more than one fee on the same
17 transaction.

18 63. A covenant of good faith and fair dealing is implied in contracts between financial
19 institutions and their members as a matter of state law in nearly every state. Moreover, the UCC
20 mandates good faith and fair dealing in all banking contracts. The covenant of good faith and fair
21 dealing constrains CB&T’s discretion to exercise self-granted contractual powers.

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

24 65. Good faith and fair dealing, in connection with executing contracts and discharging
25 performance and other duties according to their terms, means preserving the spirit—not merely the
26 letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with
27
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1 the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the
2 power to specify terms constitute examples of bad faith in the performance of contracts.

3 66. Subterfuge and evasion violate the obligation of good faith in performance even when
4 an actor believes her conduct to be justified. A lack of good faith may be overt or may consist of
5 inaction, and fair dealing may require more than honesty. Other examples of violations of good faith
6 and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and
7 interference with or failure to cooperate in the other party’s performance.

8 67. Defendant has breached its contracts with Plaintiff and the Class through its NSF and
9 OD Fee policies and practices as alleged herein.

10 68. CB&T breached the covenant of good faith and fair dealing through its NSF and OD
11 Fee policies and practices as explained herein.

12 69. Plaintiff and members of the putative Class have performed all of their obligations
13 pursuant to the Bank’s agreements.

14 70. Plaintiff and members of the putative Class have sustained monetary damages as a
15 result of each of Defendant’s breaches.

16 **SECOND CAUSE OF ACTION**
17 **California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.**
18 **(On Behalf of Plaintiff and the Class)**

19 71. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing
20 paragraphs as if fully set forth herein.

21 72. CB&T’s practice of charging more than one NSF or OD Fee on the same item violates
22 California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.

23 73. CB&T’s conduct as described herein constitutes a fraudulent business practice within
24 the meaning of Bus. & Prof. Code § 17200, et seq., through both their affirmative misrepresentations
25 and material omissions. Such representations and omissions misled Plaintiff and Class members and
26 are likely to mislead the public. Specifically:

- 27 a. CB&T misrepresented material facts, pertaining to the sale and/or furnishing of
28 banking services to the Class by representing and advertising that it would only assess a

1 single \$30 NSF Fee for a single item; and

2 b. CB&T omitted, suppressed, and concealed the material fact that it would charge
3 multiple fees for a single item.

4 74. CB&T's conduct described herein is "unfair" under Bus. & Prof. Code § 17200 because
5 it is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, and any
6 utility of such practices is outweighed by the harm caused to consumers, including to Plaintiff, the
7 Class, and the public.

8 75. CB&T knew or should have known that their representations were false, deceptive, and
9 misleading.

10 76. There were reasonably available alternatives to further CB&T's legitimate business
11 interests.

12 77. Reasonable consumers had no way of knowing that CB&T was engaged in false,
13 deceptive, and misleading advertising, and therefore could not have reasonably avoided the injuries
14 that they suffered.

15 78. CB&T's wrongful conduct is ongoing and part of a pattern or generalized course of
16 conduct repeated on thousands of occasions yearly.

17 79. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction on behalf of the
18 general public enjoining CB&T from continuing to engage in the unfair competition described above,
19 or any other act prohibited by law.

20 80. Plaintiff also seeks rescission and an order requiring CB&T to make full restitution and
21 to disgorge their ill-gotten gains wrongfully obtained from members of the Class as permitted by Bus.
22 & Prof. Code § 17203.

23 81. Additionally, Plaintiff and the Class seek an order requiring CB&T to pay attorneys'
24 fees pursuant to Cal. Civ. Code § 1021.5.

PRAYER FOR RELIEF

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

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

B. Declaring that CB&T’s policies and practices as described herein constitute a breach of contract and a breach of the covenant of good faith and fair dealing;

C. Enjoining CB&T from the wrongful conduct as described herein;

D. Awarding restitution of all fees at issue paid to CB&T by Plaintiff and the Class as a result of the wrongs alleged herein in an amount to be determined at trial;

E. Compelling disgorgement of the ill-gotten gains derived by CB&T from its misconduct;

F. Awarding actual and/or compensatory damages in an amount according to proof;

G. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

H. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in connection with this action, including reasonable attorneys’ fees, costs, and expenses, pursuant to applicable law and any other basis; and

I. Awarding such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demand a jury trial on all claims so triable.

Dated: November 8, 2021

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