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11 *and Proposed Class Counsel*

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 BRITTANY COVELL, on behalf of
herself and all others similarly situated,

15 Plaintiff,

16 v.

17 ZIONS BANCORPORATION, N.A., and
18 DOES 1-20, inclusive,

19 Defendant.

Case No.: **'22CV516 BAS JLB**

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

20
21 Plaintiff Brittany Covell (“Plaintiff”) brings this action, on behalf of herself and all
22 persons similarly situated, against Defendant Zions Bancorporation, N.A. (“Zions” or
23 “Defendant”), based on personal knowledge as to allegations regarding the Plaintiff and on
24 information and belief as to other allegations, and states:

25 **INTRODUCTION**

26 1. Plaintiff brings this action on behalf of herself, the general public, and all other
27 similarly situated consumers against Zions, including all of its local brands in the various
28 states where it does business. Zions operates via eight customer-facing brands which often

1 differ by state. This case challenges Zions’ routine practices of assessing an Overdraft Fee
2 (“OD Fee”) on transactions that did not actually overdraw checking accounts.

3 2. Zions’ customers have been injured by the Defendant’s improper practices to
4 the tune of millions of dollars bilked from their accounts in violation of Zions’ clear
5 contractual commitments.

6 3. Plaintiff, on behalf of herself and a Class of similarly situated consumers,
7 seeks to end Zions’ abusive and predatory practices and force it to refund all of these
8 improper charges. Plaintiff asserts a claim for breach of contract, including breach of the
9 covenant of good faith and fair dealing, and seeks damages, restitution, and injunctive
10 relief, as set forth more fully below.

11 4. While there is nothing unlawful about assessing OD Fees on accounts when
12 such fees are assessed in compliance with contractual terms, OD Fees generally have a
13 crushing impact on persons living paycheck to paycheck. This is why the financial services
14 industry is increasingly moving away from such fees.

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

23 6. Indeed, Black households and those with low-to-moderate incomes are almost
24 twice as likely to incur OD Fees as white households or those with higher incomes,
25 according to a report from the Financial Health Network, a research firm partly funded by
26 financial institutions.

27 7. In recognition of the inequitable effects of OD Fees, major banks, such as
28 Bank of America, are reducing OD Fees from \$35 to \$10. *People Hate Overdraft Fees*.

1 *Banks are Ditching or Reducing Them*, NPR (Jan. 11, 2022), [https://www.npr.org/2022/01/](https://www.npr.org/2022/01/11/1071860136/people-hate-overdraft-fees-capital-one-is-ditching-them-and-other-banks-may-foll)
2 [11/1071860136/people-hate-overdraft-fees-capital-one-is-ditching-them-and-other-banks](https://www.npr.org/2022/01/11/1071860136/people-hate-overdraft-fees-capital-one-is-ditching-them-and-other-banks-may-foll)
3 [-may-foll](https://www.npr.org/2022/01/11/1071860136/people-hate-overdraft-fees-capital-one-is-ditching-them-and-other-banks-may-foll) (last accessed Feb. 17, 2022).

4 **PARTIES**

5 8. Plaintiff is a citizen and resident of San Diego, California.

6 9. The Defendant is a bank holding company headquartered in Salt Lake City,
7 Utah. Zions is the largest bank in Utah with total assets exceeding \$80 billion. Zions
8 operates as a national bank doing business under eight local brands: AmegyBank,
9 California Bank & Trust, The Commerce Bank of Oregon, The Commerce Bank of
10 Washington, National Bank of Arizona, Nevada State Bank, VectraBank Colorado, and
11 Zions Bank. The Bank operates in 11 western states: Arizona, California, Colorado, Idaho,
12 Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming. Zions operates
13 over 430 branch offices throughout the western states. The Defendant is publicly traded
14 and has a market capitalization over \$10 billion.

15 **JURISDICTION AND VENUE**

16 10. This Court has original jurisdiction of this action under the Class Action
17 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original
18 jurisdiction because (1) the proposed Class comprise at least 100 members; (2) at least one
19 member of the proposed Class resides outside of Utah; and (3) the aggregate claims of the
20 putative Class members exceed \$5 million, exclusive of interest and costs.

21 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Zions is
22 subject to personal jurisdiction here and regularly conducts business in this District, and
23 because a substantial part of the events or omissions giving rise to the claims asserted
24 herein occurred in this District.

25 **FACTUAL BACKGROUND**

26 **I. ZIONS CHARGES OD FEES ON TRANSACTIONS THAT DO NOT** 27 **ACTUALLY OVERDRAW THE ACCOUNT**

28 12. Plaintiff has a checking account with Defendant.

1 13. Defendant issues debit cards to its checking account customers, including
2 Plaintiff, which allows its customers to have electronic access to their checking accounts
3 for purchases, payments, withdrawals, and other electronic debit transactions.

4 14. Pursuant to Zions' Deposit Account Agreement ("Deposit Agreement"),
5 attached as Exhibit A hereto, and Personal Service Charge Information ("Fee Schedule"),
6 attached as Exhibit B hereto (collectively, "Account Documents"), Defendant charges fees
7 for transactions that purportedly result in an overdraft of accountholders' checking
8 accounts. Certain contractual provisions only apply in certain states, but the terms relevant
9 to this case are the same for all Zions customers.

10 15. Plaintiff brings this cause of action challenging Defendant's practice of
11 charging OD Fees on what are referred to in this Complaint as "Authorize Positive,
12 Purportedly Settle Negative Transactions" ("APPSN Transactions").

13 16. At the moment debit card transactions are authorized on an account with
14 positive funds to cover the transaction, Defendant immediately reduces an accountholder's
15 checking account by the amount of the purchase, sets aside funds in a checking account to
16 cover that transaction, and as a result, the accountholder's displayed "available balance"
17 reflects that subtracted amount. Therefore, customers' accounts will always have sufficient
18 available funds to cover these transactions because Defendant has already sequestered
19 these funds for payment.

20 17. However, Defendant still assesses crippling OD Fees on many of these
21 transactions and misrepresents its practices in its Account Documents.

22 18. Despite putting aside sufficient available funds for debit card and other point
23 of sale transactions at the time those transactions are authorized, Defendant later assesses
24 OD Fees on those same transactions when they purportedly settle days later into a negative
25 balance. These types of transactions are APPSN Transactions.

26 19. Defendant maintains a running account balance in real time, tracking funds
27 accountholders have for immediate use. This running account balance is adjusted, in real-
28 time, to account for debit card transactions at the precise instance they are made. When a

1 customer makes a purchase with a debit card, Defendant sequesters the funds needed to
2 pay the transaction, subtracting the dollar amount of the transaction from the customer's
3 available balance. Such funds are not available for any other use by the accountholder, and
4 such funds are specifically associated with a given debit card transaction.

5 20. When any *subsequent*, intervening transactions are initiated on a checking
6 account, they are compared against an account a balance that has already been reduced to
7 account for any earlier debit card transactions. This means that many subsequent
8 transactions incur OD Fees due to the unavailability of the funds sequestered for those debit
9 card transactions.

10 21. Still, despite keeping those held funds off-limits for other transactions,
11 Defendant improperly charges OD Fees on those APPSN Transactions, even though the
12 APPSN Transactions *always* have sufficient available funds to be covered.

13 22. Indeed, the Consumer Financial Protection Bureau ("CFPB") has expressed
14 concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

15 [A] financial institution authorized an electronic transaction, which reduced a
16 customer's available balance but did not result in an overdraft at the time of
17 authorization; settlement of a subsequent unrelated transaction that further
18 lowered the customer's available balance and pushed the account into
19 overdraft status; and when the original electronic transaction was later
20 presented for settlement, because of the intervening transaction and overdraft
21 fee, the electronic transaction also posted as an overdraft and an additional
22 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.

23 At one or more institutions, examiners found deceptive practices relating to
24 the disclosure of overdraft processing logic for electronic transactions.
25 Examiners noted that these disclosures created a misimpression that the
26 institutions would not charge an overdraft fee with respect to an electronic
27 transaction if the authorization of the transaction did not push the customer's
28 available balance into overdraft status. But the institutions assessed overdraft
fees for electronic transactions in a manner inconsistent with the overall net
impression created by the disclosures. Examiners therefore concluded that the
disclosures were misleading or likely to mislead, and because such
misimpressions could be material to a reasonable consumer's decision-
making and actions, examiners found the practice to be deceptive.

1 Furthermore, because consumers were substantially injured or likely to be so
2 injured by overdraft fees assessed contrary to the overall net impression
3 created by the disclosures (in a manner not outweighed by countervailing
4 benefits to consumers or competition), and because consumers could not
reasonably avoid the fees (given the misimpressions created by the
disclosures), the practice of assessing the fees under these circumstances was
found to be unfair.

5 CFPB, Winter 2015 “Supervisory Highlights.”

6 23. There is no justification for these practices, other than to maximize
7 Defendant’s OD Fee revenue. APPSN Transactions only exist because intervening
8 checking account transactions supposedly reduce an account balance. But Defendant is free
9 to protect its interests and either reject those intervening transactions or charge OD Fees
10 on those intervening transactions—and it does the latter to the tune of millions of dollars
11 each year. But Defendant was not content with these millions in OD Fees. Instead, it sought
12 millions more in OD Fees on these APPSN Transactions.

13 24. Besides being unfair and unjust, these practices breach contract promises
14 made in Defendant’s adhesion contracts—contracts which fail to inform accountholders
15 about the true nature of Defendant’s processes and practices. These practices also exploit
16 contractual discretion to gouge accountholders.

17 25. In plain, clear, and simple language, the Account Documents covering OD
18 Fees promise that Defendant will only charge OD Fees on transactions that have
19 insufficient funds to cover that transaction.

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

22 ***A. Mechanics of a Debit Card Transaction***

23 27. A debit card transaction occurs in two parts. First, authorization for the
24 purchase amount is instantaneously obtained by the merchant from Defendant. When a
25 merchant physically or virtually “swipes” a customer’s debit card, the credit card terminal
26 connects, via an intermediary, to Defendant, which verifies that the customer’s account is
27 valid and that sufficient available funds exist to cover the transaction amount.
28

1 28. At this step, if the transaction is approved, Defendant immediately decrements
2 the funds in an accountholder’s account and sequesters funds in the amount of the
3 transaction but does not yet transfer the funds to the merchant.

4 29. Indeed, the entire purpose of the immediate debit and hold of positive funds
5 is to ensure that there are enough funds in the account to pay the transaction when it settles,
6 as discussed in the Federal Register notice announcing revisions to certain provisions of
7 the Truth in Lending Act regulations:

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

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

14 30. Sometime thereafter, the funds are actually transferred from the customer’s
15 account to the merchant’s account.

16 31. Defendant (like all banks and credit unions) decides whether to “pay” debit
17 card transactions at authorization. After that, Defendant is obligated to pay the transaction.
18 For debit card transactions, that moment of decision can only occur at the point of sale, at
19 the instant the transaction is authorized or declined. It is at that point—and only that point—
20 when Defendant may choose to either pay the transaction or decline it. When the time
21 comes to actually settle the transaction, it is too late—the financial institution has no
22 discretion and must pay the charge. This “must pay” rule applies industry wide and requires
23 that, once a financial institution authorizes a debit card transaction, it “must pay” it when
24 the merchant later makes a demand, regardless of other account activity. *See Electronic*
25 *Fund Transfers*, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

26 32. There is no change—no impact whatsoever—to the available funds in an
27 account when this step occurs.

28

1 **B. Defendant’s Account Contract**

2 33. Plaintiff has a checking account with Defendant, which is governed by
3 Defendant’s standardized Account Documents.

4 34. The Deposit Agreement promises that Zions immediately places a hold on
5 debit card transactions at the moment of authorization, and that those held funds are off
6 limits for other, later transactions:

7 **Authorization Hold.** When you conduct an Everyday Debit Card Transaction
8 as a Signature-Based Transaction (defined below), the merchant requests that
9 we authorize the transaction. When we authorize a transaction following the
10 merchant’s request, we typically note the amount of funds relating to that
11 request by creating an “Authorization Hold” in your account. *At the time we
12 create the Authorization Hold, the Available Balance for your account is
13 reduced by that amount* (even though settlement will occur later and we will
14 post the final transaction to your account). The amount of an Authorization
15 Hold may be less than, the same as, or more than the final amount of the
16 signature-based transaction.

17 **Everyday Debit Card Transaction.** A one-time transaction or purchase in
18 which the cardholder provides their debit card or debit card number to a
19 merchant for payment of goods or services that are not recurring. *Each
20 payment is normally authorized (confirmed) by you (usually with a PIN or
21 cardholder’s signature) at the time of the transaction or purchase.* We are
22 authorized to rely on the originating bank’s or the merchant’s coding of the
23 transaction as an Everyday Debit Card Transaction for all purposes, including
24 refusing or paying the charge and assessing the applicable fee if the account
25 has an insufficient Available Balance.

26 Deposit Agreement, Exh. A, p. 11 (emphasis added).

27 35. For APPSN Transactions, which are immediately deducted from a positive
28 account balance and should be held aside for payment of that same transaction, there are
always funds to cover those transactions—yet Zions assesses OD Fees on them anyway.

 36. The above promises mean that transactions are only overdraft transactions
when they are authorized into a negative account balance. Of course, that is not true for
APPSN Transactions.

 37. APPSN Transactions are always initiated at a time when there are sufficient
available funds in the account.

1 38. In fact, Zions actually authorizes transactions on positive funds, claims to set
2 those funds aside on hold, but then fails to use those same funds to settle those same
3 transactions. Instead, it uses a secret posting process described below.

4 39. All the above representations and contractual promises are untrue. In fact,
5 Zions charges OD Fees even when sufficient funds exist to cover transactions that are
6 authorized into a positive balance. No express language in any document states that Zions
7 may impose OD Fees on any APPSN Transactions.

8 40. First, and most fundamentally, Zions charges OD Fees on debit card
9 transactions for which there are sufficient funds available to cover the transactions. That is
10 despite contractual representations that Zions will only charge OD Fees on transactions
11 with insufficient available funds to cover a given transaction.

12 41. Zions assesses OD Fees on APPSN Transactions that do have sufficient funds
13 available to cover them throughout their lifecycle.

14 42. Zions' practice of charging OD Fees even when sufficient available funds
15 exist to cover a transaction violates a contractual promise not to do so. This discrepancy
16 between Zions' actual practice and the contract causes accountholders like Plaintiff to incur
17 more OD Fees than they should.

18 43. Next, sufficient funds for APPSN Transactions are actually debited from the
19 account immediately, consistent with standard industry practice.

20 44. Because these withdrawals take place upon initiation, they cannot be re-
21 debited later. But that is what Zions does when it re-debits the account during a secret batch
22 posting process.

23 45. In reality, Zions' actual practice is to deduct the same debit card transaction
24 twice to determine if the transaction overdraws an account—both at the time a transaction
25 is authorized and later at the time of settlement.

26 46. At the time of settlement, however, an available balance *does not change at*
27 *all* for these transactions previously authorized into good funds. As such, Zions cannot then
28

1 charge an OD Fee on such transaction because the available balance has not been rendered
2 insufficient due to the pseudo-event of settlement.

3 47. Upon information and belief, something more is going on: at the moment a
4 debit card transaction is getting ready to settle, Zions does something new and unexpected,
5 during the middle of the night, during its nightly batch posting process. Specifically, Zions
6 releases the hold placed on funds for the transaction for a split second, putting money back
7 into the account, then re-debits the same transaction a second time.

8 48. This secret step allows Zions to charge OD Fees on transactions that never
9 should have caused an overdraft—transactions that were authorized into sufficient funds,
10 and for which Zions specifically set aside money to pay them.

11 49. This discrepancy between Zions' actual practices and the contract causes
12 accountholders to incur more OD Fees than they should.

13 50. In sum, there is a huge gap between Zions' practices as described in the
14 Account Documents and Zions' practices in reality.

15 ***C. Defendant Abuses Contractual Discretion***

16 51. Defendant's treatment of debit card transactions to charge OD Fees is not
17 simply a breach of the express terms of the numerous Account Documents. In addition,
18 Defendant exploits contractual discretion to the detriment of accountholders when it uses
19 these policies.

20 52. Defendant uses its contractual discretion to cause APPSN Transactions to
21 incur OD Fees by knowingly authorizing later transactions that it allows to consume
22 available funds previously sequestered for APPSN Transactions.

23 53. Defendant uses this contractual discretion unfairly to extract OD Fees on
24 transactions that no reasonable accountholder would believe could cause OD Fees.

25 ***D. Reasonable Accountholders Understand Debit Card/POS Transactions Are***
26 ***Debited Immediately***

27 54. The assessment of OD Fees on APPSN Transactions is fundamentally
28 inconsistent with immediate deduction and holding of funds for debit card/POS

1 transactions. That is because, if funds are immediately debited from the balance and held,
2 they cannot be depleted by intervening transactions (and it is that subsequent depletion that
3 is the necessary condition of APPSN Transactions). If funds are immediately debited from
4 the available balance, then they are necessarily available to be applied to the debit card
5 transactions for which they are debited.

6 55. Defendant was and is aware that this is precisely how accountholders
7 reasonably understand such transactions to work.

8 56. Defendant knows that many accountholders prefer debit cards for this very
9 reason. Research indicates that accountholders prefer debit cards as a budgeting device
10 because they do not allow debt like credit cards do, and because the money comes directly
11 out of a checking account.

12 57. Consumer Action, a national nonprofit consumer education and advocacy
13 organization, advises consumers determining whether they should use a debit card that
14 “[t]here is no grace period on debit card purchases the way there is on credit card purchases;
15 the money is immediately deducted from your checking account. Also, when you use a
16 debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.”
17 *What Do I Need to Know About Using a Debit Card?*, Consumer Action (Jan. 14, 2019),
18 [https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_usi](https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card)
19 [ng_a_debit_card](https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card) (last visited Aug. 24, 2021).

20 58. Further, Consumer Action informs consumers that “[d]ebit cards offer the
21 convenience of paying with plastic without the risk of overspending. When you use a debit
22 card, you do not get a monthly bill. You also avoid the finance charges and debt that can
23 come with a credit card if not paid off in full.” *Understanding Debit Cards*, Consumer
24 Action, http://www.consumer-action.org/english/articles/understanding_debit_cards (last
25 visited Aug. 24, 2021).

26 59. This understanding is a large part of the reason that debit cards have risen in
27 popularity. The number of terminals that accept debit cards in the United States increased
28 by approximately 1.4 million in a recent five year period and, with that increasing ubiquity,

1 consumers have (along with credit cards) viewed debit cards “as a more convenient option
2 than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining*
3 *on Case for Smallest Purchases*, MarketWatch, Mar. 23, 2016, [http://www.marketwatch.](http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23)
4 [com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23](http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23).

5 60. Not only have accountholders increasingly transitioned from cash to debit
6 cards, but they believe that a debit card purchase is the fundamental equivalent of a cash
7 purchase, with the swipe of a card equating to handing over cash, permanently and
8 irreversibly.

9 61. Defendant was aware of accountholder perception that debit transactions
10 reduce an available balance in a specified order—namely, the moment they are actually
11 initiated—and its account agreement only supports this perception.

12 ***E. Plaintiff’s Experience***

13 62. As an example, on August 26, 2020, Plaintiff’s available account balance was
14 \$98.66. She made three (3) transaction on August 27, 2020, which totaled \$88.24. Her
15 available account balance on August 28, 2020, was \$10.42 and Plaintiff made a single
16 transaction the same day of \$22.05. Plaintiff was then assessed two (2) \$36.00 OD Fees,
17 insufficient funds fee—item paid, on August 28 and August 31, 2020, respectively, despite
18 the fact that positive funds were deducted immediately, prior to that day, for the
19 transactions on which Plaintiff was assessed an improper OD Fee.

20 **CLASS ACTION ALLEGATIONS**

21 63. Definition of the Class: Plaintiff brings this action on behalf of herself and on
22 behalf of all others similarly situated. The Class includes:

23 All persons with a Zions checking account in who, within the applicable
24 statute of limitations, were charged a fee on an APPSN Transaction.

25 The time period for the Class is the number of years immediately preceding the date on
26 which this Complaint was filed as allowed by the applicable statute of limitations, going
27 forward into the future until such time as Zions remedies the conduct complained of herein.
28

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

6 65. Plaintiff reserves the right to modify or amend the definition of the proposed
7 Class and/or to add a sub-class if necessary before this Court determines whether
8 certification is appropriate.

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

- 15 a) whether Zions improperly assessed OD Fees on APPSN transactions;
- 16 b) whether the conduct enumerated above violates the parties' contract;
- 17 c) whether any of the conduct enumerated above violates the covenant of
18 good faith and fair dealing; and
- 19 d) the appropriate measure of damages.

20 67. Numerosity: The members of the proposed Class are numerous such that
21 joinder is impracticable. Upon information and belief, and subject to class discovery, the
22 Class consists of thousands of members or more, the identities of whom are within the
23 exclusive knowledge of and can be ascertained only by resort to Zions' records. Zions has
24 the administrative capability through its computer systems and other records to identify all
25 members of the Class, and such specific information is not otherwise available to Plaintiff.

26 68. Superiority of Class Action and Risk of Inconsistent or Varying Adjudication:
27 Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result
28 of Zions' unlawful and wrongful conduct. A class action is superior to other available

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

20 69. Typicality: Plaintiff's claims are typical of the claims of the other members of
21 the Class in that they arise out of the same wrongful business practices by Zions, as
22 described herein.

23 70. Adequacy of Representation: Plaintiff is a more than an adequate
24 representative of the Class in that Plaintiff has a Zions checking account and has suffered
25 damages as a result of Zions' contract violations and Zions' violations of the covenant of
26 good faith and fair dealing. In addition:

27 a) Plaintiff is committed to the vigorous prosecution of this action on
28 behalf of herself and all others similarly situated and has retained competent counsel

1 experienced in the prosecution of class actions and, in particular, class actions on
2 behalf of consumers against financial institutions;

3 b) there is no conflict of interest between Plaintiff and the unnamed
4 members of the Class;

5 c) Plaintiff anticipates no difficulty in the management of this litigation as
6 a class action; and

7 d) Plaintiff's legal counsel has the financial and legal resources to meet
8 the substantial costs and legal demands associated with this type of litigation.

9 71. Plaintiff knows of no difficulty to be encountered in the maintenance of this
10 action that would preclude its treatment as a class action.

11 72. Zions has acted or refused to act on grounds generally applicable to the Class,
12 thereby making appropriate final injunctive relief or corresponding declaratory relief with
13 respect to the Class as a whole.

14 73. All conditions precedent to bringing this action have been satisfied and/or
15 waived.

16 **FIRST CAUSE OF ACTION**

17 **(Breach of Contract, including Breach of the Covenant of Good Faith and Fair**
18 **Dealing on behalf of Plaintiff and the Class)**

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

21 75. Plaintiff and Zions contracted for checking account services, as embodied in
22 the Deposit Agreement and Fee Schedule.

23 76. Defendant mischaracterized in the Account Documents its true OD Fee
24 practices and breached the express terms of the Account Documents.

25 77. No contract provision authorizes Defendant to charge an OD Fee on an
26 APPSN Transaction.

27 78. A covenant of good faith and fair dealing is implied in contracts between
28 financial institutions and their members as a matter of state law in nearly every state.

1 Moreover, the UCC mandates good faith and fair dealing in all banking contracts. The
2 covenant of good faith and fair dealing constrains Zions' discretion to exercise self-granted
3 contractual powers

4 79. This good faith requirement extends to the manner in which a party employs
5 discretion conferred by a contract.

6 80. Good faith and fair dealing, in connection with executing contracts and
7 discharging performance and other duties according to their terms, means preserving the
8 spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are
9 mutually obligated to comply with the substance of their contract in addition to its form.
10 Evading the spirit of the bargain and abusing the power to specify terms constitute
11 examples of bad faith in the performance of contracts.

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

18 82. Defendant has breached its contracts with Plaintiff and the Class through its
19 OD Fee policies and practices as alleged herein.

20 83. Zions breached the covenant of good faith and fair dealing through its OD Fee
21 policies and practices as explained herein.

22 84. Plaintiff and members of the putative Class have performed all of their
23 obligations pursuant to the Defendant's agreements.

24 85. Plaintiff and members of the putative Class have sustained monetary damages
25 as a result of each of Defendant's breaches.

26 **PRAYER FOR RELIEF**

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

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

3 B. Declaring that Zions' policies and practices as described herein constitute a
4 breach of contract and a breach of the covenant of good faith and fair dealing;

5 C. Enjoining Zions from the wrongful conduct as described herein;

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

8 E. Compelling disgorgement of the ill-gotten gains derived by Zions from its
9 misconduct;

10 F. Awarding actual and/or compensatory damages in an amount according to
11 proof (including twice the amount of usurious interest paid);

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

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

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

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in
20 this complaint that are so triable as a matter of right.

21 Dated: April 14, 2022

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