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IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR PIERCE COUNTY

CHERYL RIEKEN, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

TIMBERLAND BANK,

Defendant.

No.

CLASS ACTION COMPLAINT

**CLASS ACTION COMPLAINT**

Plaintiff Cheryl Rieken, by and through her counsel of record, for its class action  
complaint against Defendant Timberland Bank, alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this action individually and on behalf of all similarly situated  
consumers against Defendant Timberland Bank (“Bank”), arising from its routine practices of (a)  
assessing more than one insufficient funds fee (“NSF Fee”) on the same transaction; and (b)  
assessing an overdraft fee (“OD Fee”) on transactions that did not actually overdraw checking  
accounts.

2. Timberland Bank’s customers have been injured by the Bank’s improper practices  
to the tune of millions of dollars bilked from their accounts in violation Timberland Bank’s clear  
contractual commitments.

1           3. Plaintiff, on behalf of herself and two Classes of similarly situated consumers,  
2 seeks to end Timberland Bank's abusive and predatory practices and force it to refund all of these  
3 improper charges. Plaintiff asserts a claim for breach of contract, including breach of the covenant  
4 of good faith and fair dealing, and seeks damages, restitution, and injunctive relief, as set forth  
5 more fully below.

6           4. While there is nothing unlawful about assessing NSF Fees on accounts when such  
7 fees are assessed in compliance with contractual terms, NSF Fees in general have a crushing  
8 impact on persons living paycheck to paycheck. This is why the financial services industry is  
9 increasingly moving away from such fees.

10           5. For example, one of the nation's largest consumer banks, Ally Bank recently  
11 stopped assessing overdraft fees altogether. Diane Morais, Ally Bank's president of consumer  
12 and commercial banking, said that one reason is because NSF Fees disproportionately affect  
13 people who are living paycheck to paycheck and that NSF Fees disproportionately affect Black  
14 and Latino households. *Overdraft Fees Are Getting the Boot at Ally Financial*, The Wall Street  
15 Journal (June 2, 2021), [https://www.wsj.com/articles/overdraft-fees-are-getting-the-boot-at-ally-](https://www.wsj.com/articles/overdraft-fees-are-getting-the-boot-at-ally-financial-11622631600)  
16 [financial-11622631600](https://www.wsj.com/articles/overdraft-fees-are-getting-the-boot-at-ally-financial-11622631600) (last accessed June 4, 2021).

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

### **JURISDICTION**

21           7. This Court has jurisdiction under the Washington Constitution, Article IV,  
22 Section 6, and RCW 2.08.010.

1 8. This Court has personal jurisdiction over Defendant because Timberland Bank is  
2 a resident of the State of Washington and engages in continuous business providing financial  
3 services to Washington citizens.

4 9. Venue is proper in Pierce County pursuant to RCW 4.12.020(3) and pursuant to  
5 RCW 4.12.025(1) because Defendant transacts business and has an office for the transaction of  
6 business in Pierce County.

7 10. The claims of the named Plaintiff and of the members of the Class are brought  
8 under state law claims for relief. No federal question exists in this matter.

9 11. Federal jurisdiction is inappropriate under the Class Action Fairness Act, 28  
10 U.S.C. § 1332(d)(4)(B), because two-thirds or more of the members of the proposed plaintiff  
11 class in the aggregate are citizens of the state of Washington, as is Columbia, the defendant.

12 **PARTIES**

13 12. Plaintiff Cheryl Rieken is a natural person who is a citizen of Washington and  
14 resides in Tacoma Washington.

15 13. Defendant Timberland Bank is a bank with over \$1.69 billion in assets.  
16 Timberland Bank is headquartered in Hoquiam, Washington and maintains branch locations  
17 across the state of Washington, including in Pierce County.

18 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

19 **I. TIMBERLAND BANK CHARGES MORE THAN ONE FEE ON THE SAME**  
20 **TRANSACTION**

21 14. Timberland Bank's Account Documents allow Timberland Bank to charge a *single*  
22 \$30 NSF Fee when a transaction is returned for insufficient funds or paid despite insufficient  
23 funds.  
24

1           15.     Timberland Bank breaches its Account Documents by charging more than one \$30  
2 NSF 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 Fee.

4           16.     A recent Washington Post article discussed predatory overdraft fees, labeling NSF  
5 fees like those Timberland Bank imposes as “indefensible” because “the customer gets hit with  
6 multiple charges for the same item.” *I bought my kids dinner – and saw firsthand how overdraft  
7 fees punish the poor*, The Washington Post (October 1, 2021), [https://www.washingtonpost.com/  
8 outlook/i-bought-my-kids-dinner--and-saw-firsthand-how-overdraft-fees-punish-the-poor/2021/  
9 09/30/32383c40-216e-11ec-b3d6-8cdebe60d3e2\\_story.html](https://www.washingtonpost.com/outlook/i-bought-my-kids-dinner--and-saw-firsthand-how-overdraft-fees-punish-the-poor/2021/09/30/32383c40-216e-11ec-b3d6-8cdebe60d3e2_story.html) (last accessed October 8, 2021). The  
10 banks “are charging a fee for doing literally nothing.... [T]his is like asking a friend if I can borrow  
11 \$20, only to have him take \$10 out of my wallet for turning down my request.” *Id.*

12           17.     Timberland Bank’s abusive practices are not standard within the financial services  
13 industry. Indeed, major banks like Wells Fargo—one of the largest consumer banks in the  
14 country—charge one NSF Fee per item, even if that item is resubmitted for payment multiple  
15 times. And while some other banks engage in the same practices as Timberland Bank, their  
16 members agree to terms authorizing the fee practice.

17           18.     Timberland Bank’s Account Documents do not say that Timberland Bank may  
18 repeatedly charge customers multiple fees on a single transaction. To the contrary, the Account  
19 Documents indicate Timberland Bank will only charge a single NSF Fee on a transaction.

20           **A.     Plaintiff’s Experiences.**

21           19.     In support of her claim, Plaintiff offers examples of fees that should not have been  
22 assessed against her checking account. As alleged below, Timberland Bank: (a) reprocessed  
23 previously declined transactions; and (b) charged an additional fee upon reprocessing.

24

1           20. For example, in May 2020, Plaintiff was charged NSF Fees on transactions which  
 2 were resubmitted by the merchant for payment without Plaintiff’s request to reprocess the  
 3 transactions.

4           21. Each merchant request for payment was for a single transaction and, as is laid out  
 5 in Timberland Bank’s Account Documents, should be subject to, at most, a single NSF or OD  
 6 Fee (if Timberland Bank returned it or paid it).

7           **B. The Imposition of Multiple Fees on a Single Transaction Violates**  
 8           **Timberland Bank’s Express Promises and Representations.**

9           22. Timberland Bank’s Account Documents state that the Bank will assess a single fee  
 10 of \$30 for a transaction that is returned due to insufficient funds.

11           23. According to Timberland Bank’s Deposit Agreement, at most a *single* fee will be  
 12 assessed:

<b>Non-Sufficient Funds (NSF) Fee – Check or ACH</b>	<b>\$30</b>
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13 Ex. A.

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

17           25. Even if Timberland Bank reprocesses an instruction for payment, it is still the same  
 18 item. The Bank’s reprocessing is simply another attempt to effectuate an accountholder’s original  
 19 order or instruction.

20           26. As alleged herein, Plaintiff took only a single action to make a single payment; she  
 21 therefore created only one transaction and may be charged only a single fee.  
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1 27. As the disclosures described above show, Plaintiff never agreed that Timberland  
2 Bank may assess multiple NSF Fees for a transaction that was returned for insufficient funds and  
3 later reprocessed one or more times and returned again.

4 28. In sum, Timberland Bank promises that one \$30 NSF Fee will be assessed per  
5 item, and this must mean all iterations of the same instruction for payment. As such, Timberland  
6 Bank breached the contract when it charged more than one fee per transaction.

7 29. A reasonable consumer would understand that Timberland Bank's Account  
8 Documents permit it to assess an NSF Fee only once per "item."

9 30. Taken together, the representations and omissions identified above convey to  
10 customers that all submissions for payment of the same transaction will be treated as the same  
11 "item," which the Bank will either pay (resulting in an overdraft item) or return (resulting in a  
12 returned transaction) when it decides there are insufficient funds in the account. Nowhere do  
13 Timberland Bank and its customers agree that Timberland Bank will treat each reprocessing of a  
14 check or ACH payment as a separate transaction, subject to additional fees.

15 31. Customers reasonably understand, based on the language of the Account  
16 Documents, that the Bank's attempts to reprocess checks or ACH payments are simply additional  
17 attempts to complete the original order or instruction for payment, and as such, will not trigger  
18 additional NSF Fees. In other words, it is always the same transaction.

19 32. Banks like Timberland Bank that employ this abusive multiple fee practice know  
20 how to plainly and clearly disclose it. Indeed, other banks and credit unions that engage in this  
21 abusive practice require their accountholders to expressly authorize it—something Timberland  
22 Bank never did.

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1 33. For example, First Hawaiian Bank engages in the same abusive practices as  
2 Timberland Bank, but at least currently discloses it in its online banking agreement, in all capital  
3 letters, as follows:

4 YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT  
5 A RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY  
6 BE CHARGED TO YOUR ACCOUNT.

7 *Terms and Conditions of FHB Online Services*, First Hawaiian Bank 5, [https://www.fhb.com/](https://www.fhb.com/sites/default/files/2022-04/FHBDirect_Combined_Disclosures_.pdf)  
8 sites/default/files/2022-04/FHBDirect\_Combined\_Disclosures\_.pdf (last accessed Apr. 12,  
9 2022) (emphasis in original).

10 34. Klein Bank similarly states in its online banking agreement:

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

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

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

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

25 *Miscellaneous Fee Schedule*, Central Pacific Bank 1 (June 3, 2021), [https://www.cpb.bank/](https://www.cpb.bank/media/2776/fee-001.pdf)  
26 media/2776/fee-001.pdf (last accessed Apr. 12, 2022).

1 36. BP Credit Union likewise states: “We may charge a fee each time an item is  
2 submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a  
3 result of a returned item and resubmission(s) of the returned item.” *Membership and Account*  
4 *Agreement*, BP Federal Credit Union, ¶ 14(a), [https://www.bpfcu.org/images/docs/membership-](https://www.bpfcu.org/images/docs/membership-agreement.pdf)  
5 [agreement.pdf](https://www.bpfcu.org/images/docs/membership-agreement.pdf) (last accessed Apr. 12, 2022).

6 37. Regions Bank likewise states:

7 If an item is presented for payment on your account at a time when there is an  
8 insufficient balance of available funds in your account to pay the item in full, you  
9 agree to pay us our charge for items drawn against insufficient or unavailable  
10 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.

11 *Deposit Agreement*, Regions Bank 18 (2018), <https://bit.ly/2L0vx6A> (last accessed Apr. 12,  
12 2022).

13 38. Andrews Federal Credit Union states:

14 You understand and agree that a merchant or other entity may make multiple  
15 attempts to resubmit a returned item for payment. Consequently, because we may  
16 charge a service fee for an NSF item each time it is presented, we may charge you  
17 more than one service fee for any given item. . . . Therefore, multiple fees may be  
18 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 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.

19 *Terms & Conditions*, Andrews Federal Credit Union 17 (Aug. 2020), ¶ 6, <https://bit.ly/3iXEdHb>  
20 (last accessed Apr. 12, 2022).

21 39. Consumers Credit Union states:

22 Consequently, because we may charge a service fee for an NSF item each time it  
23 is presented, we may charge you more than one service fee for any given item.  
24 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



1 to us for payment, and regardless of whether we pay the item or return, reverse, or  
2 decline to pay the item.

3 *Member Services Guide*, Consumers Credit Union 5 (Apr. 2020), ¶ 11a, <https://bit.ly/3iVM1ta>  
4 (last accessed Apr. 12, 2022).

5 40. Wright Patt Credit Union states:

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

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

11 41. Railroad & Industrial Federal Credit Union states:

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

15 *Important Account Information for Our Members*, Railroad & Industrial Federal Credit Union, p.  
16 2, (Aug. 1, 2019), <https://bit.ly/3t5ehhF> (last accessed June 4, 2021).

17 42. Partners 1<sup>st</sup> Federal Credit Union states:

18 Consequently, because we may charge a fee for an NSF item each time it is  
19 presented, we may charge you more than one fee for any given item. Therefore,  
20 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.

21 *Consumer Membership & Account Agreement*, Partners 1st Federal Credit Union, p. 11 (Sept. 15,  
22 2019), <https://bit.ly/39pDZWb> (last accessed March 2, 2021).

23 43. Members First Credit Union states:  
24

1 We reserve the right to charge a Non-Sufficient Funds Fee (NSF Fee) each time  
2 a transaction is presented if your account does not have sufficient funds to cover  
3 the transaction at the time of presentment and we decline the transaction for that  
4 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[.]

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

7 44. Community Bank, N.A. states:

8 We cannot dictate whether or not (or how many times) a merchant will submit a  
9 previously presented item. 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.

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

12 45. RBC Bank states:

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

15 *Service Agreement for Personal Accounts*, RBC Bank 13 (Sept. 17, 2014), <https://bit.ly/3otUtko>  
16 (last accessed Apr. 12, 2022).

17 46. Diamond Lakes Credit Union states,

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

21 *Membership and Account Agreement*, Diamond Lakes Federal Credit Union,  
22 <https://bit.ly/39o2P94> (last accessed Apr. 12, 2022).

23 47. Parkside Credit Union states,  
24

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

5 *Membership and Account Agreement*, Parkside Credit Union 21 (Jan. 30, 2020),  
6 <https://bit.ly/3aaXfpG> (last accessed Apr. 12, 2022) (emphasis in original).

7 48. Timberland Bank provides no such disclosure, and by not doing so, deceives its  
8 accountholders.

9 **C. The Imposition of Multiple Fees on a Single Transaction Breaches  
10 Timberland Bank’s Duty of Good Faith and Fair Dealing.**

11 49. Parties to a contract are required not only to adhere to the express conditions in the  
12 contract, but also to act in good faith when they are vested with a discretionary power over the  
13 other party. Further, as to bank transactions, the Uniform Commercial Code (“UCC”)—which  
14 has been adopted by all states—mandates good faith and fair dealing. As such, when a party such  
15 as Timberland Bank gives itself discretion to act, the party with discretion is required to exercise  
16 that power and discretion in good faith. This creates an implied promise to act in accordance with  
17 the parties’ reasonable expectations and means that the Bank is prohibited from exercising its  
18 discretion to enrich itself and gouge its customers. Indeed, the Bank has a duty to honor  
19 transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from  
20 exercising its discretion to pile on ever greater penalties.

21 50. Here—in the adhesion agreements Timberland Bank foisted on Plaintiff and its  
22 other customers—Timberland Bank has provided itself numerous discretionary powers affecting  
23 customers’ bank accounts. But instead of exercising that discretion in good faith and consistent  
24 with consumers’ reasonable expectations, the Bank abuses that discretion to take money out of

1 consumers' accounts without their permission and contrary to their reasonable expectations that  
2 they will not be charged multiple fees for the same transaction.

3 51. Timberland Bank exercises its discretion in its own favor—and to the prejudice of  
4 Plaintiff and its other customers—when it defines “item” in a way that directly leads to more NSF  
5 Fees. Further, Timberland Bank abuses the power it has over customers and their bank accounts  
6 and acts contrary to their reasonable expectations under the Account Documents. This is a breach  
7 of the Bank’s implied covenant to engage in fair dealing and act in good faith.

8 52. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and  
9 other customers—by charging more than one fee on a single transaction, Timberland Bank  
10 breaches the reasonable expectation of Plaintiff and other customers and in doing so violates the  
11 implied covenant to act in good faith.

12 53. It was bad faith and totally outside Plaintiff’s reasonable expectations for  
13 Timberland Bank to use its discretion to assess multiple NSF Fees for a single attempted payment.

14 **II. DEFENDANT CHARGES OD FEES ON TRANSACTIONS THAT DO NOT**  
15 **ACTUALLY OVERDRAW THE ACCOUNT**

16 54. Plaintiff has a checking account with Defendant.

17 55. Defendant issues debit cards to its checking account customers, including Plaintiff,  
18 which allows its customers to have electronic access to their checking accounts for purchases,  
19 payments, withdrawals, and other electronic debit transactions.

20 56. Pursuant to its Account Documents, Defendant charges fees for transactions that  
21 purportedly result in an overdraft.

22 57. Plaintiff brings this cause of action challenging Defendant’s practice of charging  
23 OD Fees on what are referred to in this complaint as “Authorize Positive, Purportedly Settle  
24 Negative Transactions” (“APPSN Transactions”).

1           58.     Here’s how it works. At the moment debit card transactions are authorized on an  
2 account with positive funds to cover the transaction, Defendant immediately reduces  
3 accountholders’ checking accounts by the amount of the purchase, sets aside funds in a checking  
4 account to cover that transaction, and as a result, the accountholder’s displayed “available  
5 balance” reflects that subtracted amount. Therefore, customers’ accounts will always have  
6 sufficient available funds to cover these transactions because Defendant has already sequestered  
7 these funds for payment.

8           59.     However, Defendant still assesses crippling OD Fees on many of these  
9 transactions and misrepresents its practices in its Account Documents.

10          60.     Despite putting aside sufficient available funds for debit card and other POS  
11 transactions at the time those transactions are authorized, Defendant later assesses OD Fees on  
12 those same transactions when they purportedly settle days later into a negative balance. These  
13 types of transactions are APPSN Transactions.

14          61.     Defendant maintains a running account balance in real time, tracking funds  
15 accountholders have for immediate use. This running account balance is adjusted, in real-time, to  
16 account for debit card transactions at the precise instance they are made. When a customer makes  
17 a purchase with a debit card, Defendant sequesters the funds needed to pay the transaction,  
18 subtracting the dollar amount of the transaction from the customer’s available balance. Such funds  
19 are not available for any other use by the accountholder, and such funds are specifically associated  
20 with a given debit card transaction.

21          62.     That means when any *subsequent*, intervening transactions are initiated on a  
22 checking account, they are compared against an account balance that has already been reduced to  
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1 account for any earlier debit card transactions. This means that many subsequent transactions  
2 incur OD Fees due to the unavailability of the funds sequestered for those debit card transactions.

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

6 64. Indeed, the Consumer Financial Protection Bureau (“CFPB”) has expressed  
7 concern with this very issue, flatly calling the practice “unfair” and/or “deceptive” when:

8 A financial institution authorized an electronic transaction, which reduced a  
9 customer’s available balance but did not result in an overdraft at the time of  
10 authorization; settlement of a subsequent unrelated transaction that further lowered  
11 the customer’s available balance and pushed the account into overdraft status; and  
12 when the original electronic transaction was later presented for settlement, because  
13 of the intervening transaction and overdraft fee, the electronic transaction also  
14 posted as an overdraft and an additional overdraft fee was charged. Because such  
15 fees caused harm to consumers, one or more supervised entities were found to have  
16 acted unfairly when they charged fees in the manner described above. Consumers  
17 likely had no reason to anticipate this practice, which was not appropriately  
18 disclosed. They therefore could not reasonably avoid incurring the overdraft fees  
19 charged. Consistent with the deception findings summarized above, examiners  
20 found that the failure to properly disclose the practice of charging overdraft fees  
21 in these circumstances was deceptive. At one or more institutions, examiners  
22 found deceptive practices relating to the disclosure of overdraft processing logic  
23 for electronic transactions. Examiners noted that these disclosures created a  
24 misimpression that the institutions would not charge an overdraft fee with respect  
to an electronic transaction if the authorization of the transaction did not push the  
customer’s 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. Furthermore, because consumers  
were substantially injured or likely to be so injured by overdraft fees assessed  
contrary to the overall net impression created by the disclosures (in a manner not  
outweighed by countervailing 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 fees under these circumstances was  
found to be unfair.

Consumer Financial Protection Bureau, Winter 2015 “Supervisory Highlights.”

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

8           66.     Besides being unfair and unjust, these practices breach contract promises made in  
9 Defendant's adhesion contracts—contracts which fail to inform accountholders about the true  
10 nature of Defendant's processes and practices. These practices also exploit contractual discretion  
11 to gouge accountholders.

12           67.     In plain, clear, and simple language, the Account Documents covering OD Fees  
13 promise that Defendant will only charge OD Fees on transactions that have insufficient funds to  
14 cover that transaction.

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

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

18           69.     A debit card transaction occurs in two parts. First, authorization for the purchase  
19 amount is instantaneously obtained by the merchant from Defendant. When a merchant physically  
20 or virtually “swipes” a customer's debit card, the credit card terminal connects, via an  
21 intermediary, to Defendant, which verifies that the customer's account is valid and that sufficient  
22 available funds exist to cover the transaction amount.

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

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

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

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

16           69. Sometime thereafter, the funds are actually transferred from the customer’s  
17 account to the merchant’s account.

18           70. Defendant (like all banks and credit unions) decides whether to “pay” debit card  
19 transactions at authorization. After that, Defendant is obligated to pay the transaction no matter  
20 what. For debit card transactions, that moment of decision can only occur at the point of sale, at  
21 the instant the transaction is authorized or declined. It is at that point—and only that point—when  
22 Defendant may choose to either pay the transaction or decline it. When the time comes to actually  
23 settle the transaction, it is too late—the financial institution has no discretion and must pay the  
24 charge. This “must pay” rule applies industry wide and requires that, once a financial institution  
authorizes a debit card transaction, it “must pay” it when the merchant later makes a demand,



1 regardless of other account activity. *See* Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046  
2 (Nov. 17, 2009).

3 71. There is no change—no impact whatsoever—to the available funds in an account  
4 when this step occurs.

5 ***B. Defendant's Account Contract***

6 72. Plaintiff has a checking account with Defendant, which is governed by  
7 Defendant's standardized Account Documents.

8 73. The Account Documents indicate that Timberland Bank will only pay overdrafts  
9 when an accountholder lacks sufficient funds to pay for a transaction.

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

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

16 76. APPSN transactions are always initiated at a time when there are sufficient  
17 available funds in the account.

18 77. In fact, Timberland Bank actually authorizes transactions on positive funds, claims  
19 to set those funds aside on hold, but then fails to use those same funds to settle those same  
20 transactions. Instead, it uses a secret posting process described below.

21 78. All the above representations and contractual promises are untrue. In fact,  
22 Timberland Bank charges OD Fees even when sufficient funds exist to cover transactions that are  
23  
24

1 authorized into a positive balance. No express language in any document states that Timberland  
2 Bank may impose OD Fees on any APPSN Transactions.

3 79. First, and most fundamentally, Timberland Bank charges OD Fees on debit card  
4 transactions for which there are sufficient funds available to cover the transactions. That is despite  
5 contractual representations that Timberland Bank will only charge OD Fees on transactions with  
6 insufficient available funds to cover a given transaction.

7 80. Timberland Bank assesses OD Fees on APPSN Transactions that do have  
8 sufficient funds available to cover them throughout their lifecycle.

9 81. Timberland Bank's practice of charging OD Fees even when sufficient available  
10 funds exist to cover a transaction violates a contractual promise not to do so. This discrepancy  
11 between Timberland Bank's actual practice and the contract causes accountholders like the  
12 Plaintiff to incur more OD Fees than they should.

13 82. Next, sufficient funds for APPSN Transactions are actually debited from the  
14 account immediately, consistent with standard industry practice.

15 83. Because these withdrawals take place upon initiation, they cannot be re-debited  
16 later. But that is what Timberland Bank does when it re-debits the account during a secret batch  
17 posting process.

18 84. In reality, Timberland Bank's actual practice is to deduct the same debit card  
19 transaction twice to determine if the transaction overdraws an account—both at the time a  
20 transaction is authorized and later at the time of settlement.

21 85. At the time of settlement, however, an available balance *does not change at all* for  
22 these transactions previously authorized into good funds. As such, Timberland Bank cannot then  
23  
24

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 86. Upon information and belief, something more is going on: at the moment a debit  
4 card transaction is getting ready to settle, Timberland Bank does something new and unexpected,  
5 during the middle of the night, during its nightly batch posting process. Specifically, Timberland  
6 Bank 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 87. This secret step allows Timberland Bank to charge OD Fees on transactions that  
9 never should have caused an overdraft—transactions that were authorized into sufficient funds,  
10 and for which Timberland Bank specifically set aside money to pay them.

11 88. This discrepancy between Timberland Bank’s actual practices and the contract  
12 causes accountholders to incur more OD Fees than they should.

13 89. In sum, there is a huge gap between Timberland Bank’s practices as described in  
14 the Account Documents and Timberland Bank’s practices in reality.

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

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

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

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

24

1           ***D. Reasonable Accountholders Understand Debit Card/POS Transactions Are***  
2           ***Debited Immediately***

3           93. The assessment of OD Fees on APPSN Transactions is fundamentally inconsistent  
4 with immediate deduction and holding of funds for debit card/POS transactions. That is because,  
5 if funds are immediately debited from the balance and held, they cannot be depleted by  
6 intervening transactions (and it is that subsequent depletion that is the necessary condition of  
7 APPSN Transactions). If funds are immediately debited from the available balance, then they are  
8 necessarily available to be applied to the debit card transactions for which they are debited.

9           94. Defendant was and is aware that this is precisely how accountholders reasonably  
10 understand such transactions to work.

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

15           96. Consumer Action, a national nonprofit consumer education and advocacy  
16 organization, advises consumers determining whether they should use a debit card that “[t]here is  
17 no grace period on debit card purchases the way there is on credit card purchases; the money is  
18 immediately deducted from your checking account. Also, when you use a debit card you lose the  
19 one or two days of ‘float’ time that a check usually takes to clear.” *What Do I Need to Know*  
20 *About Using a Debit Card?*, Consumer Action (Jan. 14, 2019), [https://www.consumer-](https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card)  
21 [action.org/helpdesk/articles/what\\_do\\_i\\_need\\_to\\_know\\_about\\_using\\_a\\_debit\\_card](https://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card) (last visited  
22 June 4, 2021).

23           97. Further, Consumer Action informs consumers that “Debit cards offer the  
24 convenience of paying with plastic without the risk of overspending. When you use a debit card,

1 | you do not get a monthly bill. You also avoid the finance charges and debt that can come with a  
2 | credit card if not paid off in full.” *Understanding Debit Cards*, Consumer Action,  
3 | [http://www.consumer-action.org/english/articles/understanding\\_debit\\_cards](http://www.consumer-action.org/english/articles/understanding_debit_cards) (last visited June 4,  
4 | 2021).

5 | 98. This understanding is a large part of the reason that debit cards have risen in  
6 | popularity. The number of terminals that accept debit cards in the United States increased by  
7 | approximately 1.4 million in a recent five year period and, with that increasing ubiquity,  
8 | consumers have (along with credit cards) viewed debit cards “as a more convenient option than  
9 | refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case*  
10 | *for Smallest Purchases*, MarketWatch, Mar. 23, 2016, [http://www.marketwatch.com/story/more-](http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23)  
11 | [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).

12 | 99. Not only have accountholders increasingly transitioned from cash to debit cards,  
13 | but they believe that a debit card purchase is the fundamental equivalent of a cash purchase, with  
14 | the swipe of a card equating to handing over cash, permanently and irreversibly.

15 | 100. Defendant was aware of accountholder perception that debit transactions reduce  
16 | an available balance *in a specified order*—namely, the moment they are actually initiated—and  
17 | its account agreement only supports this perception.

18 | ***E. Plaintiff’s Experience***

19 | 101. As examples, on April 8, 2019, Plaintiff was assessed OD Fees for debit card  
20 | transactions that settled that day, despite the fact that positive funds were deducted immediately,  
21 | prior to that day, for the transaction on which Plaintiff was assessed the OD Fee. At the time that  
22 | the positive funds were deducted, Plaintiff had a positive balance, which would not have caused  
23 | an OD Fee.

24 |

**CLASS ACTION ALLEGATIONS**

102. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Rule 23 of the Washington Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

103. The proposed classes are defined as:

All Timberland Bank checking account holders in the state of Washington who, during the applicable statute of limitations, were charged multiple fees on the same item (the “Multi NSF Class”).

All Timberland Bank checking account holders in the state of Washington who, during the applicable statute of limitations, were charged OD Fees on transactions that were authorized into a positive available balance (the “APPSN Class”).

The classes are collectively referred to as the “Classes.”

104. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

105. Excluded from the Classes are Timberland Bank, its parents, subsidiaries, affiliates, officers and directors, any entity in which Timberland Bank has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

106. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to Timberland Bank’s records.

107. The claims of Plaintiff are typical of the claims of the Classes in that she, like all Class members, was charged improper NSF Fees and OD Fees. Plaintiff, like all Class members, has been damaged by Timberland Bank’s misconduct in that she paid improper NSF Fees and

1 OD Fees. Furthermore, the factual basis of Timberland Bank's misconduct is common to all  
2 Class members, and represents a common thread of unfair and unconscionable conduct resulting  
3 in injury to all members of the Classes.

4 108. There are numerous questions of law and fact common to the Classes and those  
5 common questions predominate over any questions affecting only individual Class members.

6 109. Among the questions of law and fact common to the Classes are whether  
7 Timberland Bank:

- 8 a. Charged multiple fees on a single transaction;
- 9 b. Charged OD Fees on transactions when those transactions did not  
10 overdraw accounts;
- 11 c. Breached its contract with consumers by charging OD Fees on transactions  
12 when those transactions did not overdraw accounts;
- 13 d. Breached the covenant of good faith and fair dealing by charging OD Fees  
14 on transactions when those transactions did not overdraw accounts;
- 15 e. Whether Plaintiff and the Classes were damaged by Defendant's conduct  
16 and if so, the proper measure of damages.

17 110. Plaintiff is committed to the vigorous prosecution of this action and has retained  
18 competent counsel experienced in the prosecution of class actions and, in particular, class actions  
19 on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate  
20 representative and will fairly and adequately protect the interests of the Classes.

21 111. A class action is superior to other available methods for the fair and efficient  
22 adjudication of this controversy. Since the amount of each individual Class member's claim is  
23 small relative to the complexity of the litigation, and due to the financial resources of Timberland  
24

1 Bank, no Class member could afford to seek legal redress individually for the claims alleged  
2 herein. Therefore, absent a class action, the Class members will continue to suffer losses and  
3 Timberland Bank's misconduct will proceed without remedy. Moreover, given that the improper  
4 fees were assessed in a uniform manner, common issues predominate over any questions, to the  
5 extent there are any, affecting only individual members.

6 112. Even if Class members themselves could afford such individual litigation, the  
7 court system could not. Given the complex legal and factual issues involved, individualized  
8 litigation would significantly increase the delay and expense to all parties and to the Court.  
9 Individualized litigation would also create the potential for inconsistent or contradictory rulings.  
10 By contrast, a class action presents far fewer management difficulties, allows claims to be heard  
11 which might otherwise go unheard because of the relative expense of bringing individual lawsuits,  
12 and provides the benefits of adjudication, economies of scale and comprehensive supervision by  
13 a single court.

14 **FIRST CLAIM FOR RELIEF**  
15 **BREACH OF CONTRACT AND BREACH OF THE COVENANT OF GOOD FAITH**  
16 **AND FAIR DEALING**  
17 **(On Behalf of Plaintiff and the Classes)**

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

20 114. Plaintiff and Timberland Bank have contracted for bank account deposit, checking,  
21 ATM, and debit card services. That contract did not permit Timberland Bank to charge multiple  
22 fees for the same item. Moreover, the contract also does not permit Timberland Bank to charge  
23 OD Fees on transactions that do not actually overdraw an account.

24 115. Further, under the laws of Washington, good faith is an element of every contract,  
including the instant Account Documents pertaining to the assessment of OD Fees and NSF Fees.



1 Whether by common law or statute, all such contracts impose upon each party a duty of good  
2 faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and  
3 discharging performance and other duties according to their terms, means preserving the spirit –  
4 not merely the letter – of the bargain. Put differently, the parties to a contract are mutually  
5 obligated to comply with the substance of their contract in addition to its form. Evading the spirit  
6 of the bargain and abusing the power to specify terms constitute examples of bad faith in the  
7 performance of contracts.

8 116. Subterfuge and evasion violate the obligation of good faith in performance even  
9 when an actor believes his conduct to be justified. A failure to act in good faith may be overt or  
10 may consist of inaction, and fair dealing may require more than honesty. Examples of violations  
11 of good faith and fair dealing include evasion of the spirit of the bargain, willful rendering of  
12 imperfect performance, abuse of a power to specify terms, and interference with or failure to  
13 cooperate in the other party's performance.

14 117. Timberland Bank has breached the covenant of good faith and fair dealing in its  
15 contract with customers by charging multiple fees for the same item.

16 118. Timberland Bank has breached the covenant of good faith and fair dealing in its  
17 contract with customers by charging OD Fees on transactions that do not actually overdraw the  
18 account *i.e.* when there were sufficient actual funds in the account to cover the transaction.

19 119. Timberland Bank also breached the express terms of its contract with Plaintiff and  
20 the Multi NSF Classes by charging multiple fees on the same item.

21 120. Timberland Bank also breached the express terms of its contract with Plaintiff and  
22 the APPSN Classes by charging OD Fees on transactions that do not actually overdraw the  
23 account *i.e.* when there were sufficient actual funds in the account to cover the transaction.  
24

1 121. Plaintiff and members of the Classes have performed all, or substantially all, of  
2 the obligations imposed on them under the contract.

3 122. Plaintiff and members of the Classes have sustained damages as a result of  
4 Timberland Bank’s breach of the contract.

5 **SECOND CLAIM FOR RELIEF**  
6 **VIOLATION OF WASHINGTON’S CONSUMER PROTECTION ACT**  
7 **(On Behalf of Plaintiff and the Classes)**

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

10 124. Plaintiff asserts this claim on behalf of herself and on behalf of the Class who are  
11 Washington citizens and enjoy the protections of Unfair Business Practices Act—Consumer  
12 Protection Act (CPA), RCW Chapter 19.86.

13 125. Plaintiff and members of the Class are “persons” within the meaning of RCW  
14 19.86.010(1).

15 126. Timberland Bank is a “person” within the meaning of RCW 19.86.010(1).

16 127. Timberland Bank’s common course of conduct alleged above is unfair and  
17 deceptive and had, and continues to have, the capacity to deceive a substantial portion of the  
18 public.

19 128. Timberland Bank’s policies and practices are deceptive and unfair because  
20 Timberland Bank misleadingly and actively omits material facts and deceptively misrepresents  
21 its OD Fee and NSF Fee practices, including in its own account documents.

22 129. Timberland Bank’s conduct was deceptive. By failing to honestly disclose its true  
23 OD Fee and NSF Fee practices and policies to its customers, Timberland Bank made affirmative  
24

1 misrepresentations and omissions of material fact, and thus, engaged in deceptive acts or  
2 practices.

3 130. Timberland Bank's conduct was also unfair. Timberland Bank's practices of  
4 charging OD Fees on APPSN transactions and multiple NSF Fees on the same transaction were  
5 and are likely to cause substantial injury to consumers. Consumers could not reasonably avoid  
6 these OD Fees and NSF Fees which were not outweighed by countervailing benefit.

7 131. Timberland Bank's common course of unfair and deceptive conduct occurred in  
8 trade or commerce and impact the public interest because Timberland Bank is in the business of  
9 providing financial services to tens of thousands of consumers in Washington. Thousands of  
10 Washingtonians have been and continue to be affected by Timberland Bank's unfair and  
11 deceptive acts and practices.

12 132. Timberland Bank's common course of conduct caused injury to the business or  
13 property of Plaintiff and the Classes.

14 133. Plaintiff and the Classes have been damaged in amounts to be determined at trial  
15 and, under RCW 19.86.090, Plaintiff and the Classes are entitled to recover such damages,  
16 including interest thereon, as well as three times actual damages (up to \$25,000.00), attorneys'  
17 fees and costs.

18 134. Under RCW 19.86.090, Plaintiff and the Classes are also entitled to an order  
19 enjoining Timberland Bank from engaging in the illegal acts and practices described above.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff and members of the Classes demand a jury trial on all claims so  
22 triable and judgment as follows:  
23  
24

1           A.     An order certifying that this action may be maintained as a class action,  
2 that Plaintiff be appointed Class Representative and that Plaintiff’s counsel be appointed  
3 Class Counsel;

4           B.     Declaring Defendant’s OD and NSF Fee policies and practices to be  
5 wrongful, unfair, unconscionable, and in breach of contract;

6           C.     Ordering Defendant to immediately cease the wrongful conduct set forth  
7 above and enjoining Timberland Bank from conducting business via the unlawful and  
8 unfair business acts and practices complained of herein;

9           D.     Restitution of all wrongful OD and NSF Fees paid to Defendant by Plaintiff  
10 and members of the Classes as a result of the wrongs alleged herein in an amount to be  
11 determined at trial;

12           E.     Actual and exemplary damages in an amount to be determined at trial;

13           F.     Pre-judgment interest at the maximum rate permitted by applicable law;

14           G.     Costs and disbursements assessed by Plaintiff in connection with this  
15 action, including reasonable attorneys’ fees pursuant to applicable law;

16           H.     Granting leave to amend these pleadings to conform to the evidence  
17 produced at trial; and

18           I.     Granting such other relief as the Court deems just and proper.

19 Dated: April 13, 2022

Respectfully submitted,

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