

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

LISA DE SIMONE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

CITIZEN BANK, N.A.,

Defendant.

Case No. 23-482

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

**CLASS ACTION COMPLAINT**

Plaintiff Lisa De Simone (“Plaintiff”) brings this Class Action Complaint against Defendant Citizens Bank, N.A. (“Defendant”), and alleges as follows:

**INTRODUCTION**

1. Defendant breaches its account contract, Ex. A hereto, and state and federal law by not providing account records to consumers upon request.

2. In doing so, Defendant gives itself license to, upon information and belief, improperly assess and collect (1) \$35 overdraft fees (“Overdraft Fees” or “OD Fees”) on transactions that did not actually overdraw the account and (2) multiple \$35 fees on an item. Upon information and belief, these practices are also a breach of contract.

3. Plaintiff and other Defendant customers have been injured by Defendant’s improper fee maximization practices. Plaintiff, individually and on behalf of the classes of individuals preliminarily defined below, brings claims for Defendant’s breach of contract and violations of New York General Business Law § 349, *et seq.*

4. The Contract purports to have an arbitration clause. Prior to the filing of this class action lawsuit, Plaintiff initiated an arbitration proceeding against Defendant regarding Defendant’s refusal to provide her with her account statements and its fee assessment practices.

5. Defendant refused to participate in that process and therefore the American Arbitration Association (AAA), the entity Defendant chosen in its Contract to administer arbitration, declined to administer the arbitration because Defendant failed to comply with the AAA's policies regarding consumer claims. Ex. B, AAA Refusal Letter.

6. For this reason, Defendant has forced Plaintiff to bring this action before this Court.

### **PARTIES**

7. Plaintiff is a citizen of this District, and has maintained a checking account at Defendant at all times relevant hereto.

8. Defendant is a bank with more than \$200 billion in assets, making it one of the biggest banks in the country. Defendant maintains its headquarters and principal place of business in Providence, Rhode Island. Defendant is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the Classes, in this District.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a class action in which at least one member of the class (including Plaintiff) is a citizen of a State different from the Defendant. The number of members of the proposed Classes in aggregate exceeds 100 accountholders. 28 U.S.C. § 1332(d)(5)(B).

10. This Court has personal jurisdiction over the Defendant because it resides in, regularly conducts and/or solicits business in, engages in other persistent courses of conduct in, and/or derives substantial revenue from products and/or services provided to persons in this District and in New York.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District—where Defendant does business and where Plaintiff conducts banking business with Defendant.

### **BACKGROUND FACTS**

12. In 2021, the largest financial institutions in America charged customers almost \$11 billion in overdraft fees. Customers who carried an average balance of less than \$350 paid 84 percent of these fees. *Why Poverty Persists in America* (The New York Times, Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html>.

13. Because of this, Defendant’s peers like Bank of America, Capital One and Wells Fargo have made plans to end the assessment of OD or NSF fees entirely. *See* Hugh Son, *Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

14. But not Defendant. In fact, its \$35 per item fee is significantly higher than the 2022 national average of \$29.80 per item. <https://time.com/personal-finance/article/what-is-an-overdraft-fee/>. This is not how banks, particularly industry leading ones, are supposed to make money.

15. Regulators have taken action against the assessment of these types of “junk fees.” The CFPB has concluded that charging OD Fees on debit card transactions authorized on sufficient funds is an “unfair act[] or practice[].” Consumer Financial Protection Bureau, Mar. 2023, Supervisory Highlights Junk Fees Special Edition, Issue 29, Winter 2023, at 3 *available at* <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-junk-fees-special-edition-issue-29-winter-2023/> (last accessed May 30, 2023). As a result of this fee practice, the CFPB has “identified at least tens of millions of dollars of consumer injury and in

response to these examination findings, institutions are providing redress to over 170,000 consumers.” *Id.* at 4.

16. In line with this industry trend, the New York Attorney General recently asked industry leading banks *to end the assessment of all OD Fees by the summer of 2022*. *NY Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6, 2022). Upon information and belief, Citizens Bank did not do so.

17. The FDIC also recently recommended that the common practice of assessing multiple fees on the same item returned for insufficient funds should be halted entirely. *See* Barbarino, Al. “FDIC Warns Banks About Risks of Bounced Check Fees.” Law360, Aug. 19, 2022, available at <https://www.law360.com/articles/1522501/fdic-warns-banks-about-risks-tied-to-bounced-check-fees>.

18. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

## **I. DEFENDANT REFUSES TO PROVIDE PLAINTIFF ACCESS TO HER FINANCIAL RECORDS IN VIOLATION OF FEDERAL LAW AND THE CONTRACT**

19. At all times material hereto, Plaintiff had an account with Defendant and, upon information and belief, was assessed several Overdraft and NSF Fees.

20. Nearly one year ago, Plaintiff, by counsel, first requested in writing that Defendant provide her with documents related to her accounts with Defendant for the last five years. *See* Ex. C, Customer Consent and Authorization for Access to Financial Records (the “Financial Release”).

21. Despite multiple requests for these documents, Defendant refused to comply with its obligations under federal law to provide Plaintiff with her account documents.

22. Section 1033 of the Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) states:

a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

12 U.S.C.A. § 5533.

23. Under this law, Defendant is a “covered person,” Plaintiff is a “consumer,” and the checking account services offered by Defendant is a “consumer financial product or service.” Defendant is required to comply with Plaintiff’s request for her account documents, as contained in the Financial Release. Defendant’s refusal to do so violates federal law.

24. In addition, Defendant’s refusal to provide account documents breaches contractual promises to provide bank statements upon request for a reasonable fee. *See* Ex. A at 14.

25. Because Defendant has not provided Plaintiff’s bank statements and the contracts governing the fees assessed on those bank statements, Plaintiff cannot attach all applicable contract language related to its OD Fee and Multiple Fee claims hereto.

### **CLASS ALLEGATIONS**

26. Plaintiff brings this action individually and as a class action on behalf of the following proposed Classes:

The Account Records Class: All Defendant accountholders who, during the applicable statute of limitations, requested their account documents from Defendant and had such requested denied by Defendant.

The Overdraft Fee Class: All Defendant accountholders who, during the applicable statute of limitations, were assessed overdraft fees on transactions that did not overdraw their checking accounts.

The Multiple Fee Class: All Defendant accountholders who, during the applicable statute of limitations, were charged multiple fees on an item by Defendant.

27. Plaintiff reserves the right to modify or amend the definition of the Classes as this litigation proceeds.

28. Excluded from the Classes are Defendant, its parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant 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.

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

30. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be readily ascertained only by resort to Defendant's records.

31. The claims of the representative Plaintiff are typical of the claims of the Classes in that the representative Plaintiff, like all members of the Classes, was charged improper fees as set forth herein. The representative Plaintiff, like all members of the Classes, has been damaged by Defendant's misconduct. Furthermore, the factual basis of Defendant's misconduct is common to all members of the Classes and represents a common thread of unlawful and unauthorized conduct resulting in injury to all members of the Classes. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Classes.

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

33. Among the questions of law and fact common to the Classes include:

- a. Whether Defendant systematically refuses to provide account documents upon request as federal law and its contract require;

- b. Whether Defendant charges \$35 OD Fees on transactions that do not overdraw the account and multiple \$35 fees on an item;
- c. Whether these practices breach the contract and/or federal law;
- d. Whether Defendant violated New York General Business Law § 349;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory and injunctive relief to which the Classes are entitled.

34. Plaintiff is committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions, particularly on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual class member's claim is small relative to the complexity of the litigation, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Classes will continue to suffer losses and Defendant's misconduct will proceed without remedy.

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

37. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all Class members, is at risk of additional improper fees. Plaintiff and the Class members are entitled

to injunctive and declaratory relief as a result of the conduct complained of herein. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to commit its unfair and illegal actions.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract**  
*(On Behalf of Plaintiff and the Account Records Class)*

38. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

39. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's account documents. *See* Ex. A.

40. All contracts entered by Plaintiff and the Account Records Class are identical or substantively identical because Defendant's form contracts were used uniformly.

41. Defendant has breached the express terms of its own agreements as described herein by not providing Plaintiff access to her own account documents.

42. Plaintiff and members of the Account Records Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

43. Plaintiff and members of the Account Records Class request that their account documents be provided free of charge, that their rights under the Contract and federal law to these documents be declared by the Court and that Defendant be enjoined from its illegal conduct.

**SECOND CLAIM FOR RELIEF**  
**Breach of Contract**  
*(On Behalf of Plaintiff and the OD Fee Class)*

44. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

45. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's account documents. *See* Ex. A.



46. All contracts entered by Plaintiff and the OD Fee Class are identical or substantively identical because Defendant's form contracts were used uniformly.

47. Upon information and belief, Defendant assesses OD Fees on transactions that do not overdraw the account in breach of contract.

48. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

49. Plaintiff and members of the Class have sustained damages as a result of Defendant's breaches of the Contract.

**THIRD CLAIM FOR RELIEF**  
**Breach of Contract**  
*(On Behalf of Plaintiff and the Multiple Fee Class)*

50. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

51. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's account documents. *See* Ex. A.

52. All contracts entered by Plaintiff and the Multiple Fee Class are identical or substantively identical because Defendant's form contracts were used uniformly.

53. Upon information and belief, Defendant assesses multiple fees on an item in breach of contract.

54. Plaintiff and members of the Multiple Fee Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

55. Plaintiff and members of the Multiple Fee Class have sustained damages as a result of Defendant's breaches of the Contract.

**FOURTH CLAIM FOR RELIEF**  
**Violations of New York General Business Law § 349, et seq.**  
*(On behalf of Plaintiff and the Classes)*

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

57. Defendant's practices of refusing ordinary course requests by consumers, including Plaintiff, for account statements and, upon information and belief, assessing improper fees violates the NYGBL.

58. NYGBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service in the New York State.

59. Defendant conducts business, trade or commerce in New York State.

60. In the conduct of its business, trade, and commerce, and in furnishing services in New York State, Defendant's actions were directed at consumers.

61. In the conduct of its business, trade, and commerce, and in furnishing services in New York State, Defendant engaged in deceptive, unfair, and unlawful trade, acts or practices, in violation of NYGBL § 349(a), including but not limited to the following:

a. Defendant misrepresented material facts pertaining to the sale and/or furnishing of banking services to Plaintiff and the Class by representing that it would charge fees on transactions initiated by Plaintiff and furnish account documents upon request; and

b. Defendant omitted, suppressed, and concealed the material fact that it would charge such fees and would not actually provide bank statements upon request.

62. Defendant systematically engaged in these deceptive, misleading, and unlawful acts and practices, to the detriment of Plaintiff and members of the Classes.

63. Defendant willfully engaged in such acts and practices and knew that it violated NYGBL § 349 or showed reckless disregard for whether it violated NYGBL § 349.

64. As a direct and proximate result of Defendant's deceptive banking practices, members of the Class suffered injury and/or damages, including the payment of deceptive fees, as described herein, and the loss of the benefit of their respective bargains with Defendant.

65. The unfair and deceptive practices by Defendant, as described herein, were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to consumers that these consumers could not reasonably avoid; this substantial injury outweighed any benefits to consumers or to competition.

66. Further, Defendant's conduct was substantially injurious to Plaintiff and members of the putative Classes in that they were forced to pay fees they were told they would not incur and were denied access to their account information.

67. Defendant's actions in engaging in the above-described unfair practices and deceptive acts were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of members of the Classes.

68. Had Plaintiff and members of the Classes known they could be charged the above-described deceptive fees, they would have attempted to avoid incurring such fees.

69. As a result of the Defendant's violations of NYGBL § 349, Plaintiff and members of the Classes have paid and will continue to pay improper fees. Accordingly, Plaintiff and the Classes have suffered and will continue to suffer actual damages.

70. Accordingly, Plaintiff and the members of the Class are entitled to relief under NYGBL § 349(h), including, but not limited to, actual damages, treble damages, statutory damages, injunctive relief, and/or attorneys' fees and costs.

### **REQUEST FOR RELIEF**

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

- a. Certification for this matter to proceed as a class action;
- b. Declare rights under the Contract such that Plaintiff and the Classes can freely receive their account documents;
- c. Enjoin Defendant from breaching its contract;
- d. Designation of Plaintiff as the Class Representative and designation of the undersigned as Class Counsel;
- e. Restitution of all improper fees paid to Defendant by Plaintiff and the Classes because of the wrongs alleged herein in an amount to be determined at trial;
- f. Actual damages in amount according to proof;
- g. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- h. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- i. Such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff, by counsel, demands trial by jury.

Dated: June 2, 2023

Respectfully submitted,

/s/ James J. Bilborrow

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