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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

APR 19 2023

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14 *ATTORNEYS FOR PLAINTIFF AND PROPOSED CLASS*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN BERNARDINO**

18 VICTORIA JOHNSON, individually and )  
on behalf of all others similarly situated, )  
19 )  
Plaintiff, )

Case No. **CIV SB 2309190**

20 v. )

**CLASS ACTION COMPLAINT**

21 )  
22 NEW YORK COMMUNITY BANCORP, )  
INC. and DOES 1-50, inclusive )

**[DEMAND FOR JURY TRIAL]**

23 )  
24 Defendants. )

**FILED**

RECEIVED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
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1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff, individually and on behalf of all persons similarly situated, alleges the  
3 following based on personal knowledge as to allegations regarding herself and on information and  
4 belief as to others:

5 **INTRODUCTION**

6 2. Plaintiff brings this action on behalf of herself and a class of similarly situated  
7 individuals against Defendant New York Community Bancorp, Inc., as successor of Desert  
8 Community Bank (“Defendant”) for assessing non-sufficient funds charges (“NSF Fees”) on  
9 transactions in breach of its Contract’s express promise not to assess such fees.

10  
11 3. Plaintiff brings claims for breach of contract, including breach of the implied duty  
12 of good faith and fair dealing, and unjust enrichment.

13 **PARTIES**

14 4. Plaintiff Victoria Johnson is a citizen of California. Plaintiff has had an account  
15 with Desert Community Bank at all times material hereto.

16  
17 5. Defendant Desert Community Bank was a California Bank. Desert Community  
18 Bank was acquired by Flagstar Bank, FSB, which, in turn, was acquired by New York Community  
19 Bancorp, Inc. on December 1, 2022. New Your Community Bancorp, Inc. thus acquired Desert  
20 Community Bank’s assets and liabilities.

21 6. Defendant New York Community Bancorp, Inc. is a national bank incorporated in  
22 Delaware and headquartered in Hicksville, New York. New York Community Bancorp, Inc. has  
23 more than \$90.1 billion in assets.

24 **JURISDICTION AND VENUE**

25  
26 7. This Court has jurisdiction over this matter because the amount in controversy  
27 exceeds \$25,000.

28 8. Venue is proper in this District pursuant to CCP § 395 because Plaintiff resides in

1 this District.

2 9. Defendant regularly and systematically provides retail banking services  
3 throughout the State of California, including in this county, and provides retail banking services  
4 to its customers, including Plaintiff and members of the putative Class. As such, it is subject to  
5 the personal jurisdiction of this Court.  
6

### 7 **BACKGROUND FACTS**

#### 8 **I. DEFENDANT ASSESS NSF FEES IN VIOLATION OF ITS EXPRESS 9 PROMISES NOT TO CHARGE SUCH FEES.**

10 10. Overdraft fees and insufficient funds fees (“NSF fees”) are among the primary fee  
11 generators for banks. According to a banking industry market research company, Moebs Services,  
12 in 2018 alone, banks generated an estimated \$26.5 billion from overdraft fees. *Overdraft Revenue*  
13 *Inches Up in 2018*, MOEBS SERVS. (Mar. 27, 2019), <https://bit.ly/3cbHnkV>.

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

18 12. Unfortunately, the customers who are assessed these fees are the most vulnerable  
19 customers. Younger, lower-income, and non-white account holders are among those who were  
20 more likely to be assessed overdraft fees. *Overdrawn: Consumer Experiences with Overdraft*,  
21 Pew Charitable Trusts 8 (June 2014), <https://bit.ly/3ksKD0I>.

22 13. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo,  
23 Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See Hugh*  
24 *Son, Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1,  
25 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*,  
26 CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>,  
27  
28

1           14. Federal regulators have also taken action. For example, the Federal Deposit  
2 Insurance Corporation has repeatedly criticized the unauthorized assessment of NSF Fees. *See*,  
3 *e.g.*, *Consumer Compliance Supervisory Highlights*, FED. DEPOSIT INS. CORP. (Mar. 2022),  
4 <https://bit.ly/3FJF8ae>; *Supervisory Guidance on Multiple Re-Presentment NSF Fees*, Fed.  
5 Deposit Ins. Corp. (Aug. 2022), <https://bit.ly/3FCIBXS>. Regulatory agencies have also ordered  
6 banks to refund millions of dollars as restitution and civil penalties for the unauthorized  
7 assessment of NSF Fees. *See* Consent Order, *In the Matter of Higher One Inc.*, Nos. FDIC-11-  
8 700b, FDIC-11-704k (Aug. 7, 2012), <https://bit.ly/3v46Ucu>.

10           15. Because of this, industry leaders like Capital One and Alliant made plans to end  
11 the assessment of OD Fees entirely. Hugh Son, *Capital One to Drop Overdraft Fees for All Retail*  
12 *Banking Customers*, NBC NEWS (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>.

13           16. Despite routine criticism from federal regulators for unauthorized fees, Defendant  
14 regularly assesses improper and unauthorized fees in direct violation of its Contract's express  
15 promises.

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

20           **A. The Contract Unambiguously States Defendant Will Not Assess NSF Fees.**

21           18. The parties entered into a contract for the provision of checking account services.  
22 The parties' Contract comprises Desert Community Bank's Checking Account Summary (Ex. A  
23 at 2-3), Terms and Conditions of Your Account (Ex. A at 3-20), Bounce Protection Enrollment  
24 Form (Ex. A at 21), Bounce Protection Overdraft Program (Ex. A at 22-26), What You Need to  
25 Know About Overdrafts and Overdraft Fees document (Ex. A at 27), Electronic Fund Transfers  
26 Disclosure (Ex. A at 28-35), the Substitute Checks and Your Rights document (Ex. A at 35-37),  
27  
28

1 Funds Availability Disclosure (Ex. A at 38-40), Common Features – Fee Schedule document (Ex.  
2 A at 41-43), and Flagstar Bank’s “About Your Privacy” document (Ex. A at 44-45).

3 19. When an item is presented for payment and there are insufficient funds in the  
4 customer’s account to cover it, Defendant may either (1) reject payment of the charge and return  
5 it to the merchant unpaid or (2) pay the transaction into overdraft.  
6

7 20. Specifically, Defendant’s Contract explains: “[A]t our discretion, to avoid  
8 overdrawing or causing our account to become further overdrawn, we may return (i.e., not honor  
9 or reject) any item that would cause your account to become overdrawn, or further overdraw your  
10 account.” Checking Account Summary at 1.

11 21. The Contract expressly and repeatedly states that, while Defendant may assess fees  
12 for transactions that are paid into overdraft, Defendant *will not* charge NSF Fees for transactions  
13 returned due to insufficient funds:  
14

15 [W]e may assess an Overdraft Charge against your account if we pay an item  
16 exceeding your Available Balance. . . . If we do not honor such an Item, the  
17 transaction will be considered a non-sufficient funds transaction and ***we will not  
assess a fee for a non-sufficient funds transaction.***

18 Checking Account Summary at 1 (emphasis added).

19 22. The Bounce Protection Overdraft Program disclosure and Bounce Protection  
20 Enrollment Form likewise note that the bounce protection program permits Defendant to pay an  
21 item exceeding the account’s available balance “instead of returning the Item unpaid and *not*  
22 *charging you a fee.*” Bounce Protection Overdraft Program at 1 (emphasis added); Bounce  
23 Protection Enrollment Form at 1 (emphasis added).

24 23. The Bounce Protection Overdraft Program disclosure makes this promise even  
25 more clear, reiterating: “If we return the Item unpaid rather than paying it, *we will not assess a*  
26 *fee.*” Bounce Protection Overdraft Program at 1 (emphasis added); *see also id.* at 5 (“we may  
27  
28

1 return each Item unpaid and *we will not assess you a fee for Items we return.*) (emphasis  
 2 added).

3 24. Defendant’s fee schedules reiterate this promise:

4 **Common Features – Fee Schedule**

5 . . .

6 Non-Sufficient Funds (NSF) Charge (each)	No charge
7 Overdraft Charge (each)	\$36.00

8 Checking Account Summary at 1.

9 Returned deposited item or returned check charge (each) No charge

10 Common Features - Fee Schedule at 1.

11 25. The Terms and Conditions’ examples of situations in which members may incur  
 12 fees further confirm that Defendant will not charge NSF Fees for transactions that are returned  
 13 unpaid. Specifically, the Contract provides the following two examples, both of which explicitly  
 14 promise that Defendant does not charge NSF Fees:  
 15

16 Example 1: Suppose that your account has an Available Balance of \$0, and you do  
 17 not have Bounce Protection. Three ACH debits are presented against your account  
 18 on a single day; the first ACH debit presented is \$1,000, the second is \$300, and  
 19 the third is \$350. All three ACH debits would initially be scheduled to be returned  
 20 unpaid because they exceed your Available Balance. . . . ***As we do not charge for  
 21 non-sufficient funds transactions, you would not be assessed fees for the . . .  
 22 returned and unpaid ACH debits.***

23 Example 2: Suppose your account has an Available Balance of \$0 and you have  
 24 Bounce Protection with a limit of \$500. Three ACH debits are presented against  
 25 your account on a single day; the first presented is \$1,000, the second is \$300, and  
 26 the third is \$350. . . . Suppose you deposited \$600 cash by 6 p.m. PT that day. The  
 27 deposit would result in an Available Balance of \$300 and a Bounce Protection  
 28 limit of \$500. We would then apply the rejected ACH debits to the Available  
 Balance in the order in which the ACH debits were presented to us. Your Available  
 Balance and your Bounce Protection limit would not be sufficient to pay the first  
 ACH debit presented (\$1000) in its entirety and the ACH debit would be returned  
 unpaid. Your Available Balance and your Bounce Protection limit would be  
 sufficient to pay the third ACH debit (\$350) in its entirety leaving a \$-50 Available  
 Balance and \$450 of remaining Bounce Protection limit. An Overdraft Charge for  
 would be assessed for both the second ACH debit (\$300) and the third ACH debit  
 (\$350) because your Available Balance at the end of the day was overdrawn by

1 more than \$-10. *As we do not charge for non-sufficient funds transactions, you*  
2 *would not be assessed a fee for the first ACH debit (\$1,000) that was returned*  
3 *unpaid.*

4 Terms and Conditions at 9-10 (emphasis added).

5 26. In sum, the Contract expressly and unambiguously promises accountholders that  
6 Defendant will not assess NSF Fees on transactions that are returned unpaid due to insufficient  
7 funds.

8 27. Defendant thus breaches its Contract by routinely assessing NSF Fees on items  
9 that are returned unpaid.

10 28. Indeed, not only does Defendant regularly assess NSF Fees in breach of its  
11 Contract, but Defendant regularly assesses *multiple* NSF Fees on an item that is returned for  
12 insufficient funds.

13 29. After Defendant returns an item to a merchant unpaid, the merchant may re-submit  
14 the item to Defendant up to two more times, or three presentments total.

15 30. Unbeknownst to consumers, when Defendant reprocesses an electronic payment  
16 item, ACH item, or check for payment after it was initially rejected for insufficient funds,  
17 Defendant chooses to treat it as a new and unique item and assesses yet another NSF Fee if the  
18 item is returned unpaid again.

19 31. But Defendant and its accountholders never agreed that this counterintuitive and  
20 deceptive result could be possible. To the contrary, the parties expressly agreed that Defendant  
21 would *not* assess NSF Fees, no matter how many times an item is represented and reprocessed for  
22 payment.  
23

24 **B. Plaintiff's Experience**

25 32. Plaintiff was charged \$36 NSF Fees on items that were returned unpaid on  
26 numerous occasions, including but not limited to December 2, 2021, December 6, 2021,  
27  
28



1 December 21, 2021, January 7, 2022, January 13, 2022, January 18, 2022, February 14, 2022,  
2 April 12, 2022, June 6, 2022, and June 21, 2022.

3 33. Plaintiff was also assessed NSF Fees on items that had previously been returned  
4 unpaid, assessed an NSF Fee, and re-processed by Defendant on January 7, 2022, January 24,  
5 2022, February 18, 2022, March 4, 2022, April 14, 2022, June 10, 2022, and June 27, 2022.  
6

7 34. Defendant thus routinely charged Plaintiff between \$36 and \$108 in NSF Fees on  
8 items that were returned unpaid in direct violation of the Contract's promise *not* to assess such  
9 fees.

10 35. The improper fees charged by Defendant to Plaintiff's account were not errors by  
11 Defendant, but rather were intentional charges made by Defendant as part of its standard  
12 processing of transactions.  
13

14 36. Plaintiff therefore had no duty to report the fees as errors because they were not;  
15 instead, they were part of the systematic and intentional assessment of fees according to  
16 Defendant's standard practices.

17 37. Moreover, any such reporting would have been futile as Defendant's own contract  
18 admits that Defendant made a decision to charge the fees.

19 **II. THE IMPOSITION OF THESE IMPROPER FEES BREACHES**  
20 **DEFENDANT'S DUTY OF GOOD FAITH AND FAIR DEALING**

21 38. Parties to a contract are required not only to adhere to the express conditions of the  
22 contract but also to act in good faith when they are invested with a discretionary power over the  
23 other party. This creates an implied duty to act in accordance with account holders' reasonable  
24 expectations and means that the bank or credit union is prohibited from exercising its discretion  
25 to enrich itself and gouge its customers. Indeed, the bank or credit union has a duty to honor  
26 transaction requests in a way that is fair to its customers and is prohibited from exercising its  
27 discretion to pile on even greater penalties on its account holders.  
28



1 controlling interest, the legal representatives, heirs, successors or assigns of any such excluded  
2 party, the judicial officer(s) to whom this action is assigned, and the members of their  
3 immediate families.

4 45. Plaintiff reserves the right to modify or amend the definition of the proposed  
5 Class and/or to add a subclass(es), if necessary, before this Court determines whether  
6 certification is appropriate.  
7

8 46. The questions here are ones of common or general interest such that there is a  
9 well-defined community of interest among the class members. These questions predominate  
10 over questions that may affect only individual class members because Defendant has acted on  
11 grounds generally applicable to the Class. Such common legal or factual questions include, but  
12 are not limited to:

- 13 a. Whether Defendant improperly charged NSF Fees on items returned for
- 14 insufficient funds;
- 15 b. Whether such conduct violates Defendant's Contract;
- 16 c. Whether such conduct violates the contract and the covenant of good faith and
- 17 fair dealing;
- 18 d. Whether such conduct is deceptive or in bad faith;
- 19 e. Whether Defendant violated the UCL; and
- 20 f. Whether Plaintiff and other members of the Class have sustained damages as a
- 21 result of Defendant's improper fee practices and the proper measure of
- 22 damages.

23 47. The Class members are numerous such that joinder is impracticable. Upon  
24 information and belief, and subject to class discovery, the Class consists of thousands of  
25 members or more, the identity of whom are within the exclusive knowledge of and can be  
26 ascertained only by resort to Defendant's records. Defendant has the administrative capability  
27 through its computer systems and other records to identify all members of the Class, and such  
28 specific information is not otherwise available to Plaintiff.

1           48.     It is impracticable to bring Class members' individual claims before the Court.  
2     Class treatment permits a large number of similarly situated persons or entities to prosecute their  
3     common claims in a single forum simultaneously, efficiently and without the unnecessary  
4     duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory  
5     judgments that numerous individual actions would engender. The benefits of the class  
6     mechanism, including providing injured persons or entities with a method for obtaining redress  
7     on claims that might not be practicable to pursue individually, substantially outweigh any  
8     difficulties that may arise in the management of this class action.  
9

10           49.     Plaintiff's claims are typical of the claims of the other Class members in that they  
11     arise out of the same wrongful business practices by Defendant, as described herein.

12           50.     Plaintiff is more than an adequate representative of the Class in that she has a  
13     checking account with Defendant and has suffered damages as a result of Defendant's and  
14     improper business practices. In addition:  
15

- 16           a.     Plaintiff is committed to the vigorous prosecution of this action on behalf of  
17                 herself and all others similarly situated and has retained competent counsel  
18                 experienced in the prosecution of class actions and, in particular, class actions  
19                 on behalf of accountholders against financial institutions;  
20           b.     There is no conflict of interest between Plaintiff and the unnamed Class  
21                 members;  
22           c.     Plaintiff anticipates no difficulty in the management of this litigation as a  
23                 class action; and  
24           d.     Plaintiff's legal counsel has the financial and legal resources to meet the  
25                 substantial costs and legal issues associated with this type of litigation.  
26           e.     Plaintiff knows of no difficulty to be encountered in the maintenance of this  
27                 action that would preclude its maintenance as a class action.  
28           f.     Defendant has acted or refused to act on grounds generally applicable to the  
               Class, thereby making appropriate final injunctive relief or corresponding  
               declaratory relief with respect to the Class as a whole.

1           51. All conditions precedent to bringing this action have been satisfied and/or  
2           waived.

3   **FIRST CLAIM FOR RELIEF**  
4                   **Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**  
5   **(On Behalf of Plaintiff and the Class)**

6           52. Plaintiff incorporates the preceding allegations by reference as if fully set forth  
7           herein.

8           53. Plaintiff and Defendant have contracted for bank account deposit, checking, ATM,  
9           and debit card services. *See* Ex. A.

10           54. Defendant mischaracterized in the account documents its true fee practices and  
11           breached the express terms of the account documents.

12           55. No contract provision authorizes Defendant to charge \$36 NSF Fees on items that  
13           are returned unpaid due to insufficient funds.

14           56. Under California law, good faith is an element of every contract pertaining to the  
15           assessment of overdraft fees. Good faith is also mandated by the Uniform Commercial Code  
16           ("UCC"), which covers banking transactions. Whether by common law or statute, all contracts  
17           impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in  
18           connection with executing contracts and discharging performance and other duties according to  
19           their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently,  
20           the parties to a contract are mutually obligated to comply with the substance of their contract in  
21           addition to its form. Evading the spirit of the bargain and abusing the power to specify terms  
22           constitute examples of bad faith in the performance of contracts.  
23           constitute examples of bad faith in the performance of contracts.

24           57. Subterfuge and evasion violate the obligation of good faith in performance even  
25           when an actor believes their conduct to be justified. A lack of good faith may be overt or may  
26           consist of inaction, and fair dealing may require more than honesty. Examples of violations of  
27           constitute examples of bad faith in the performance of contracts.  
28

1 good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to  
2 specify terms, and interference with or failure to cooperate in the other party's performance.

3 58. Defendant has breached the covenant of good faith and fair dealing through its  
4 overdraft policies and practices as alleged herein.

5 59. Defendant harms consumers by abusing its contractual discretion in a number of  
6 ways that no reasonable customer would anticipate.

7 60. Plaintiff and members of the Class have performed all, or substantially all, of the  
8 obligations imposed on them by the account documents.

9 61. Plaintiff and members of the Class have sustained damages as a result of  
10 Defendant's breach of the contract and breach of the covenant of good faith and fair dealing.

11  
12 **SECOND CLAIM FOR RELIEF**  
13 **Unjust Enrichment**  
14 **(On Behalf of Plaintiff and the Class)**

15 62. Plaintiff incorporates the preceding allegations by reference as if fully set forth  
16 herein.

17 63. Plaintiff, individually and on behalf of the Class, asserts a common law claim for  
18 unjust enrichment. This claim is brought solely in the alternative to Plaintiff's breach of contract  
19 claims and applies only if the parties' contract is deemed unconscionable or otherwise  
20 unenforceable for any reason. In such circumstances, unjust enrichment will dictate that  
21 Defendant disgorge all improperly assessed fees.

22 64. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly  
23 assessed fees upon Plaintiff and the members of the Class that are unconscionable and oppressive.

24 65. Defendant knowingly received and retained wrongful benefits and funds from  
25 Plaintiff and the members of the Class. In so doing, Defendant acted with conscious disregard for  
26 the rights of Plaintiff and the members of the Class.  
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66. As a result of Defendant's wrongful conduct as alleged herein, Defendant has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and the members of the Class.

67. Defendant's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

68. Under the common law doctrine of unjust enrichment, it is inequitable for Defendant to retain the benefits it received, and is still receiving, without justification, from the fee practices alleged herein on Plaintiff and members of the Class in an unconscionable and oppressive manner. Defendant's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

69. The financial benefits derived by Defendant rightfully belong to Plaintiff and the members of the Class. Defendant should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds collected by Defendant. A constructive trust should be imposed upon all wrongful or inequitable sums received by Defendant traceable to Plaintiff and the members of the Class.

70. Plaintiff and the members of the Class have no adequate remedy at law.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Unfair Competition Law**  
**Cal. Bus. & Prof. Code § 17200, *et seq.***  
**(On Behalf of Plaintiff and the Class)**

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

72. Defendant's conduct described herein violates the Unfair Competition Law (the "UCL"), codified at California Business and Professions Code section 17200, *et seq.*

73. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is to protect both consumers and competitors by promoting fair competition in

1 commercial markets for goods and services. In service of that purpose, the Legislature framed  
2 the UCL's substantive provisions in broad, sweeping language.

3 74. By defining unfair competition to include any "any unlawful, unfair or fraudulent  
4 business act or practice," the UCL permits violations of other laws to be treated as unfair  
5 competition that is independently actionable and sweeps within its scope acts and practices not  
6 specifically proscribed by any other law.  
7

8 75. Defendant violates the UCL by charging NSF Fees on items that are returned  
9 unpaid due to insufficient funds.

10 76. Defendant committed fraudulent business acts and practices in violation of Cal.  
11 Bus. & Prof. Code § 17200, *et seq.*, in the following respect, among others:

- 12 a. Defendant's practice of falsely indicating in account documents that it will  
13 charge not charge NSF Fees on items returned unpaid; and  
14  
15 b. Defendant's practice of falsely indicating in account documents and  
16 marketing materials that it will not charge NSF Fees on items returned  
17 unpaid.

18 77. Defendant's conduct was not motivated by any business or economic need or  
19 rationale. The harm and adverse impact of Defendant's imposition of NSF Fees on items  
20 returned unpaid were neither outweighed nor justified by any legitimate reasons, justifications,  
21 or motives.  
22

23 78. The harm to Plaintiff and members of the Class arising from Defendant's unfair  
24 practices relating to the imposition of NSF Fees on an item returned unpaid outweighs the  
25 utility, if any, of those practices.  
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79. Defendant’s unfair business practice relating to NSF Fees on items returned unpaid is immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff and Class members.

80. Defendant’s conduct was substantially injurious to accountholders in that they have been forced to pay NSF Fees on items returned unpaid, which Plaintiff and the Class never agreed to.

81. As a result of Defendant’s violations of the UCL, Plaintiff and members of the Class have paid, and/or will continue to pay NSF Fees on items returned unpaid and thereby have suffered and will continue to suffer actual damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, respectfully requests the Court to enter an Order:

- a. certifying the proposed Class, appointing Plaintiff as Class Representative, and appointing Plaintiff’s counsel as Class counsel;
- b. declaring Defendant’s fee policies and practices alleged in this Complaint to be wrongful and unconscionable to the extent they are inconsistent with its contractual representations;
- c. enjoining Defendant from breaching its Contract;
- d. awarding Plaintiff and the Class restitution in an amount to be proven at trial;
- e. awarding actual damages in an amount according to proof;
- f. awarding pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- g. awarding costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys’ fees and costs pursuant to applicable law; and
- h. awarding such other relief as this Court deems just and proper.