

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

LYNN EGAN, as an individual, and on behalf of all others similarly situated,

Plaintiffs,

Vs.

WELLS FARGO & COMPANY; WELLS FARGO BANK, N.A.

Defendants.

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**ORIGINAL CLASS ACTION COMPLAINT**

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Plaintiff LYNN EGAN, as an individual, on behalf of herself and all others similarly situated (i.e., the members of the various Plaintiff Classes described and defined, *infra*), herein alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. The amount-in-controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and there is minimal diversity because certain members of the class are citizens of a different state than any defendant as required by 28 U.S.C., section 1332(d)(2).

2. Venue as to Defendant is proper in this judicial district because the acts of Defendants Wells Fargo & Company and Wells Fargo Bank, N.A. complained of herein, largely occurred in this judicial district.

**GENERAL ALLEGATIONS**

3. This is a civil action primarily seeking from Defendants Wells Fargo & Co. and Wells Fargo Bank, N.A., restitution and disgorgement of all profits gained as a result of wrongfully taking overdraft fees from Wells Fargo customers' checking accounts after debit transactions and ATM withdrawals when customers had sufficient funds in their checking

accounts to cover these transactions at the time they were made. Plaintiff also seeks remedies for Defendants' actions in increasingly the likelihood of assessing these charges by identifying and publishing inaccurate "available balance" information to customers; Defendants' practice of creating a line of credit on accounts without the customers' knowledge, thereby permitting overdrafting from the account and assessing overdraft fees; and Defendants' failure to adequately notify Customers of these practices. Finally, Plaintiff seeks to enjoin Defendants from continuing to conduct such improper activities. Plaintiff, for herself and all others similarly situated, brings this action pursuant to the Colorado Consumer Protection Act, Colorado Revised Statutes ("C.R.S.") § 6-1-101, *et seq.*; as well as Colorado common law fraud, negligent misrepresentation, and conversion.

4. Plaintiff LYNN EGAN is a resident of the County of Larimer, Colorado. She entered into her contractual relationship with Wells Fargo & Company and Wells Fargo Bank, N.A. (hereinafter referred to as "WELLS FARGO" or "Defendants") in the County of Larimer, and her account is currently maintained at a Larimer County Wells Fargo branch office.

5. Wells Fargo & Co. is the parent of all Wells Fargo entities. Wells Fargo & Co. is a diversified financial services company providing banking, insurance, investments, mortgage banking and consumer finance to individuals, businesses and institutions in all 50 states and internationally. Wells Fargo & Co. is headquartered in San Francisco, CA.

6. Wells Fargo Banking, N.A., is a subsidiary of Wells Fargo & Co. and conducts substantial business in all Counties within the State of Colorado as well as in most other States.

7. Wells Fargo maintains branch offices throughout the State of Colorado and in most other states. Individual customer accounts are maintained at these branch offices.

8. The true names and capacities of defendants sued herein as DOES 1 through 125, inclusive, are currently unknown to Plaintiff, who therefore sues such defendants by such fictitious names. Each of the defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the defendants designated herein as DOES when such identities become known.

9. Based upon information and belief, plaintiffs allege that at all times mentioned herein, each and every defendant was acting as an agent and/or employee of each of the other defendants, and at all times mentioned was acting within the course and scope of said agency and/or employment with the full knowledge, permission and consent of each of the other defendants. In addition, each of the acts and/or omissions of each defendant alleged herein were made known to, and ratified by, each of the other defendants.

## **FACTUAL ALLEGATIONS**

### **A. “Sufficient Funds” Class Factual Allegations**

10. WELLS FARGO is one of this country’s largest consumer banking companies servicing millions of individual and business customers nationwide. One of the services provided by WELLS FARGO for customers who open a checking account is a check/debit/ATM card. This card allows customers to access their checking account funds by using the card to conduct transactions. Whether it is transactions with vendors or using the card to withdraw cash from an ATM machine, the card is processed electronically so that WELLS FARGO is aware of the use of the card and has the option to accept or decline transactions at the point of sale.

11. On several occasions throughout the time that Plaintiff LYNN EGAN has had her Wells Fargo account, she used her WELLS FARGO debit card to make multiple transactions over several days. Based on information and belief, WELLS FARGO expressly electronically approved these transactions before the transactions were completed. Based on information and belief, at the time of most of these transactions, Plaintiff had a positive balance in her account.

12. However, WELLS FARGO assessed several overdraft fees, which were more than she should have been assessed based on the fact that she had sufficient funds in her account at the time she made most of these transactions, and as a result of WELLS FARGO’s re-ordering of transactions from the order they occurred to highest transaction to lowest.

13. Based on information and belief, the insufficient funds charges incurred by Plaintiffs are representative of hundreds of millions of dollars of insufficient overdraft fees that WELLS FARGO assessed its customers and automatically deducted from their checking accounts when there were sufficient funds in their accounts at the time of the transaction. This is

an especially egregious wrongful taking of customers' money from their checking accounts because WELLS FARGO specifically approved each of these transactions and knew at the time it approved the transaction there was sufficient funds in the account to cover the transaction.

14. Finally, WELLS FARGO has failed to provide notice and make customers aware that they can incur insufficient funds overdraft fees on transactions that when made, there was sufficient funds in the account to cover the transaction.

#### **B. "Inaccurate Balance" Class Factual Allegations**

15. Another service that WELLS FARGO promotes, markets and sells to its customers is the availability of current available balance information provided by WELLS FARGO online, by telephone, by in-store representatives and at ATM's.

16. However, when customers like Plaintiff LYNN EGAN rely on this available balance information provided by WELLS FARGO, they still incur insufficient funds overdraft fees for WELLS FARGO approved purchases made within the available balance amount provided by WELLS FARGO. Upon information and belief, LYNN EGAN reviewed and relied on her "available balance" information prior to being hit with an overdraft fee. This is because WELLS FARGO has a practice of publishing inaccurate account balances and therefore misrepresents in all of the above mentioned ways of accessing checking account information that the "available balance" is actually what it purport to be—the amount of funds available in the checking account, and that the transactions within the "available balance" will not result in overdraft fees

17. WELLS FARGO further misrepresents the accuracy and reliability of these published "account balance" or "available balance" information in its marketing materials and customer contractual agreements while encouraging customers to rely on available balance information provided to them by WELLS FARGO in making their purchase decisions.

Examples of such misrepresentations include:

a. Welcome to Your New Account Jacket:

**“Gain More Control Over Your Finances With Wells Fargo Online Banking.**

Free online access to your accounts lets you manage your finance any time, anywhere you have Internet access. **Check your account balances and transaction history.”**

b. Consumer Account Fee and Information Schedule, p. 38:

**“Wells Fargo Online Banking**

Online Banking gives you a convenient and flexible way to manage your finances by providing free online access to your personal accounts. You can view account balances and history, transfer funds and receive monthly statements online.”

c. Get your finances into shape with our resources (brochure):

**“Wells Fargo Online Banking with Bill Pay**

As a leader in Internet banking, we can help you get fiscally fit by organizing your finances with Online Banking with Bill Pay. This service lets you enjoy managing your money in one place, anytime, anywhere you have Internet access. You can check balances, transfer funds between accounts, view your monthly statement and pay your bills all online.”

d. Checking, Savings, And More (brochure):

**“Online Banking and Bill Pay**

- Manage your finances anytime, anywhere you have Internet access
- View online statements, check balances, transfer funds, and more
- Pay any company or individual in the U.S. with Online Bill Pay”

e. Wells Fargo Account Activity Questions (webpage):

**“Why are my available and ending balances different?”**

Your available balance is the most current information regarding the funds you have available for withdrawal, ATM or check Card purchases, or writing checks. It reflects the latest balance based on transactions recorded to your account today including direct deposits, paid checks, withdrawals, and point-of-sale purchases.”

f. Checking Account statement envelope, postmarked August 24, 2007:

Front side: “Someday, I’ll know where all my money goes.”

Back side: “Today. Take control of your financial life with our **FREE** online tools. Easily track your spending, transfer funds, check your balances and more with money management tools from *Wells Fargo Online*®. To learn more, visit **www. Wellsfargo.com/wfonline**”

g. Television and Radio Commercial Campaign:

In a television and radio commercial campaign, WELLS FARGO advertised that customers could rely on ATM and online balance information for whether the customer had sufficient funds in the account for the transactions.

18. WELLS FARGO has also failed to provide notice to customers that the published available balance information it promotes, markets, encourages and advertises as something for the customer to rely on, is inaccurate and can result in insufficient overdraft charges for transaction that are within the amount of the stated available balance published by WELLS FARGO.

### **CLASS ACTION ALLEGATIONS**

19. Plaintiffs initially propose that two subclasses be used in litigating this case, the “Sufficient Funds” Class Plaintiffs and the “Inaccurate Balance” Class Plaintiffs, as defined below.

20. **The “Sufficient Funds” Class Plaintiffs:** Plaintiff incurred an insufficient funds overdraft fee in her checking account for a transaction that when it occurred, there was sufficient funds in the account to cover the transaction. WELLS FARGO approved the transaction of Plaintiff before the transaction was processed. Plaintiff was not notified by WELLS FARGO that she would incur an insufficient funds overdraft fee for an approved transaction where she had sufficient funds to cover the transaction at the time the transaction was made.

21. Plaintiff brings this action on behalf of herself and a plaintiff class initially defined as follows:

All WELLS FARGO customers who maintained a checking accounts with a Colorado branch office who from February 5, 2005 to the present who were assessed an insufficient overdraft fee for a Check Card Purchase, Debit Card

Purchase, or ATM transaction which there was sufficient funds in the checking account at the time of the transaction to cover the amount of the transaction.

Excluded from this class is any entity in which Defendants have a controlling interest, and officers or director of Defendants. Plaintiff, and those persons similarly situated as described in the preceding paragraph, may be collectively referred to herein as “The ‘Sufficient Funds’ Class Plaintiffs.”

22. **The “Inaccurate Balance” Class Plaintiffs:** Plaintiff relied on account available balance information provided to her by WELLS FARGO in entering into the transactions that resulted in an insufficient funds overdraft fee when the available balance provided to her by WELLS FARGO showed she had sufficient funds to cover the transactions. Plaintiff was not notified that the account available balance information provided to her by WELLS FARGO was inaccurate.

23. Plaintiff brings this action on behalf of herself and a plaintiff class initially defined as follows:

All WELLS FARGO customers who maintained a checking account with a Colorado branch office who from February 5, 2005 to the present who were assessed an insufficient overdraft fee for a Check Card Purchase, Debit Card Purchase, or ATM transaction which amount was within WELLS FARGO’s published available balance information at the time of the transaction.

Excluded from this class is any entity in which Defendant has a controlling interest, and officers or directors of Defendants. Plaintiff, and those persons similarly situated as described in the preceding paragraph, may be collectively referred to herein as “The ‘Inaccurate Balance’ Class Plaintiffs.”

24. This action is brought as a class action and may properly be so maintained pursuant to the provisions of the Federal Rules of Civil Procedure 23(a) and 23(b). Plaintiff reserves the right to modify the “Sufficient Funds” Class and the “Inaccurate Balance” Class definitions and the class period based on the results of discovery.

25. **Numerosity of the “Sufficient Funds” and “Inaccurate Balance” Class** – The members of the “Sufficient Funds” Class and the “Inaccurate Balance” Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes that there are at least hundreds of thousands of customers in the class. Since the class members may be identified through business records regularly maintained by Defendant and its employees and agents, and through the media, the number and identities of class members can be ascertained. Members of the Classes can be notified of the pending action by e-mail, mail and supplemented by published notice, if necessary;

26. **Existence and Predominance of Common Question of Fact and Law** – There are questions of law and fact common to either the “Sufficient Funds” Class or the “Inaccurate Balance” Class. These questions predominate over any questions affecting only individual class members. These common legal and factual issues include, but are not limited to:

- a. Whether Defendant WELLS FARGO assessed insufficient overdraft fees for transactions it approved and for which there were sufficient funds in the account at the time of the transaction to cover the cost of the transaction.
- b. Whether Defendant WELLS FARGO posted account balances that do not reflect their actual balance, thereby inducing the customers who rely on the inaccurate statement of account balance into overdrafting from their account and resulting in being assessed overdraft fees.
- c. Whether Defendant WELLS FARGO delayed the posting of transactions made by customers using WELLS FARGO’s debit card, check card or ATM card so that customers are charged overdraft fees on transactions even though the customers had sufficient funds in their account to cover the transactions when the transactions were entered into.
- d. Whether Defendant WELLS FARGO re-ordered daily the posting of transactions from largest transactions to smallest, thereby increasing the number of overdraft fees customers are assessed.

- e. Whether WELLS FARGO charged exorbitant overdraft fee that bears no relationship to the actual cost and risk to WELLS FARGO of paying an NSF item that it had already assessed.
- f. Whether WELLS FARGO created a line of credit for customers to permit them to overdraft from their accounts, thereby assessing the customers overdraft fees.
- g. Whether WELLS FARGO failed to disclose to customers each of the above practices.
- h. Whether WELLS FARGO assessed insufficient overdraft fees for transactions which were within the published available balance information at the time of the transaction.
- i. Whether Defendant WELLS FARGO promotes, markets, encourages and advertises the available balance through ATM machines, Online, Bank Statements, In-Store and Telephone as something for the customer to rely on, which is inaccurate and can result in insufficient overdraft charges for transaction that are within the amount of the stated available balance provided by WELLS FARGO.
- j. Whether Defendant WELLS FARGO misled customers regarding that it assessed insufficient overdraft fees for transactions it approved, and for which there were sufficient funds in the account at the time of the transaction to cover the cost of the transaction.
- k. Whether Defendant WELLS FARGO misled customers that available balance information through ATM machines, Online, Bank Statements, In-Store and Telephone is inaccurate and can result in insufficient overdraft charges for transaction that are within the amount of the stated available balance provided by WELLS FARGO.
- l. Whether Defendant WELLS FARGO'S conduct as described above constitute violations of the causes of action set forth below.;

27. **Typicality** – The claims of the representative Plaintiff are typical of the claims of the member of either or both of the “Sufficient Funds” Class or the “Inaccurate Balance” Class. Plaintiff, like all other members of the Classes, has sustained damages arising from Defendants’ violations of the laws, as alleged herein. The representative Plaintiff and the members of the Classes were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by Defendants.

28. **Adequacy** – The representative Plaintiff will fairly and adequately represent and protect the interests of the Class members and has retained counsel who are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflicts between the claims of the representative Plaintiff and the members of the Classes that would make class certification inappropriate. Counsel for the Classes will vigorously assert the claims of all Class members.

29. **Predominance and Superiority** – This suit may be maintained as a class action under Federal Rules of Civil Procedure 23(b)(3) because questions of law and fact common to the Classes predominate over the questions affecting only individual members of the Classes and a class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendant’s conduct. Further, it would be virtually impossible for the members of the Classes to individually redress effectively the wrongs done to them. Even if class members themselves could afford such individual litigation, the court system could not. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from complex legal and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

30. The Class Plaintiff contemplates the eventual issuance of notice to the proposed Class members setting forth the subject and nature of the instant action. Upon information and belief, Defendants' own business records and electronic media can be utilized for the contemplated notices. To the extent that any further notices may be required, the Class Plaintiff would contemplate the use of additional media and/or mailings.

31. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:

a. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the Classes will create the risk of:

i. Inconsistent or varying adjudications with respect to individual members of the Classes which would establish incompatible standards of conduct for the parties opposing the Classes; or

ii. Adjudication with respect to individual members of the Classes which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

b. The parties opposing the Classes have acted or refused to act on grounds generally applicable to each member of the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Classes as a whole; or

c. Common questions of law and fact exist as to the members of the Classes and predominate over any questions affecting only individual members, and a Class Action is superior to other available methods of the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of the members of the Classes in individually controlling the prosecution or defense of separate actions;

ii. The extent and nature of any litigation concerning controversy already commenced by or against members of the Classes;

iii. The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

iv. The difficulties likely to be encountered in the management of a Class Action.

### **FIRST CAUSE OF ACTION**

#### **Violation of C.R.S. § 6-1-101 *et seq.* – Colorado Consumer Protection Act**

##### **(Against all Defendants)**

32. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein.

33. Plaintiff and members of the Classes are consumers within the meaning of the Colorado Consumer Protection Act (“CPA”). Defendant is a seller within the meaning of the CPA.

34. Plaintiff is engaged in consumer commerce in Colorado who have been affected by Defendants’ deceptive business practices, in violation of the CPA, including: wrongfully taking overdraft fees from Wells Fargo customers’ checking accounts after debit transactions and ATM withdrawals when customers had sufficient funds in their checking accounts to cover these transactions at the time they were made; Defendants’ actions in increasingly the likelihood of assessing these charges by identifying and publishing inaccurate “available balance” information to customers; Defendants’ practice of creating a line of credit on accounts without the customers’ knowledge, thereby permitting overdrafting from the account and assessing overdraft fees; and Defendants’ failure to adequately notify Customers of these practices.

35. As a result of Defendants’ action, each Plaintiff and members of the Classes have incurred damages in the form of insufficient funds overdraft fees being assessed and automatically withdrawn from their checking account.

36. Plaintiff seeks judicial orders of an equitable nature against Defendants, including, but not limited to, orders declaring such practices as are complained of herein to be unlawful, unfair, fraudulent and/or deceptive and enjoining them from undertaking any further unfair, unlawful, fraudulent and/or deceptive acts or omissions.

## **SECOND CAUSE OF ACTION**

### **Fraud**

#### **(Against all Defendants)**

37. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein.

38. The misrepresentations, nondisclosure and/or concealment of material facts made by Defendants to Plaintiffs and the members of the Class, as set forth above, were known by Defendants to be false and material and were intended by the Defendants to mislead Plaintiff and the members of the Class.

39. That the Plaintiff and the Class were actually misled and deceived and were induced by WELLS FARGO to incur overdraft charges they otherwise would not have incurred.

40. As a result of the conduct of Defendants, Plaintiff and the Class members have been damaged by having incurred unwarranted overdraft fees assessed and taken from their checking account. In addition to such damages, Plaintiff seeks punitive or exemplary damages pursuant to N.R.S. § 42.001, *et seq.*, in that defendants engaged in “an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant[s] with the intention on the part of the defendant[s] of thereby depriving a person of property or legal rights or otherwise causing injury.”

## **THIRD CAUSE OF ACTION**

### **Negligent Misrepresentation**

#### **(Against all Defendants)**

41. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein.

42. That Defendants had a duty to provide honest and accurate information to its customers to avoid those customers from incurring expensive and unnecessary overdraft charges.

43. Defendants specifically and expressly indicated to class members that Wells Fargo’s customers’ checking account balance or available balance that are published online, by

phone, by ATM machines, and in-store inquiries are accurate and reliable, when in fact they are inaccurate and unreliable.

44. Such misrepresentations were and are made by WELLS FARGO through the use of the identifying term “available balance” in the various methods in which customers may access their checking account information, when in fact such information is not what it purport to be, and through the various marketing materials and the customer agreement contracts (examples of all of which are set forth in the “Factual Allegations” set forth above).

45. Defendants knew or in the exercise of reasonable diligence should have known, that the ordinary consumer and customer of Defendants’ products would understand Defendants’ representations concerning the terms “account balance” or “available balance” as being what they purport to be – the actual available balance at the time of the inquiry. Defendants also knew or in the exercise of reasonable diligence should have known, that the ordinary consumer and customer of Defendants’ products would understand the marketing materials and the terms of the customers agreement contracts set forth in this Complaint as indicating that the published “account balance” or “available balance” are accurate and reliable. Any other understanding on the part of consumers would not be reasonable given Defendants’ representations.

46. Plaintiff and the “Inaccurate Balance” Class members justifiably relied on Defendants’ misrepresentation as to their available balance and engaged in debit transactions or ATM withdrawals which were within the limits of their published “available balance,” yet were assessed overdraft fees.

47. As a result of the conduct of Defendants, Plaintiff and the “Inaccurate Balance” Class Members have been damaged by having relied on Defendants’ misrepresentations as to their available balance and have incurred unwarranted overdraft fees.

48. In addition, by representing and posting pending charges to online accounts in real time, and then including those charges to provide available balance, WELLS FARGO represented to Class Members that overdraft fees would not be charged for transactions that were less than the balance in the account at the time the transaction took place.

49. Those representations were false as Defendants did assess and automatically deduct overdraft fees from customers account even though there was funds available to cover the transaction at the time of the transaction.

50. Defendants knew or in the exercise of reasonable diligence should have known, the Plaintiffs and ordinary customers would rely on those representations.

51. That Plaintiff and the Class Members did reasonably rely on those representations.

52. As a result, Plaintiff and the Class Members have been damaged by being assessed expensive and unnecessary overdraft fees.

#### **FOURTH CAUSE OF ACTION**

##### **Conversion**

##### **(Against all Defendants)**

53. Plaintiff incorporates by reference and re-allege all paragraphs previously alleged herein.

54. Plaintiff and the Class members own and have the right to possess the money that is in their checking accounts.

55. Defendants interfered with Plaintiff's and the Class members' possession of this money by wrongfully taking directly from their checking accounts overdraft fees after check card, debit card transactions or ATM withdrawals, despite the fact that Plaintiff and the "Sufficient Funds" Class members had sufficient funds in their accounts to cover these transactions at the time they were made, and that the "Available Balance" Class reasonably relied on the available balance information provided by Defendants.

56. Plaintiffs and the members of the Classes never consented to Defendants directly taking overdraft fees from their checking accounts as a result of debit card transactions or ATM withdrawals when there were sufficient funds in their accounts to cover these transactions at the time they were made.

57. Plaintiffs and the Class members have been damaged by Defendants' wrongful taking of overdraft fees from their checking accounts in an amount that is capable of identification through Defendants' records.

### **FIFTH CAUSE OF ACTION**

#### **Violation of C.R.S. § 18-441-405. – Civil Theft**

##### **(Against all Defendants)**

58. Plaintiff incorporates by reference and re-allege all paragraphs previously alleged herein.

59. Plaintiff and the Class members own and have the right to possess the money that is in their checking accounts.

60. Defendants interfered with Plaintiff's and the Class members' possession of this money by intentionally and wrongfully taking directly from their checking accounts overdraft fees after check card, debit card transactions or ATM withdrawals, despite the fact that Plaintiff and the "Sufficient Funds" Class members had sufficient funds in their accounts to cover these transactions at the time they were made, and that the "Available Balance" Class reasonably relied on the available balance information provided by Defendants.

61. Plaintiffs and the members of the Classes never consented to Defendants directly taking overdraft fees from their checking accounts as a result of debit card transactions or ATM withdrawals when there were sufficient funds in their accounts to cover these transactions at the time they were made.

62. Plaintiffs and the Class members have been damaged by Defendants' wrongful taking of overdraft fees from their checking accounts in an amount that is capable of identification through Defendants' records.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs, on their own behalf and on behalf of the "Insufficient Funds" and "Inaccurate Balance" Classes, pray for relief as follows:

A. For an order certifying the "Insufficient Funds" Class and appointing Plaintiff and her counsel to represent the "Insufficient Funds" Class;

- B. For an order certifying the “Inaccurate Balance” Class and appointing Plaintiff and her counsel to represent the “Inaccurate Balance” Class;
- C. For an order awarding Plaintiff and the “Insufficient Funds” and “Inaccurate Balance” Classes restitution and/or disgorgement and other equitable relief as the Court deems proper;
- D. For an order awarding Plaintiff and the “Insufficient Funds” and “Inaccurate Balance” Classes punitive/treble damages as to the appropriate cause of action;
- E. For an order enjoining Defendants from continuing to violate the law in the manner stated herein, and such other injunctive relief as the Court deems just and appropriate;
- F. For an order mandating that Defendants engage in a corrective advertising campaign to correct the misperceptions Defendants’ conduct created;
- G. For an order awarding plaintiff and the “Insufficient Funds” and “Inaccurate Balance” Classes pre-judgment and post-judgment interest, as well as their reasonable attorneys’ and expert-witness fees and other costs; and
- H. For an order awarding such other and further relief as this Court may deem just and proper.

**PLAINTIFF REQUESTS A JURY TO HEAR ALL ISSUES IN THIS CASE**

DATED: February 6, 2009

Respectfully submitted,

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