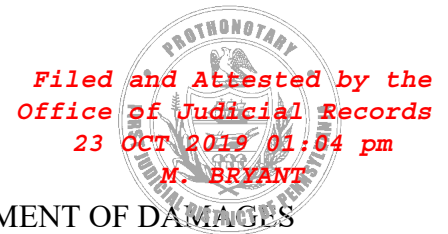


COHEN, PLACITELLA & ROTH, P.C.
 BY: STEWART L. COHEN, ESQUIRE
 ERIC S. PASTERNAK, ESQUIRE
 Email: scohen@cprlaw.com;
 epasternack@cprlaw.com
 Identification No. 25448;320127
 Two Commerce Square, Suite 2900
 2001 Market Street
 Philadelphia, PA 19103
 215-567-3500



**ASSESSMENT OF DAMAGES
 HEARING IS REQUIRED
 JURY TRIAL DEMANDED**

ATTORNEY FOR PLAINTIFFS

ALIESHA DAILEY, on behalf of herself and
 all other similarly situated,
 8723 West Chester Pike, Apt. A5
 Upper Darby, PA 19082

Plaintiff

v.

PHILADELPHIA FEDERAL CREDIT
 UNION
 12800 Townsend Road
 Philadelphia, PA 19154

Defendant

COURT OF COMMON PLEAS
 PHILADELPHIA COUNTY, PA

Term, 2019

No:

CLASS ACTION COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Philadelphia Bar Association
 Lawyer Referral & Information Service
 One Reading Center
 Philadelphia, Pennsylvania 19107
 Telephone: (215) 238-6333**

AVISO

La han demandado a usted en la corte. Si usted quiere defensas de estas demandas expuestas en la paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas or sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted compla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABODAGO INMEDIATAMENTE. SI NO TIENE ABODAGO O SINO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

**Asociacion DeLicenciados De Filadelfia
 Servicio DeReferencia E Información Legal
 One Reading Center
 Filadelfia, Pennsylvania 19107
 Telefono: (215) 238-1701**

CLASS ACTION COMPLAINT

1. This is a class action seeking monetary damages, restitution, and declaratory relief from Defendant Philadelphia Federal Credit Union (“PFCU”), arising from the unfair and unconscionable assessment and collection of multiple \$28 “insufficient funds fees” (“NSF Fees”) on the same items.

2. Besides being deceptive, unfair, and unconscionable, this practice breaches contract promises made in PFCU’s adhesion contracts.

3. Plaintiff Aliasha Dailey and other PFCU customers have been injured by PFCU’s practices. On behalf of herself and the putative class, Plaintiff seeks damages, restitution, and declaratory and injunctive relief for PFCU’s breach of contract and violation of Pennsylvania law.

4. Two documents permit PFCU to impose NSF Fees and address the policies at issue in this Complaint. *See* “Account Disclosures” attached as ***Exhibit A***, and “Schedule of Fees and Charges” attached as ***Exhibit B*** (collectively “Account Documents”).

5. Plaintiff does not dispute PFCU’s right to either (a) reject a transaction and charge a single NSF Fee or (b) pay a transaction and charge a single overdraft fee on a transaction that actually overdraws the account, but PFCU unlawfully maximizes its already profitable account fees with deceptive practices that also violate its contract.

6. Specifically, PFCU unlawfully assesses *multiple* NSF Fees on a single Automated Clearing House (“ACH”) transaction or check.

7. In PFCU’s sole and undisclosed view, each time PFCU processes an ACH transaction or check for payment after a having been rejected for insufficient funds, it becomes a new, unique item or transaction that is subject to another NSF Fee. But PFCU’s Account

Documents never even hints that this counterintuitive result could be possible.

8. PFCU's Account Documents indicate that only a single NSF Fee will be charged for however many times the request for payment is reprocessed. An electronic item reprocessed after an initial return for insufficient funds cannot and does not fairly become a new, unique item for NSF fee assessment purposes.

9. PFCU breaches its contract when it charges more than one \$28 NSF Fee on the same item, since the contract states—and reasonable consumers understand—that the same item can only incur a single NSF Fee.

10. PFCU also breaches its duty of good faith and fair dealing when it charges multiple NSF Fees on a single transaction. Specifically, PFCU abuses its contractual discretion by (a) processing transactions when it knows full well that a customer's account lacks sufficient funds and (b) charging NSF Fees upon each reprocessing of the same item.

11. This practice not only violates PFCU's contracts and the covenant of good faith and fair dealing but is also unfair and deceptive under the consumer protection law of Illinois.

12. Plaintiff and other PFCU customers have been injured by these practices. On behalf of herself and the class, Plaintiff seeks damages, restitution and declaratory and injunctive relief for PFCU's breach of contract and breach of the covenant of good faith and fair dealing, and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

13. Defendant's improper scheme to extract funds from accountholders already struggling to make ends meet has victimized Plaintiff and thousands of other accountholders. Unless enjoined, PFCU will continue to engage in these schemes and cause substantial injury to Pennsylvania citizens.

JURISDICTION

14. This Court has jurisdiction over this action and venue is proper based on PFCU's substantial operations in Philadelphia County.

PARTIES

15. Plaintiff Aliesha Dailey ("Plaintiff Dailey") is a natural person who resides in Lebanon, Pennsylvania. Plaintiff has a personal checking account with PFCU, which is governed by the Account Documents.

16. PFCU is a credit union with approximately \$1 billion in assets. PFCU is one of the largest credit unions in Pennsylvania and is headquartered in Philadelphia, PA.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

I. PFCU CHARGES TWO OR MORE NSF FEES ON THE SAME ITEM

17. PFCU's Account Documents allows it to take certain steps when a bank account holder attempts an ACH transaction but does not have sufficient funds to cover it. Specifically, the Bank may (a) authorize the transaction and charge a *single* \$28 overdraft fee ("OD Fee"); or (b) reject the transaction and charge a *single* \$28 NSF Fee.

18. In contrast to its account documents, however, PFCU regularly assesses two or more NSF Fees on the *same* item or transaction.

19. Plaintiff does not dispute PFCU's right to reject an item and charge a *single* NSF Fee, but PFCU unlawfully maximizes its already profitable NSF Fees with deceptive practices that also violate the express terms of its account documents.

20. Specifically, PFCU unlawfully assesses *multiple* NSF Fees on a single Automated Clearing House ("ACH") item.

21. Unbeknownst to consumers, each time PFCU reprocesses an ACH transaction or check for payment after it was initially rejected for insufficient funds, PFCU chooses to treat it as

a new and unique item or item that is subject to yet another NSF Fee. But PFCU's Account Documents never disclose that this counterintuitive and deceptive result could be possible and, in fact, suggests the opposite.

22. The Account Documents indicate that only a *single* NSF Fee will be charged per "item," however many times that item is reprocessed with no request from the customer to do so. An electronic item reprocessed after an initial return for insufficient funds, especially through no action by the customer, cannot and does not fairly become a new, unique item for fee assessment purposes.

23. This abusive practice is not universal in the financial services industry. Indeed, major banks like Chase—the largest consumer bank in the country—do not undertake the practice of charging more than one NSF Fee on the same item when it is reprocessed. Instead, Chase charges one NSF Fee even if an item is reprocessed for payment multiple times.

24. PFCU's Account Documents never discloses this practice. To the contrary, the Bank's account documents indicate it will only charge a single NSF Fee on an item or per item.

A. Plaintiff's Experience

25. In support of her claims, Plaintiff offer an example of an NSF Fee that should not have been assessed against her checking account. As alleged below, PFCU: (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

26. On February 6, 2019, Plaintiff attempted an electronic payment from her savings account via ACH.

27. PFCU rejected payment of that item due to insufficient funds in Plaintiff's account and charged them a \$28 NSF Fee for doing so. Plaintiff does not dispute this initial fee, as it is allowed by PFCU's account documents.

28. One day later, PFCU processed the same item yet again, and this time paid the item into insufficient funds and charged Plaintiff *another* \$28 fee—this time, an OD Fee.

29. *In sum, PFCU charged Plaintiff \$56 in NSF Fees to attempt to process a single payment.*

30. Plaintiff understood the payment to be a single item as is laid out in PFCU's account documents, capable at most of receiving a single NSF Fee (if PFCU returned it) or a single OD Fee (if PFCU paid it).

B. The Imposition of Multiple NSF or OD Fees on a Single Item Violates PFCU's Express Promises and Representations

31. The Account Documents provide the general terms of Plaintiff's relationship with PFCU, and therein PFCU makes explicit promises and representations regarding how transactions will be processed, as well as when NSF Fees and OD Fees may be assessed.

32. The Account Documents contain explicit terms indicating that NSF Fees will only be assessed once per item, when in fact PFCU regularly charges two or more NSF Fees per item even though a customer only requested the payment or transfer once.

33. PFCU's Account Documents indicate that a singular NSF Fee can be assessed on checks, ACH debits, and electronic payments.

34. PFCU's Account Disclosures, Ex. B at 3, state in pertinent part:

Nonsufficient Funds Returns. Any Check or pre-authorized transfer, or transaction made through the use of Your ATM or debit Card, or other electronic means, as is applicable (including any in-person transaction) that is presented to Us for payment on Your Account when Your Account lacks sufficient collected funds to pay any such item may, at Our option, be returned for nonsufficient funds or We may honor any such item and charge You a fee for doing so.

[...]

Subject to applicable law, You are responsible for paying any overdraft fees and charges assessed in connection with Our payment of an overdraft, as well as any

NSF fees charged to Your Account when We dishonor and return an item for non-sufficient funds.

35. PFCU's Account Documents state that it will charge \$28 per item that is returned due to insufficient funds.

36. According to the Schedule of Fees and Charges, Ex. B, a singular fee will be charged for each "item":

Non-Sufficient Funds \$28 per item

37. The Schedule of Fees and Charges, therefore, states that a single fee will be assessed per "item."

38. Further, the Schedule of Fees and Charges makes clear that, for all transaction types (whether debit card, check, ACH, or other transaction), only a single NSF Fee or OD Fee can be charged. Indeed, more than one OD Fee is impossible for transactions like debit card transactions, which can only possibly be paid or rejected one time. PFCU uses identical language to describe OD Fees and NSF Fees, even though it is impossible for a transaction to incur more than one OD Fee.

39. Most of the transaction and fee types covered by the Schedule of Fees and Charges can only occur once, and there is no warning that a certain type of transaction or fee can happen more than once. This is yet another indication to reasonable consumers that the contract means a single NSF Fee may be charged per item.

40. The same "item" or "transaction" on an account cannot conceivably become a new one each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit it.

41. There is zero indication anywhere in the Account Documents that the same "item" is eligible to incur multiple NSF Fees.

42. Even if PFCU reprocesses an instruction for payment, it is still the same “item.” Its reprocessing is simply another attempt to effectuate an account holder’s original order or instruction.

43. The disclosures described above never discuss a circumstance where PFCU may assess multiple NSF Fees for a single check or ACH transaction that was returned for insufficient funds and later reprocessed one or more times and returned again.

44. In sum, PFCU promises that one \$28 NSF Fee will be assessed per electronic payment or check, and these terms must mean all iterations of the same instruction for payment. As such, PFCU breached the contract when it charged more than one fee per item.

45. Reasonable consumers understand any given authorization for payment to be one, singular “item” or “transaction” as those terms are used in PFCU’s Account Documents.

46. Taken together, the representations and omissions identified above convey to customers that all submissions for payment of the same transaction will be treated as the same “item,” which PFCU will either authorize (resulting in an overdraft item) or reject (resulting in a returned item) when it decides there are insufficient funds in the account. Nowhere does PFCU disclose that it will treat each reprocessing of a check or ACH payment as a separate item, subject to additional fees, nor do PFCU customers ever agree to such fees.

47. Customers reasonably understand, based on the language of the account documents and PFCU’s other Account Documents, that its reprocessing of checks or ACH payments are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger NSF Fees. In other words, it is always the same item or transaction.

48. Banks and credit unions like PFCU that employ this abusive practice know how to plainly and clearly disclose it. Indeed, other banks and credit unions that do engage in this abusive practice disclose it expressly to her account holders—something PFCU here never did.

49. For example, First Citizens Bank, a major institution in the Carolinas, engages in the same abusive practice as PFCU, but at least expressly states:

Because we may charge a service fee for an NSF item each time it is presented, **we may charge you more than one service fee for any given item.** All fees are charged during evening posting. 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.

First Citizens Bank Deposit Account Agreement, Fees for NSF Items (emphasis added).

50. First Hawaiian Bank engages in the same abusive practices as Defendant, but at least currently discloses it in its online banking agreement, in all capital letters, as follows:

YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A RETURNED ITEM FOR PAYMPFCU AND THAT MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND RESUBMISSION.

Terms and Conditions of FHB Online Services – First Hawaiian Bank, Amendment of Terms and Conditions Bill Payment Service, ¶13 (September 2018) (emphasis added).

51. Klein Bank similarly states in its online banking agreement:

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

Klein Bank Consumer and Small Business Online Access Agreement, Bill Pay Service ¶H.

52. First Financial Bank in Ohio, aware of the commonsense meaning of “item,”

clarifies the meaning of that term to its accountholders:

Merchants or payees may present an item multiple times for payment if the initial or subsequent presentment is rejected due to insufficient funds or other reason (representation). Each presentment is considered an item and will be charged accordingly.¹

53. PFCU provides no such disclosures, and in so doing, deceives its accountholders.

C. The Imposition of Multiple NSF Fees on a Single Transaction Breaches PFCU's Duty of Good Faith and Fair Dealing

54. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are invested with a discretionary power over the other party. This creates an implied promise to act in accordance with the parties' reasonable expectations and means that PFCU is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, PFCU has a duty to honor transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater penalties on the depositor.

55. Here—in the adhesion agreements PFCU foisted on Plaintiff and its other customers—PFCU has provided itself numerous discretionary powers affecting customers' credit union accounts. But instead of exercising that discretion in good faith and consistent with consumers' reasonable expectations, PFCU abuses that discretion to take money out of consumers' account without her permission and contrary to her reasonable expectations that they will not be charged multiple fees for the same transaction.

56. PFCU abuses the power it has over customers and their credit union accounts and acts contrary to reasonable expectations under the Account Documents when it construes the word "item" or "transaction" to mean each iteration of the same payment. This is a breach of PFCU's

¹ https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf (last accessed September 18, 2019).

implied covenant to engage in fair dealing and to act in good faith.

57. Further, PFCU maintains complete discretion not to assess NSF Fees on transactions at all. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—by charging more than one NSF Fee on single item, PFCU breaches the reasonable expectation of Plaintiff and other customers and in doing so violates the implied covenant to act in good faith.

58. It was bad faith and totally outside of Plaintiff' reasonable expectations for PFCU to use its discretion to assess two or three NSF Fees for a single attempted payment.

59. When PFCU charges multiple NSF Fees, the bank uses its discretion to define the meaning of “item” and “transaction” in an unreasonable way that violates common sense and reasonable consumer expectations. PFCU uses its contractual discretion to set the meaning of those terms to choose a meaning that directly causes more NSF Fees.

60. Moreover, PFCU provides itself discretion to refuse to reprocess transactions that are initially rejected. It abuses that discretion when it repeatedly reprocesses transactions and charges NSF Fees each time.

CLASS ACTION ALLEGATIONS

61. Plaintiff bring this action on behalf of herself and all others similarly situated pursuant to Rule 1700 of the Pennsylvania Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rules 1702, 1708, and 1709.

62. Plaintiff brings this class action on behalf of herself and a class and subclass of persons (“the Class”) defined as follows:

All PFCU checking account holders in Pennsylvania who, during the applicable statute of limitations through the date of class certification, were charged more than

one NSF Fee on the same item.

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

64. Excluded from the Class are PFCU, its parents, subsidiaries, affiliates, officers and directors, any entity in which PFCU 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.

65. The members of the Class are so numerous that joinder is impractical. The Class consist of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to PFCU's records.

66. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all Class members, was charged multiple NSF Fees on a single transaction. The representative Plaintiff, like all Class members, has been damaged by PFCU's misconduct in that they have been assessed unfair and unconscionable NSF Fees. Furthermore, the factual basis of PFCU's misconduct is common to all Class members and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other members of the Class.

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

68. Among the questions of law and fact common to the Class are whether PFCU:

- a. Whether PFCU violated contract provisions by charging multiple NSF Fees on the same transaction;

- b. Whether PFCU breached its covenant of good faith and fair dealing with Plaintiff and other members of the Class through its NSF Fee policies and practices;
- c. Whether PFCU violated the applicable consumer protection law through its NSF Fee policies and practices;
- d. The proper method or methods by which to measure damages; and
- e. The declaratory and injunctive relief to which the Class are entitled.

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

70. 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, and due to the financial resources of PFCU, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and PFCU's misconduct will proceed without remedy.

71. 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 claims to be heard 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.

72. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all members of the Class, is at risk of additional multiple NSF Fees on repeated reprocessing of transactions. Plaintiff and the members of the Class 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 PFCU from continuing to commit its unfair and illegal actions

FIRST CLAIM FOR RELIEF
Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing²
(On Behalf of the Class)

73. Plaintiff repeats paragraphs 1 through 72 above.

74. Plaintiff and PFCU have contracted for deposit account services, as embodied in PFCU's Account Documents.

75. The Account Documents state that Pennsylvania law applies.

76. PFCU's Account Documents explicitly state that, when a customer lacks sufficient funds to cover a transaction, PFCU may either (a) authorize the transaction and charge a single OD Fee, or (b) reject the transaction and charge a single NSF fee. PFCU regularly violates its contractual promises by charging multiple NSF Fees on a single transaction.

77. Under Pennsylvania law, parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are invested with a

² Certain states recognize a claim for breach of the covenant of good faith and fair dealing as a separate and independent claim from breach of contract. Other states like Pennsylvania treat breach of the covenant of good faith and fair dealing as a species of breach of contract. For the sake of convenience, these claims are brought in a single count.

discretionary power over the other party. In such circumstances, the party with discretion is required to exercise that power and discretion in good faith. This creates an implied promise to act in accordance with the parties' reasonable expectations. That means that PFCU is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, PFCU has a duty to honor transaction requests in a manner that is fair to Plaintiff and other accountholders and is prohibited from exercising its discretion to pile on ever greater penalties. Here—in the form agreements PFCU foisted on Plaintiff and other accountholders—PFCU has provided itself numerous discretionary powers affecting Plaintiff's and other accountholders' accounts.

78. Instead of exercising that discretion in good faith and consistent with Plaintiff's and other accountholders reasonable expectations, PFCU abuses that discretion to take money out of their accounts without their permission and contrary to their reasonable expectations that they will not be charged multiple NSF Fees for the same transaction. Specifically, PFCU regularly (a) reprocesses previously declined transactions, even when PFCU knows a customer's account lacks sufficient funds, and (b) charges NSF Fees upon reprocessing of previously declined transactions.

79. PFCU further breaches the covenant of good faith and fair dealing by charging more than one NSF Fee on a single transaction.

80. PFCU breached promises included in the account documents as described herein when it charged more than one NSF Fee on the same item.

81. By exercising its discretion to enrich itself by gouging its consumers, PFCU consciously and deliberately frustrates the agreed common purposes of the contract and disappoints the reasonable expectations of Plaintiff and members of the Class, thereby depriving them of the benefit of their bargain.

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

83. Plaintiff and members of the Class have sustained damages as a result of PFCU's breach of the contract.

84. Plaintiff and members of the Class have sustained damages as a result of PFCU's breach of the covenant of good faith and fair dealing.

WHEREFORE, Plaintiff, individually and on behalf of others similarly situated, demands judgment and claims damages against PFCU, plus interest, costs, reasonable attorneys' fees, and any other such relief as the Court deems just and proper.

SECOND CLAIM FOR RELIEF
Violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law
(On Behalf of the Class)

85. Plaintiff repeats paragraphs 1 through 72 above.

86. This claim is asserted on behalf of the Class of PFCU customers who are Pennsylvania citizens and enjoy the protections of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*

87. PFCU engages in unfair business practices relating to the imposition of overdraft fees on consumers, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* In particular, the wrongful conduct described herein violated 73 P.S. § 201-2(4)(v) (representing that goods or services have characteristics, uses, or benefits that they do not have), § 201-2(4)(xiv) (failing to comply with the terms of any written guarantee or warranty given to a buyer), and § 201-2(4)(xxi) (engaging in any other deceptive

conduct which creates a likelihood of confusion or misunderstanding).

WHEREFORE, Plaintiff, individually and on behalf of others similarly situated, demands judgment and claims damages against PFCU, either actually sustained or the sum of \$100.00, whichever is greater, plus interest, costs, reasonable attorneys' fees, and any other such relief as the Court deems just and proper.

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;
- b. declaring PFCU's NSF Fee policies and practices alleged in this Complaint to be wrongful, unfair and unconscionable;
- c. enjoining PFCU from charging more than one NSF Fee for any single transaction;
- d. enjoining PFCU from materially misrepresenting its true fee processing practices;
- e. granting restitution of all NSF Fees paid to PFCU by Plaintiff and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
- f. granting disgorgement of the ill-gotten gains derived by PFCU from its misconduct;
- g. awarding actual damages;
- h. statutory damages measured as the greater of actual damages sustained or the sum of \$100.00;
- i. awarding treble damages in accordance with proof and in an amount consistent with applicable precedent;
- j. awarding pre-judgment and post-judgment interest at the maximum rate permitted

by applicable law;

k. awarding costs and disbursements incurred by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and

l. awarding such other relief as this Court deems just and proper.

COHEN, PLACITELLA & ROTH, P.C.

/s/ ERIC S. PASTERNAK

BY: _____

Stewart L. Cohen, Esquire
Eric S. Pasternack, Esquire
Attorneys for Plaintiff and the Proposed
Class

Dated: October 23, 2019

Jeffrey D. Kaliel (*pro hac vice* to be filed)
Sophia G. Gold (*pro hac vice* to be filed)
KALIEL PLLC
1875 Connecticut Ave. NW 10th Floor
Washington, D.C. 20009
Telephone: (202) 350-4783
jkaliel@kalielllc.com
sgold@kalielllc.com

Jeffrey Ostrow (*pro hac vice* to be filed)
Jonathan M. Streisfeld (*pro hac vice* to be filed)
Daniel Tropin (*pro hac vice* to be filed)
**KOPELOWITZ OSTROW FERGUSON
WEISELBERG GILBERT**
One West Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Telephone: (954)525-4100
ostrow@kolawyers.com
streisfeld@kolawyers.com
tropin@kolawyers.com

Counsel for Plaintiff and the Proposed Class

VERIFICATION

I, Aliesha Dailey, hereby states that I am the Plaintiff in the within action and verify that the statements made in the foregoing Class Action Complaint are true and correct to the best of my knowledge, information and belief, and that I understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

10/22/2019

DATE

DocuSigned by:
Aliesha Dailey
3B1490A84D49435...

ALIESHA DAILEY