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U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

17 LORI BROWN and MITCHELL BROWN,)
18 individually and on behalf of themselves and)
19 all others similarly situated,)
20 Plaintiffs,)
21 v.)
22 U.S. BANK, N.A.,)
23 Defendant.)

NO. CV-10-356-RMP

CLASS ACTION

CLASS ACTION
COMPLAINT AND JURY
DEMAND

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CLASS ACTION COMPLAINT AND JURY
DEMAND: 1

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Plaintiffs Lori Brown and Mitchell Brown (“Plaintiffs”), on behalf of themselves and all similarly situated residents of Washington State, allege as follows.

I. INTRODUCTION

1. This is a civil action seeking monetary damages, restitution, and injunctive relief from Defendant U.S. Bank, N.A. (“U.S. Bank”), stemming from U.S. Bank’s unfair, deceptive and unconscionable assessment and collection of excessive overdraft fees from Washington consumers.

2. In recent years, consumer usage of electronic banking and debit cards has increased considerably. Many banks, including U.S. Bank, have chosen to allow customers to overdraft their debit accounts—that is, to engage in transactions that result in the withdrawal of more funds than are present in the account. When this has happened, the banks have charged one or more overdraft fees to the customer.

3. Overdraft fees make up nearly three-quarters of the total service charges that banks impose on deposit accounts in the United States, according to the 2008 Federal Deposit Insurance Corporation (“FDIC”) investigation. The

1 FDIC's investigation revealed that overdraft fees for debit cards can effectively
2 result in an annual interest rate of more than 3,500 percent.

3
4 4. Overdraft fees are a major source of profits for banks. In 2007, banks
5 collected more than \$17 billion in overdraft fees. In 2008, the number grew to \$24
6 billion. In 2009, the number again increased to nearly \$39 billion.

7
8 5. Until recently, most banks—including U.S. Bank—automatically
9 enrolled customers in automated overdraft programs. According to the 2008 FDIC
10 investigation, 81 percent of banks operating automated programs allowed
11 overdrafts to take place at automated teller machines (ATMs) as well as point-of-
12 sale/debit transactions. Most banks, however, only informed customers that there
13 were insufficient funds after the transaction had been completed and fees assessed.

14
15 6. Instead of declining debit transactions when insufficient funds existed
16 or warning customers that they would incur an overdraft fee if they proceed, U.S.
17 Bank has routinely processed such transactions. As a result, thousands of
18 Washington consumers have been charged overdraft fees ranging up to \$37.50 per
19 transaction, even when the transaction was only for a few dollars.

20
21 7. Furthermore, U.S. Bank has followed a practice of resequencing
22 transactions in such a way—from highest to lowest instead of the order in which
23 the charges were actually made—that the customer's account becomes overdrawn
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1 more quickly and frequently. Thus, U.S. Bank has maximized overdraft penalties
2 at the expense of Washington consumers through the manipulation of transaction
3 records. Indeed, because of U.S. Bank's resequencing of debit transactions for
4 processing, customers have incurred overdraft fees despite having sufficient funds
5 in their accounts at the time the transactions were made.
6

7
8 8. This automatic, fee-based scheme was intentionally designed to create
9 massive revenues for U.S. Bank. As part of its inequitable motive to generate large
10 profits, U.S. Bank either refused to allow their customers to opt out of overdraft
11 protection or failed to adequately disclose to customers that they could do so.
12

13 9. U.S. Bank's egregious and predatory banking practices have
14 negatively impacted Washington consumers, especially those who lack economic
15 resources and often maintain low balances. Imposing multiple service charges on
16 an account with a low or negative balance decreases the likelihood the balance will
17 become positive—resulting in yet more fees. Moeb's Services, a research company
18 that has conducted studies for the government as well as banks, estimates that 90
19 percent of overdraft fees are paid by the poorest 10 percent of banking customers.
20
21

22 **II. PARTIES**

23
24 10. Plaintiffs Lori and Mitchell Brown: Plaintiffs Lori Brown and
25 Mitchell Brown (the "Browns") are mother and son, domiciled in the state of
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1 Washington, and residents of Lincoln County. Plaintiffs are typical of other U.S.
2 Bank customers in Washington who incurred overdraft fees on debit card
3 transactions as a result of U.S. Bank's practice of resequencing transactions from
4 highest to lowest.
5

6 11. Defendant U.S. Bank, N.A.: Defendant U.S. Bank, N.A. ("U.S.
7 Bank") is a United States bank with its headquarters in Cincinnati, Ohio. U.S.
8 Bank does business throughout the United States, including Washington. U.S.
9 Bank is in the retail banking business and has thousands or tens of thousands of
10 customers in Washington, including Plaintiffs and members of the proposed Class.
11 U.S. Bank issues debit cards for use by customers to access funds in their checking
12 accounts.
13
14
15

16 **III. JURISDICTION AND VENUE**

17 12. This Court has original jurisdiction over this matter pursuant to 28
18 U.S.C. § 1332(d)(2). Based on information and belief, the matter in controversy
19 exceeds the sum or value of \$5,000,000 exclusive of interest and is a class action
20 composed of more than 100 members and in which at least one member of the
21 Class is a citizen of a state different from that of the Defendant.
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1 13. Defendant has engaged in conduct in violation of chapter 19.86 RCW,
2 which conduct has had an impact in Washington, giving rise to personal
3 jurisdiction pursuant to RCW 19.86.160.
4

5 14. Venue is proper pursuant to 28 USC § 1391(b)(2) in that the events
6 that gave rise to claims occurred in substantial part in this federal district.
7

8 **IV. CLASS ALLEGATIONS**

9 15. Plaintiffs bring this action on behalf of themselves and all other
10 similarly situated Washington residents pursuant to Fed. R. Civ. P. 23.
11

12 16. The proposed class (the "Class") is defined as follows: All U.S. Bank
13 customers in Washington State from October 13, 2006 through the date of final
14 judgment who incurred overdraft fees on debit card transactions as a result of U.S.
15 Bank's practice of resequencing transactions from highest to lowest.
16

17 17. Excluded from the Class are U.S. Bank, its parents, subsidiaries,
18 affiliates, officers and directors, any entity in which U.S. Bank has a controlling
19 interest, all customers who make a timely decision to be excluded, governmental
20 entities and all judges assigned to hear any aspect of this litigation as well as their
21 immediate family members.
22

23 18. Members of the proposed Class are so numerous that joinder is
24 impracticable. On information and belief, Class members number in the
25
26

1 thousands. The identity of Class members can be ascertained through U.S. Bank's
2 records.

3
4 19. There are numerous questions of law and fact common to the Class,
5 including those delineated below.

6
7 20. The claims and defenses of the named Plaintiffs are typical of the
8 claims and defenses of the Class. Plaintiffs, like all Class members, were charged
9 overdraft fees by U.S. Bank as a result of the bank's practice of resequencing debit
10 card transactions from highest to lowest. Plaintiffs, like all Class members, have
11 been damaged by U.S. Bank's unfair and deceptive misconduct because they
12 incurred unfair and unconscionable overdraft charges. U.S. Bank's unfair and
13 unconscionable conduct is common to all Class members and injured all Class
14 members. Plaintiffs and Class members' claims arise from the same or
15
16 substantially similar unconscionable provisions of U.S. Bank's overdraft practices
17 and procedures, account agreements and other related documents. Plaintiffs have
18 suffered the harm alleged and have no interests antagonistic to the interests of any
19 other Class member.
20
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23 21. Named Plaintiffs are members of the proposed Class and will fairly
24 and adequately protect the interests of the Class. Plaintiffs are committed to the
25 vigorous prosecution of this matter and have retained competent counsel who are
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1 experienced in the prosecution of class actions, including, in particular, consumer-
2 related class actions.

3
4 22. Defendant has acted or refused to act on grounds generally applicable
5 to the Class, making final injunctive relief appropriate respecting the Class as a
6 whole and rendering certification appropriate under Fed. R. Civ. P. 23(b)(2).

7
8 23. Common questions of law and fact central to the claims of the Class
9 predominate over individual questions, rendering certification appropriate under
10 Fed. R. Civ. P. 23(b)(3). These common questions of law and fact include but are
11 not limited to the following:
12

- 13 a. Whether U.S. Bank has a practice of resequencing debit card
14 transactions from highest to lowest;
- 15 b. Whether U.S. Bank imposes overdrafts fees when, but for U.S. Bank's
16 resequencing of transactions, there would be sufficient funds in the
17 account;
- 18 c. Whether U.S. Bank delays posting of transactions by customers using
19 debit cards so that customers are charged overdraft fees on
20 transactions, even though customers had sufficient funds in their
21 accounts to cover the transactions;
- 22 d. Whether U.S. Bank fails to provide customers with accurate balance
23 information;
- 24 e. Whether U.S. Bank has been unjustly enriched by its overdraft
25 policies and practices; and
- 26 f. Whether U.S. Bank has violated the Washington Consumer Protection
Act through its overdraft policies and practices.

24. Other common questions of law and fact for the Class include:

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- a. The proper measure of damages, and
- b. The injunctive relief to which the Class is entitled.

25. The class device is a superior method of adjudicating Class members' claims as compared to other available methods for fairly and efficiently adjudicating this controversy. Class members are unlikely to have any meaningful recourse against U.S. Bank absent collective pursuit of their claims under Fed. R. Civ. P. 23. The value of Class members' claims, taken individually, is such that their claims cannot, as a practical matter, be pursued on an individual basis.

V. COMMON FACTUAL ALLEGATIONS

26. According to its website, U.S. Bank is the fifth largest commercial bank in the United States, with \$283 billion in assets. In addition to its online banking services, U.S. Bank operates in 24 states with approximately 3,000 branch offices and 5,300 ATMs.

27. U.S. Bank is in the business of providing its customers with a variety of banking services. One of the services provided by U.S. Bank for customers who open a checking account is a debit card, also known as a check card or ATM card. Through debit cards, customers can use funds directly from their accounts by engaging in "debit" or "point of sale" ("POS") transactions or may withdraw money from their accounts at automated teller machines ("ATMs"). These

1 transactions are processed electronically. As a result, U.S. Bank is notified
2 instantaneously when the card is used and has the option to accept or decline the
3 transaction at that time.
4

5 28. U.S. Bank has employed computer software to operate its overdraft
6 system. For many years, and perhaps continuing to this day, the bank's program
7 has maximized the number of overdrafts, and thus the amount of overdraft fees,
8 charged per customer. This has been done through the resequencing of debit card
9 transactions so that they are processed by the bank from the highest to lowest
10 amount.
11

12
13 29. As a result of U.S. Bank's manipulation and alteration of transaction
14 records, funds in customer accounts have been depleted more rapidly than the
15 funds would have been had the transactions been processed in a chronological
16 sequence, resulting in more overdraft fees being charged for multiple smaller
17 transactions.
18

19
20 30. Overdraft charges occurred at times when, but for U.S. Bank's
21 manipulation and alteration, there were sufficient funds in the account to cover the
22 transaction. For example, if a customer whose account had a \$50 balance made
23 four transactions of \$10 and one subsequent transaction of \$100 on the same day,
24 the Bank would resequence the debits from largest to smallest, imposing five
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1 overdraft fees on the customer. Had the transactions been processed in
2 chronological order, so that the \$100 transaction was debited last, only one
3 overdraft fee would have been assessed. *See* FDIC Study of Bank Overdraft
4 Programs, November 2008.
5

6 31. U.S. Bank authorized transactions into overdrafts with no warning to
7 Plaintiffs and Class members that overdrafts were in progress. Specifically, U.S.
8 Bank did not inform Plaintiffs and Class members that their charges, purchases,
9 withdrawals or transfers had been made against insufficient funds or would result
10 in overdraft fees being assessed. For example, a Class member purchasing a cup
11 of coffee with her debit card could unwittingly incur an overdraft fee of \$37.50,
12 more than ten times the price of the underlying transaction.
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16 32. U.S. Bank failed to adequately inform Plaintiffs and Class members
17 about the bank's overdraft protection program. In particular, U.S. Bank failed to
18 inform Plaintiffs and Class members of the bank's actual resequencing practices,
19 including the order in which debit-card purchases would be posted against their
20 checking accounts. U.S. Bank also failed to inform Plaintiffs and Class members
21 that the posting order could dramatically multiply the number of overdraft
22 penalties a customer could be assessed.
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1 33. The manner in which U.S. Bank published account statements was
2 unfair and deceptive and made it impossible for the average customer to
3 reconstruct how the bank had arrived at the number of overdrafts charged.
4

5 34. U.S. Bank has failed to adequately inform customers that U.S. Bank
6 will always resequence their debit transactions from highest to lowest so that U.S.
7 Bank collects the maximum amount of overdraft fees. U.S. Bank has also failed to
8 inform customers that U.S. Bank charges overdraft fees even when there are
9 sufficient funds to cover individual charges, and otherwise fails to fully inform
10 customers of U.S. Bank's unconscionable overdraft fees practices and procedures.
11
12

13 **U.S. Bank's Resequencing of Checking Account Transactions.**

14 35. In an effort to maximize overdraft revenue, U.S. Bank has engaged in
15 a practice of resequencing debit transactions from highest to lowest. U.S. Bank
16 has resequenced transactions for no reason other than to increase the number of
17 exorbitant overdraft fees it can charge. This unfair and deceptive practice violates
18 Washington's Consumer Protection Act.
19
20

21 36. Transactions involving debit cards used by U.S. Bank customers,
22 including the withdrawal of cash from ATM machines and transactions with
23 vendors, are processed electronically. U.S. Bank is notified instantaneously when
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1 the customer's debit card is swiped. U.S. Bank has the option to accept or decline
2 these transactions.

3
4 37. Notwithstanding the instantaneous nature of these electronic debit
5 card transactions, U.S. Bank has failed to post charges in the order in which they
6 are incurred or received. U.S. Bank has developed a policy and has employed a
7 practice whereby account charges and debits are posted to customer accounts out
8 of chronological order for the sole purpose of maximizing the number of overdraft
9 transactions and, therefore, the amount of overdraft fees charged to its customers.
10

11
12 38. Instead of processing such transactions in chronological order, U.S.
13 Bank has processed them starting with the largest debit and ending with the
14 smallest debit, so as to generate the largest possible number of overdrafts and the
15 greatest possible amount of overdraft fees.
16

17 39. U.S. Bank has refrained from immediately posting charges to a
18 customer's account as it receives them, sometimes for several business days. By
19 holding charges rather than posting them immediately to an account, U.S. Bank has
20 been able to amass a number of charges on the account. Subsequently, U.S. Bank
21 has posted all of the amassed charges on a single date in order of largest to
22 smallest—not in the order in which they were received or in the order in which
23 they were charged. This delayed posting has resulted in the imposition of multiple
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1 overdraft fees that would not otherwise be imposed. The delayed posting has also
2 prevented customers from ascertaining the accurate balances in their accounts.
3

4 40. U.S. Bank's policy and practice of posting charges from largest to
5 smallest, rather than chronologically, has been specifically designed to maximize
6 the generation of overdraft fees by triggering overdraft fees for account charges
7 that would not otherwise result in such fees.
8

9 41. U.S. Bank has enforced an unconscionable policy whereby charges
10 incurred have been posted to customer accounts in a non-chronological order, from
11 highest to lowest, and have been held for multiple days and then batched together,
12 to maximize the number of overdraft transactions and fees. U.S. Bank's
13 processing practices have substantially increased the likelihood that customers'
14 smaller charges will result in multiple overdraft fees. The practices provide U.S.
15 Bank with substantially higher service fee revenues than it would otherwise
16 achieve absent these practices.
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19

20 42. As a result, Plaintiffs and members of the Class have been assessed
21 overdraft fees for transactions which occurred when they actually had sufficient
22 funds in their accounts to cover those transactions.
23

24 43. U.S. Bank knew or should have known that its resequencing practices
25 would mechanically lead to more overdrafts than other methods of processing.
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1 Indeed, U.S. Bank adopted the resequencing practice for the sole purpose of
2 generating more overdraft fees and fee revenue at the expense of account holders,
3 including Plaintiffs and Class members.
4

5 **U.S. Bank's Cloaking of Accurate Balance Information.**

6 44. U.S. Bank has actively promoted the convenience of its debit cards
7 and other electronic debiting but has failed to provide customers with accurate
8 balance information. When customers execute account transactions, they generally
9 do not have access to an accurate balance register or balance information.
10

11 45. U.S. Bank has provided inaccurate balance information to its
12 customers through its electronic network. In certain cases, U.S. Bank has informed
13 its customers that they have a positive balance when, in reality, they have a
14 negative balance, despite U.S. Bank's actual knowledge of outstanding debits and
15 transactions.
16

17 46. Even when it has had actual knowledge of outstanding transactions
18 which have already created a negative balance in a customer's account, U.S. Bank
19 has encouraged the customer to incur more overdraft charges by approving—rather
20 than prudently declining—subsequent debit card purchases and other electronic
21 transactions.
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1 47. U.S. Bank has also assessed overdraft fees at times when actual funds
2 in the customer's account are sufficient to cover all debits that have been submitted
3 to the bank for payment. In doing so, U.S. Bank has charged overdraft fees where
4 it faced no risk, because the cash balance in the customer's account had not
5 dropped below zero.
6

7
8 **U.S. Bank's Failure to Notify Customers of Overdrafts or Advise Customers**
9 **of Their Right to Opt Out.**

10 48. At the time its debit cards are used in transactions or at ATMs, U.S.
11 Bank is able to determine, almost instantaneously, whether there are sufficient
12 funds in a customer's account to cover that particular transaction. U.S. Bank has
13 the technological capability to decline transactions (which it does when a pending
14 transaction would exceed a predetermined, overdraft tolerance limit for the
15 account), or notify customers at that very moment that the particular debit card
16 transaction would result in an overdraft. U.S. Bank could give customers the
17 option to decline the transaction to avoid incurring the overdraft fee, but it does not
18 do so because it seeks to maximize the amount of revenue generated through its
19 assessment of overdraft fees.
20
21
22

23
24 49. Notwithstanding its technological capabilities and actual knowledge,
25 U.S. Bank has failed to provide notice to Plaintiffs and the Class that a particular
26

1 debit card transaction will result in an overdraft and, hence, an overdraft fee.

2 Because U.S. Bank's customers have not been notified of the potential overdraft,
3 and have not been given the option of declining the debit card transaction or
4 providing another form of payment, the customers have incurred monetary
5 damages in the form of overdraft fees.
6

7
8 50. U.S. Bank has failed to make Plaintiffs and Class members aware that
9 they can opt out of the bank's overdraft scheme upon request, thereby avoiding any
10 overdraft fees from being incurred.

11
12 **U.S. Bank's Overdraft Policies and Practices Have Been Contrary to Best**
13 **Practices.**

14 51. By engaging in the conduct described herein, U.S. Bank has failed to
15 follow the list of "best practices" for overdraft programs set forth in the "Joint
16 Guidance on Overdraft Protection Programs" ("Joint Guidance") issued by the
17 United States Department of the Treasury, the Office of the Comptroller of the
18 Currency, the Board of Governors of the Federal Reserve System, the Federal
19 Deposit Insurance Corporation, and the National Credit Union Administration
20 (collectively, the "Agencies"). These "best practice" recommendations include:
21 "Provide election or opt-out of service. Obtain affirmative consent of consumers
22 to receive overdraft protection. Alternatively, where overdraft protection is
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1 automatically provided, permit consumers to ‘opt-out’ of the overdraft program
2 and provide a clear consumer disclosure of this option.” 70 F.R. 9127-01, 9132.
3

4 52. According to rules proposed by the Agencies: “Injury [caused by
5 overdraft charges] is not outweighed by countervailing benefits. . . . This is
6 particularly the case for ATM withdrawals and POS debit card transactions where,
7 but for the overdraft service, the transaction would typically be denied and the
8 consumer would be given the opportunity to provide other forms of payment
9 without incurring any fee.” 73 F.R. 28904-01, 28929 (May 19, 2008).
10
11

12 53. The Joint Guidance also advises banks to “[a]lert customers before a
13 transaction triggers any fees. When consumers attempt to withdraw or transfer
14 funds made available through an overdraft protection program, provide a specific
15 consumer notice, where feasible, that completing the withdrawal may trigger the
16 overdraft fees.” 70 F.R. 9127, 9132. The Joint Guidance further advises that
17 “[t]his notice should be presented in a manner that permits consumers to cancel the
18 attempted withdrawal or transfer after receiving the notice.” *Id.*
19
20

21 54. Similarly, the list of “best practices” recommended in “Overdraft
22 Protection: A Guide for Bankers,” issued by the American Bankers Association,
23 includes offering customers the option of “opting out” of any overdraft program,
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1 and informing customers, before they access funds, that a particular point of sale or
2 ATM transaction will cause them to incur an overdraft fee.

3
4 55. U.S. Bank's overdraft policies have made it difficult for customers to
5 avoid injury even where they carefully tracked the balance in their account. In
6 fact, the Agencies have stated that "[i]njury" resulting from such policies "is not
7 reasonably avoidable" by the consumer. 73 F.R. 28904-01, 28929. "It appears
8 that consumers cannot reasonably avoid this injury if they are automatically
9 enrolled in an institution's overdraft service without having an opportunity to opt
10 out. Although consumers can reduce the risk of overdrawing their accounts by
11 carefully tracking their credits and debits, consumers often lack sufficient
12 information about key aspects of their account. For example, a consumer cannot
13 know with any degree of certainty when funds from a deposit or a credit for a
14 returned purchase will be made available."
15
16
17

18 56. On October 6, 2009, the Center for Responsible Lending issued a
19 report entitled "Overdraft Explosion: Bank Fees for Overdrafts Increase 35% in
20 Two Years." The report finds that it is now "standard procedure to automatically
21 enroll checking account customers in their most expensive overdraft loan
22 program." The report finds that debit card transactions account for more overdraft
23 fees than traditional checks or any other type of transaction, even though "debit
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1 card transactions and ATM withdrawals . . . could easily be denied for no fee.”
2 The report also finds that overdraft fees increased 35 percent from 2006 to 2008,
3 and that over 50 million Americans overdrew their accounts in a 12 month period,
4 with 27 million accounts incurring five or more overdraft fees.

6 **U.S. Bank’s Overdraft Practices Harmed Plaintiffs.**

7
8 57. Plaintiffs Mitchell and Lori Brown held a joint checking account with
9 U.S. Bank from approximately January, 2008 to July, 2010.

10 58. In connection with the Browns’ joint account, U.S. Bank issued a
11 debit card to Mitchell Brown. A debit card allows customers to access their
12 checking account funds by using the card to execute a transaction. The charge is
13 processed electronically, and U.S. Bank has the option to accept or decline the
14 transaction at the point of sale.
15

16
17 59. U.S. Bank charged the Browns multiple overdraft fees. For example,
18 the Browns were charged eight overdraft fees on November 2nd and 3rd of 2009, in
19 the amount of \$37.50 each, for a total of \$300.00. Based on information and
20 belief, the vast majority of these overdraft fees were the result of U.S. Bank’s
21 resequencing of transactions. If U.S. Bank had not manipulated and resequenced
22 the transactions from highest to lowest, the Plaintiffs would not have incurred
23 \$300.00 in overdraft fees.
24
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1 60. For instance, if U.S. Bank had posted the transactions from lowest to
2 highest, the Browns would have incurred only one overdraft fee instead of eight.

3
4 61. Likewise, if U.S. Bank had posted the transactions in chronological
5 order, on information and belief, the Browns would have incurred only one
6 overdraft fee instead of eight.

7
8 62. U.S. Bank failed to notify Plaintiffs that they could incur overdraft
9 fees on transactions even though there were sufficient funds in the checking
10 account to cover the transaction at the time the transaction was executed. In
11 addition, U.S. Bank never notified Plaintiffs, at the time Plaintiff Mitchell Brown
12 executed the purported insufficient funds transactions described above, that their
13 checking account was overdrawn or that they would be charged an overdraft fee as
14 a result of the transactions. Furthermore, U.S. Bank paid, rather than returned, all
15 of the debit card charges described above, even though Plaintiffs account
16 purportedly lacked sufficient funds to cover the transactions. U.S. Bank charged
17 the Browns overdraft fees even when the account had sufficient funds.

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19
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21 63. Based on information and belief, the overdraft charges incurred by
22 Plaintiffs are representative of millions of dollars of overdraft fees that U.S. Bank
23 wrongfully assessed and deducted from the accounts of Class members. These
24 wrongful takings are especially egregious considering the fact that U.S. Bank
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SPOKANE, WA 99201
(509) 455-3966

1 approved each transaction and knew at the time of approval whether there were
2 sufficient funds in the account to cover the transaction.

3
4 **The Damages Sustained by Plaintiffs and the Class.**

5 64. As shown by these examples, U.S. Bank's overdraft policies made it
6 difficult for Plaintiffs and Class members to avoid injury even if they had kept
7 close track of the balances in their accounts. In fact, the Agencies have stated that
8 "injury" resulting from such policies "is not reasonably avoidable" by consumers.
9 73 F.R. 28904-01, 28929. "It appears that consumers cannot reasonably avoid this
10 injury if they are automatically enrolled in an institution's overdraft service
11 without having an opportunity to opt out. Although consumers can reduce the risk
12 of overdrawing their accounts by carefully tracking their credits and debits,
13 consumers often lack sufficient information about key aspects of their account.
14 For example, a consumer cannot know with any degree of certainty when funds
15 from a deposit or a credit for a returned purchase will be made available." *Id.*

16
17 65. According to rules proposed by the Agencies, "Injury [caused by
18 overdraft charges] is not outweighed by countervailing benefits.... This is
19 particularly the case for ATM withdrawals and POS debit card transactions where,
20 but for the overdraft service, the transaction would typically be denied and the
21
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1 consumer would be given the opportunity to provide other forms of payment
2 without incurring any fee.” 73 F.R. 28904-01, 28929 (May 19, 2008).
3

4 66. Thus, as a consequence of U.S. Bank’s overdraft policies and
5 practices, Plaintiffs and the Class have been wrongfully forced to pay overdraft
6 fees. U.S. Bank has improperly deprived Plaintiffs and the Class of significant
7 funds, causing ascertainable monetary losses and damages.
8

9 67. As a consequence of U.S. Bank’s improper overdraft fees, U.S. Bank
10 has wrongfully deprived Plaintiffs and the Class of funds to which it had no
11 legitimate claim.
12

13 68. Plaintiffs and members of the Class had sufficient funds in their
14 accounts to cover at least some of the transactions for which they were charged
15 overdraft fees. Plaintiffs and members of the Class either had adequate funds to
16 cover the transactions posted to their accounts, or the accounts were allowed to
17 become overdrawn, even by de minimis margins, exclusively so that U.S. Bank
18 could impose these wrongful charges. In many instances, U.S. Bank’s
19 manipulation of the process for imposing overdraft fees triggered a cascade of
20 charges that exponentially added to the charges it collected from Plaintiffs and
21 Class members.
22
23
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26

1 69. All conditions precedent to the relief sought herein have either
2 occurred or have been performed or waived.
3

4 **VI. CLASS CLAIMS FOR RELIEF**

5 **A. FIRST CLAIM FOR RELIEF**

6 **Violation of Washington's Consumer Protection Act**

7 70. Plaintiffs and the Class reallege and incorporate the facts set forth
8 herein as if set forth in their entirety.
9

10 71. U.S. Bank engaged in unfair or deceptive acts or practices with
11 respect to its overdraft policies and practices and the overdraft fees it charged
12 Washington consumers.
13

14 72. U.S. Bank's unfair or deceptive acts or practices occurred in the
15 conduct of trade or commerce.
16

17 73. U.S. Bank's unfair or deceptive acts or practices affected the public
18 interest.
19

20 74. U.S. Bank's unfair or deceptive acts or practices proximately caused
21 harm to the business or property interests of the Plaintiffs and the Class.
22

23 **B. SECOND CLAIM FOR RELIEF**

24 **Conversion**

25 75. Plaintiffs and the Class reallege and incorporate the facts set forth
26 herein as if set forth in their entirety.

1 76. U.S. Bank had and continues to have a duty to maintain and preserve
2 customer checking accounts and to prevent the diminishment of those accounts
3 through U.S. Bank's own wrongful acts.
4

5 77. U.S. Bank has wrongfully collected overdraft fees from Plaintiffs and
6 Class members and has taken specific and readily identifiable funds from the
7 accounts of Plaintiffs and Class members in payment of these fees.
8

9 78. U.S. Bank has, without proper authorization, assumed and exercised
10 the right of ownership over these funds, in hostility to the rights of Plaintiffs and
11 the members of the Class, without legal justification.
12

13 79. U.S. Bank continues to retain these funds unlawfully without the
14 consent of Plaintiffs or Class members.
15

16 80. U.S. Bank intends to permanently deprive Plaintiffs and Class
17 members of these funds.
18

19 81. These funds are properly owned by Plaintiffs and Class members, not
20 U.S. Bank, which now claims that it is entitled to ownership of the funds, contrary
21 to the rights of Plaintiffs and Class members.
22

23 82. Plaintiffs and Class members are entitled to the immediate possession
24 of these funds.
25
26

**CLASS ACTION COMPLAINT AND JURY
DEMAND: 25**

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1 83. U.S. Bank has wrongfully converted these specific and readily
2 identifiable funds in violation of law.

3
4 84. U.S. Bank's wrongful conduct is continuing.

5 **C. THIRD CLAIM FOR RELIEF**
6 **Unjust Enrichment**

7 85. Plaintiffs and the Class reallege and incorporate the facts set forth
8 herein as if set forth in their entirety.

9
10 86. U.S. Bank received a benefit in the form of additional overdraft fees
11 from Plaintiffs and Class members because of U.S. Bank's policies and practices.

12 87. U.S. Bank received the benefit at the expense of Plaintiffs and Class
13 members.

14
15 88. The circumstances make it unjust for U.S. Bank to retain the benefit
16 without payment.

17
18 **VII. DEMAND FOR RELIEF**

19 THEREFORE, Plaintiffs, individually and as representatives of the proposed
20 Class, pray for relief as follows:

21
22 1. An order certifying Class members' claims pursuant to Fed. R. Civ. P.
23 23(b)(2) and/or 23(b)(3), appointing named Plaintiffs as representatives of the
24 Class, and appointing undersigned counsel as Class counsel;

25
26
CLASS ACTION COMPLAINT AND JURY
DEMAND: 26

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1 2. A final order and/or judgment against U.S. Bank that Class members
2 are entitled to an amount equaling overdraft fees incurred as a result of U.S.
3 Bank's resequencing of charges or such other monetary damages as may be proven
4 at the time of trial;

5
6 3. An award of exemplary damages;

7
8 4. A final injunction prohibiting Defendant from engaging in further
9 business violating chapter 19.86 RCW;

10 5. An award of prejudgment interest;

11 6. An award of costs of litigation;

12 7. An award of attorney fees, including those afforded under chapter
13 19.86 RCW; and
14

15 8. For such equitable relief as the Court may deem fair and just.
16

17 **VIII. JURY DEMAND**

18 Plaintiffs demand a trial by jury in this matter.

19
20 DATED this 13th day of October, 2010.

21
22 THE SCOTT LAW GROUP, P.S.

23 By: 

24 _____
25 Darrell W. Scott, WSBA #20241

26 darrellscott@mac.com

 Matthew J. Zuchetto, WSBA #33404

 matthewzuchetto@mac.com

CLASS ACTION COMPLAINT AND JURY
DEMAND: 27

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-and-

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Attorneys for Plaintiffs

CLASS ACTION COMPLAINT AND JURY
DEMAND: 28

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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

CV-10-356-RMP

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS Lori Brown and Mitchell Brown, individually and on behalf of themselves and all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Lincoln</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) SEE ATTACHED</p>	<p>DEFENDANTS U.S. Bank, N.A.</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
--	--

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sec. 1332(f)(2)

Brief description of cause: Consumer Class Action re Deceptive and Unfair Business Practices

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \$5,000,000+ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10-13-10 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

RECEIVED

OCT 13 2010

CLERK, U.S. DISTRICT COURT
SPOKANE, WA

CIVIL COVERSHEET I(c)

Attorneys

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