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21 Claudine Saldivar, Barbara Bustamante, and
22 all others similarly situated

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **COUNTY OF ALAMEDA**

25 **ROXANNE WICKS, CLAUDINE**
26 **SALDIVAR, AND BARBARA**
27 **BUSTAMANTE, individually, and on behalf**
28 **of all others similarly situated,**

Plaintiffs,

vs.

PATELCO CREDIT UNION, and DOES 1
through 100, inclusive,

Defendants.

FILED BY FAX

ALAMEDA COUNTY

May 20, 2020

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG20061837

CASE NO.:

CLASS ACTION

COMPLAINT FOR

- (1) Breach of Contract;
- (2) Breach of the Implied Covenant of Good Faith and Fair Dealing;
- (3) Unjust Enrichment/Restitution;
- (4) Money Had and Received; and,
- (5) Violation of the Unfair Competition Laws, Bus.& Prof. Code §17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs Roxanne Wicks, Claudine Saldivar and Barbara Bustamante ("Plaintiffs"), by
2 and through their attorneys, hereby bring this class and representative action against Patelco
3 Credit Union and DOES 1 through 100 (collectively "PATELCO" or "Defendant").

4 **NATURE OF THE ACTION**

5 1. All allegations herein are based upon information and belief except those
6 allegations which pertain to Plaintiffs or their counsel. Allegations pertaining to Plaintiffs or their
7 counsel are based upon, *inter alia*, Plaintiffs' or their counsel's personal knowledge, as well as
8 Plaintiffs' or their counsel's own investigation. Furthermore, each allegation alleged herein either
9 has evidentiary support or is likely to have evidentiary support, after a reasonable opportunity for
10 additional investigation or discovery.

11 2. This is a class and representative action brought by Plaintiffs to assert claims in
12 their own right, and in their capacity as the class representatives of all other persons similarly
13 situated, and in their capacity as a private attorney general on behalf of the members of the
14 general public.

15 3. On behalf of themselves and all members of the putative class, Plaintiffs opt-out of
16 and reject and decline the attempted binding arbitration clause in the Patelco Account Agreement
17 dated May 1, 2020.

18 4. PATELCO wrongfully charged Plaintiffs and the Class Members fees related to
19 their checking accounts.

20 5. This class action seeks monetary damages, restitution, and injunctive relief due to,
21 *inter alia*, PATELCO's policy and practice to maximize the fees it imposes on members. The
22 conduct has the common denominator of breaching its members' contracts and violating laws so
23 as to maximize PATELCO's fee income. This conduct includes but is not limited to, assessing an
24 overdraft fee on transactions when by Defendant's own calculations there was enough available
25 money in the checking account to cover the transaction at issue when authorized and the money
26 was specifically held for that transaction but would be assessed an overdraft fee anyway; and
27 imposing more than one NSF fee, or an NSF fee followed by overdraft fee, on the *same* electronic
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1 item or check. The charging of such fees breaches PATELCO's contracts with its members, who
2 include Plaintiffs and the members of the Class.

3 **PARTIES**

4 6. Plaintiff Barbara Bustamante is a resident of Alameda County, California.
5 Plaintiff Roxanne Wicks is a resident of Solano County, California. Plaintiff Claudine Saldivar is
6 a resident of Santa Clara County, California. They all had a checking account with PATELCO at
7 all times relevant to the class action allegations.

8 7. Based on information and belief, Defendant PATELCO is and has been a credit
9 union with its headquarters located in Dublin, California. PATELCO has assets of more than \$7
10 billion, and over 360,000 members.

11 8. Without limitation, defendants DOES 1 through 100, include agents, partners, joint
12 ventures, subsidiaries and/or affiliates of PATELCO and, upon information and belief, also own
13 and/or operate PATELCO branch locations. As used herein, where appropriate, the term
14 "PATELCO" is also inclusive of Defendants DOES 1 through 100.

15 9. Plaintiffs are unaware of the true names of defendants DOES 1 through 100.
16 Defendants DOES 1 through 100 are thus sued by fictitious names, and the pleadings will be
17 amended as necessary to obtain relief against defendants DOES 1 through 100 when the true
18 names are ascertained, or as permitted by law or by the Court.

19 10. There exists, and at all times herein mentioned existed, a unity of interest and
20 ownership between the named defendants (including DOES) such that any corporate individuality
21 and separateness between the named defendants has ceased, and that the named defendants are
22 *alter egos* in that the named defendants effectively operate as a single enterprise, or are mere
23 instrumentalities of one another.

24 11. At all material times herein, each defendant was the agent, servant, co-conspirator
25 and/or employer of each of the remaining defendants, acted within the purpose, scope, and course
26 of said agency, service, conspiracy and/or employment and with the express and/or implied
27 knowledge, permission, and consent of the remaining defendants, and ratified and approved the
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1 acts of the other defendants. However, each of these allegations are deemed alternative theories
2 whenever not doing so would result in a contradiction with the other allegations.

3 12. Whenever reference is made in this Complaint to any act, deed, or conduct of
4 Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or
5 through one or more of its officers, directors, agents, employees, or representatives who was
6 actively engaged in the management, direction, control, or transaction of Defendant's ordinary
7 business and affairs.

8 13. As to the conduct alleged herein, each act was authorized, ratified or directed by
9 Defendant's officers, directors, or managing agents.

10 **VENUE AND JURISDICTION**

11 14. This Court is proper to hear this matter, among other reasons, because the events at
12 issued occurred within this Court's jurisdiction and venue, and because Defendant's principal
13 place of business is in Dublin, California.

14 **FACTUAL ALLEGATIONS**

15 15. PATELCO offers its consumer banking customers a checking account. One of the
16 features of an PATELCO checking account is a debit card, which can be used for a variety of
17 transactions including the purchasing of goods and services. In addition to receiving a debit card,
18 other features of an PATELCO checking account include the ability to write checks; withdraw
19 money from ATMs; schedule Automated Clearing House (ACH) transactions (certain recurring
20 payments); and other types of transactions that debit from a checking account.

21 16. In connection with its processing of debit transactions (debit card, ATM, check,
22 ACH, and other similar transactions), PATELCO has charged what it calls "Debit Card Paid NSF
23 Fee;" "ACH Returned Item" "NSF Fee;" "Paid NSF Fee;" "NSF Bill Pay Fee;" "NSF POS Fee;"
24 "Check Card NSF Fee;" "Recurring PD NSF Fee;" "NSF Fee ACH Debit;" and, "Retry Debit
25 Fee." As alleged further below, these fees either were not at all permitted to be charged by any
26 PATELCO Account Agreement or contract in existence during the class periods, or were charged
27 in breach of the contracts, or were charged without required predicate compliance with law.
28

17. Overdraft fees and Nonsufficient Funds fees (“NSF fees”) constitute the primary fee generators for banks and credit unions. According to a banking industry market research company, Moebs Services, in 2018 alone, banks generated an estimated \$34.5 billion from overdraft fees. While credit unions portray themselves to customers as more overdraft and fee friendly than banks, a 2015 study conducted by Moebs Services confirmed that the median overdraft fees charged by credit unions are not statistically significantly less than the median overdraft fees charged by banks. For credit unions such as PATELCO, overdraft fees and NSF fees are a major source of revenue and a profit center.

18. Since 2000, the average dollar amount of a checking account transaction has become much lower because customers, and especially younger customers, use debit cards instead of cash or credit cards for everyday purchases. In 2016, the number of terminals that accept debit cards in the United States had increased by approximately 1.4 million compared to 2011.¹ That has translated to the average dollar amount of overdraft transactions being lower than in 2000. However, while the average overdraft transaction is substantially lower and provides much less risk and exposure to the bank, the average cost of overdraft fees per transaction has gone up.

19. The high cost of an overdraft fee is also usually punitive. In a 2012 study, more than 90% of customers who were assessed overdraft fees overdrew their account by mistake. (May 2012 Pew Charitable Trust report entitled “Overdraft America: Confusion and Concerns about Bank Practices”, at p. 4). More than 60% of the transactions that resulted in a large overdraft fee were for less than \$50. (June 2014 Pew Charitable Trust report entitled “Overdrawn”, at p. 8). More than 50% of those who were assessed overdraft fees do not recall opting into an overdraft program (*id.* at p. 5), and more than two-thirds of customers would have preferred the financial institution decline their transaction rather than paying the transaction into overdraft and charging a very large fee (*id.* at p. 10).

¹ Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch, Mar. 23, 2016, <http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23> (last visited March 7, 2019).

1 20. Unfortunately, the customers who are assessed these fees are the most vulnerable
2 customers. Younger, lower-income, and non-white account holders are among those who were
3 more likely to be assessed overdraft fees. (*Id.* at p. 1). A 25-year-old is 133% more likely to pay
4 an overdraft penalty fee than a 65-year-old. (*Id.* at p. 3). More than 50% of the customers
5 assessed overdraft fees earned under \$40,000 per year. (*Id.* at p. 4). Non-whites are 83% more
6 likely to pay an overdraft fee than whites. (*Id.* at p. 3).

7 21. As a result of banks and credit unions taking advantage of millions of customers
8 through the unfair practice of charging overdraft fees through methodologies that maximize the
9 possible number of expensive overdraft fees to be charged, there has been a substantial amount of
10 litigation over the past few years. The rulings of these cases have predominantly fallen in favor of
11 consumers, forcing the banks and credit unions to repay their customers significant amounts of
12 wrongfully collected overdraft fees.

13 22. The federal government has also stepped in to provide additional protections to
14 customers with respect to abusive overdraft policies. In 2010, the Federal Reserve Board enacted
15 regulations giving financial institutions the authority to charge overdraft fees on ATM and one-
16 time debit card transactions only if the institution first obtained the affirmative consent of the
17 customer to do so. (12 C.F.R. § 1005.17 (Regulation E's "Opt-In Rule")).

18 23. An accounting gimmick related to increasing overdraft and NSF fees used by some
19 financial institutions, which on information and belief financial institutions such as Defendant
20 may use, is an "approve positive – post negative" ("APPN") method of calculation. It works as
21 follows. At the moment debit card transactions are authorized on an account with positive funds
22 to cover the transaction, PATELCO immediately reduces consumers' checking accounts for the
23 amount of the purchase, sets aside funds in a checking account to cover that transaction, and as a
24 result, the consumer's displayed "available balance" reflects that subtracted amount. As a result,
25 customers' accounts will always have sufficient available funds available to cover these
26 transactions.
27
28

1 24. However, PATELCO still assesses \$28 overdraft fees on many of these
2 transactions and misrepresents its practices in its account documents. Despite putting aside
3 sufficient available funds for debit card transactions at the time those transactions are authorized,
4 PATELCO later assesses overdraft fees on those same transactions when they purportedly settle
5 days later into a negative balance. These types of transactions are APPN Transactions.

6 25. PATELCO maintains a running account balance in real time, tracking funds
7 consumers have for immediate use. This running account balance is adjusted, in real-time, to
8 account for debit card transactions at the precise instance they are made. When a customer makes
9 a purchase with a debit card, PATELCO subtracts the dollar amount of the transaction from the
10 customer's available balance and places such funds on a hold. Such funds are not available for
11 any other use by the accountholder, and such funds are specifically associated with a given debit
12 card transaction.

13 26. That means when any *subsequent*, intervening transactions are initiated on a
14 checking account, they are compared against an account balance that has already been reduced to
15 account for any earlier debit card transactions. Accordingly, many subsequent transactions incur
16 overdraft fees due to the unavailability of the funds sequestered for those debit card transactions.

17 27. Still, despite keeping those held funds off-limits for other transactions, PATELCO
18 improperly charges overdraft fees on those APPN Transactions, although the APPN Transactions
19 *always* have sufficient available funds to be covered.

20 28. The Consumer Financial Protection Bureau in its Consumer Financial Protection
21 Bureau, Winter 2015 "Supervisory Highlights" has expressed concern with this very issue, calling
22 the practice "unfair" and/or "deceptive" when:
23

24 A financial institution authorized an electronic transaction, which reduced a customer's
25 available balance but did not result in an overdraft at the time of authorization; settlement
26 of a subsequent unrelated transaction that further lowered the customer's available balance
27 and pushed the account into overdraft status; and when the original electronic transaction
28 was later presented for settlement, because of the intervening transaction and overdraft
fee, the electronic transaction also posted as an overdraft and an additional overdraft fee
was charged. Because such fees caused harm to consumers, one or more supervised
entities were found to have acted unfairly when they charged fees in the manner described

1 above. Consumers likely had no reason to anticipate this practice, which was not
 2 appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft
 3 fees charged. Consistent with the deception findings summarized above, examiners found
 4 that the failure to properly disclose the practice of charging overdraft fees in these
 5 circumstances was deceptive. At one or more institutions, examiners found deceptive
 6 practices relating to the disclosure of overdraft processing logic for electronic
 7 transactions. Examiners noted that these disclosures created a misimpression that the
 8 institutions would not charge an overdraft fee with respect to an electronic transaction if
 9 the authorization of the transaction did not push the customer's available balance into
 10 overdraft status. But the institutions assessed overdraft fees for electronic transactions in
 11 a manner inconsistent with the overall net impression created by the disclosures.
 12 Examiners therefore concluded that the disclosures were misleading or likely to mislead,
 13 and because such misimpressions could be material to a reasonable consumer's decision-
 14 making and actions, examiners found the practice to be deceptive. Furthermore, because
 15 consumers were substantially injured or likely to be so injured by overdraft fees assessed
 16 contrary to the overall net impression created by the disclosures (in a manner not
 17 outweighed by countervailing benefits to consumers or competition), and because
 18 consumers could not reasonably avoid the fees (given the misimpressions created by the
 19 disclosures), the practice of assessing fees under these circumstances was found to be
 20 unfair.

21 29. There is no justification for these practices, other than to maximize PATELCO's
 22 overdraft fee revenue. APPN transactions only exist because intervening checking account
 23 transactions supposedly reduce an account balance. PATELCO is free to protect its interests and
 24 either reject those intervening transactions or charge overdraft fees on those intervening
 25 transactions—and it does the latter to the tune of millions of dollars each year. But PATELCO
 26 was not content with these millions in overdraft fees. Instead, it sought millions *more* in overdraft
 27 fees on these APPN Transactions.

28 30. Besides being deceptive, unfair, and unconscionable, these practices breach
 29 contract promises made in PATELCO's adhesion contracts—contracts which fundamentally
 30 misconstrue and mislead consumers about the true nature of PATELCO's processes and
 31 practices. These practices also exploit contractual discretion to gouge consumers. In short,
 32 PATELCO is not authorized by contract to charge overdraft fees on transactions that have not
 33 overdrawn an account, but it has done so and continues to do so.

34 **Mechanics of a Debit Card Transaction**

35 31. A debit card transaction occurs in two parts. First, authorization for the purchase
 36 amount is instantaneously obtained by the merchant from PATELCO. When a merchant

1 physically or virtually “swipes” a customer’s debit card, the card terminal connects, via an
2 intermediary, to PATELCO, which verifies that the customer’s account is valid and that sufficient
3 available funds exist to “cover” the transaction amount.

4 32. At this step, if the transaction is approved, PATELCO immediately reduces the
5 funds in a consumer’s account and sequesters funds in the amount of the transaction but does not
6 yet transfer the funds to the merchant.

7 33. Indeed, the entire purpose of the immediate debit and hold of positive funds is to
8 ensure that there are enough funds in the account to pay the transaction when it settles, as
9 discussed in the Federal Register notice announcing revisions to certain provisions of the Truth in
10 Lending Act regulations: “When a consumer uses a debit card to make a purchase, a hold may be
11 placed on funds in the consumer’s account to ensure that the consumer has sufficient funds in the
12 account when the transaction is presented for settlement. This is commonly referred to as a “debit
13 hold.” During the time the debit hold remains in place, which may be up to three days after
14 authorization, those funds may be unavailable for the consumer’s use for other transactions.”
15 Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration,
16 Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 25, 2009).

17 34. Sometime thereafter, the funds are actually transferred from the customer’s
18 account to the merchant’s account. PATELCO decides whether to “pay” debit card transactions
19 at authorization. If it decides to pay, after that, PATELCO is obligated to pay the transaction no
20 matter what. For debit card transactions, that moment of decision can only occur at the point of
21 sale, at the instant the transaction is authorized or declined. It is at that point—and only that
22 point—when PATELCO may choose to either pay the transaction or decline it. When the time
23 comes to actually settle the transaction, it is too late—the credit union has no discretion and must
24 pay the charge. This “must pay” rule applies industry wide and requires that, once a financial
25 institution authorizes a debit card transaction, it “must pay” it when the merchant later makes a
26 demand, regardless of other account activity. See Electronic Fund Transfers, 74 Fed. Reg. 59033-
27 01, 59046 (Nov. 17, 2009). Notably, there is no change—no impact whatsoever—to the
28 available funds in an account when this step occurs.

PATELCO's Account Contract

35. Plaintiffs had a PATELCO checking account, which during the class period was covered by the Account Agreements in effect prior to the Account Agreement dated May 1, 2020. The Account Agreement and relevant contract documents covering overdraft fees provide that PATELCO will not charge overdraft fees on transactions that have sufficient funds to cover them at the time they are initiated.

36. For debit card transactions, this moment occurs at the moment of authorization. For APPN transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there are always funds to cover those transactions—yet PATELCO assesses overdraft fees on them anyway.

37. The above promises indicate that transactions are only overdraft transactions when they are authorized into a negative account balance. Of course, that is not true for APPN transactions. In fact, PATELCO actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to settle those same transactions. Instead, it uses the secret posting process described below.

38. PATELCO charges overdraft fees even when sufficient funds exist to cover transactions that are “authorized and paid” into a positive balance. No express language in any document states that PATELCO may impose overdraft fees on any APPN Transactions.

39. The account documents misconstrue PATELCO's true debit card processing and overdraft practices. First, and most fundamentally, PATELCO charges overdraft fees on debit card transactions for which there are sufficient funds available to use to cover the transactions.

40. PATELCO assesses overdraft fees on APPN Transactions that do have sufficient funds available to cover them throughout their lifecycle. PATELCO's practice of charging overdraft fees even when sufficient available funds exist to cover a transaction violates a contractual promise not to do so. This discrepancy between PATELCO's actual practice and the contract causes consumers like Ms. Saldivar to incur more overdraft fees than they should.

1 41. Sufficient funds for APPN Transactions are actually debited from the account
2 immediately, consistent with standard industry practice. These withdrawals take place upon
3 initiation and thus they cannot be re-debited later. But that is what PATELCO does when it re-
4 debits the account during a secret batching posting process.

5 42. In reality, PATELCO's actual practice is to attempt the same debit card transaction
6 twice to determine if the transaction overdraws an account—both at the time a transaction is
7 authorized and later at the time of settlement. At the time of settlement, however, an available
8 balance *does not change at all* for these transactions previously authorized into good funds. As
9 such, PATELCO cannot then charge an OD fee on such transaction because the available balance
10 has not been rendered insufficient due to the pseudo-event of settlement.

11 43. Upon information and belief, something more is going on: at the moment a debit
12 card transaction is getting ready to settle, PATELCO does something new and unexpected, during
13 the middle of the night, during its nightly batch posting process. Specifically, PATELCO releases
14 the hold placed on funds for the transaction for a split second, putting money back into the
15 account, and then re-debits the same transaction a second time.

16 44. This secret step allows it to charge overdraft fees on transactions that never should
17 have been subject to them—transactions that were authorized into sufficient funds, and for which
18 PATELCO specifically set aside money to pay them. This discrepancy between PATELCO's
19 actual practices and the contract causes accountholders to incur more overdraft fees than they
20 should. In sum, there is a huge gap between PATELCO's practices as described in the account
21 documents and PATELCO's practices in reality.

22 45. The assessment of overdraft fees on APPN Transactions is fundamentally
23 inconsistent with immediate withdrawal of funds for debit card transactions. That is because if
24 funds are immediately debited, they cannot be depleted by intervening transactions (and it is that
25 subsequent depletion that is the necessary condition of APPN Transactions). If funds are
26 immediately debited, they are necessarily applied to the debit card transactions for which they are
27 debited.
28

1 46. PATELCO was and is aware that this is precisely how its members reasonably
2 understand debit card transactions to work. PATELCO knows that many consumers prefer debit
3 cards for these very reasons. Consumer research indicates that consumers prefer debit cards as a
4 budgeting device because they do not allow debt like credit cards do.

5 47. On information and belief, although access to Defendant's database will be sought
6 by Plaintiffs to confirm, Plaintiff Saldivar was charged such inappropriate APPN fees at least on
7 the following occasions. On July 3, 2018, Plaintiff Saldivar made a debit card purchase for \$1.85
8 for which sufficient available funds were held and set aside on July 3, 2018, while her balance
9 was positive even after the sequestered \$1.85, but when the transaction posted on July 5, 2018,
10 PATELCO imposed a \$28.00 fee, thereby turning a \$1.85 purchase into a \$29.85 cost. As
11 another example, on June 23, 2018, Plaintiff Saldivar made a debit card purchase for \$23.56
12 while her available balance was positive even after the \$23.56 was placed on hold, but when the
13 transaction posted on June 25, 2020, PATELCO imposed what a \$28.00, thereby turning a \$23.56
14 purchase into a \$51.56 cost. With regard to Plaintiff Wicks, although access to Defendant's
15 database will be sought by Plaintiff to confirm, Plaintiff was charged such inappropriate APPN
16 fees at least on January 23, 2018, when Plaintiff made a debit card purchase for \$6.89 for which
17 funds were held and set aside on January 23, 2018, while her balance was positive even after the
18 sequestered \$6.89, but when the transaction posted on January 25, 2018, PATELCO imposed a
19 \$28.00 fee, thereby turning a \$6.89 purchase into a \$34.89 cost. As another example, Plaintiff
20 made a debit card purchase on March 25, 2018, for \$57.00 for which sufficient available funds
21 were held and set aside on March 25, 2018, while her balance was positive even after the
22 sequestered \$57.00, but when the transaction posted on March 26, 2018, PATELCO imposed a
23 \$28.00 fee, thereby turning a \$57.00 purchase into an \$85.00 cost. As another example, Plaintiff
24 made a debit card purchase on September 29, 2018, for \$16.20 for which funds were held and set
25 aside on September 29, 2018, while her balance was positive even after the sequestered \$16.20,
26 but when the transaction posted on October 1, 2018, PATELCO imposed a \$28.00 fee, thereby
27 turning a \$16.20 purchase into an \$44.20 cost. On information and belief, a review of
28

1 Defendant's records to be produced in discover in this matter will reveal numerous other
2 incidents of this improper practice.

3 48. PATELCO had no authority to use an APPN calculation to assess overdraft and
4 NSF fees in its contract with its customers during the class period, and such practices breach its
5 contracts with its customers and are also deceptive, unfair, and unconscionable. These practices
6 exploit any contractual discretion PATELCO may have in its contracts with its customers in an
7 unreasonable way that adds to PATELCO's profits and harms its customers. PATELCO does not
8 describe this APPN procedure in its contracts. Instead, it states almost the opposite of this on
9 page 5 of the operative Account Agreement as follows:

10 Your "current balance" is the amount of money in your account at the beginning of a
11 business day. This amount does not include any pending deposits or withdrawals. Your
12 "available balance" is your current balance **minus any pending Debit Card purchases,**
13 **automatic drafts, processing checks or other debits from your account.** Available balance
14 is the actual amount available to you to make withdrawals or make payments. We
15 determine whether your account has a positive balance is overdrawn, and **we calculate all**
16 **fees associated with overdrafts, based on available balance.** (emphasis added)

17 49. Further on page 13 of the same Account Agreement, PATELCO also expressly
18 informs account holders that "authorization holds" are immediately placed on debit card
19 transactions, and that such holds "will not be available for any other use."

20 **• Effect of Use on Available Checking Account Balance**

21 Your Checking Account will usually be debited within three business days after the date you use the
22 Debit Card for a purchase or cash withdrawal. However, the amount of such transactions will be held
23 from available funds from the date of the transaction until the end of the hold period, and will not be
24 available for any other use.

25 50. Of course, when PATELCO then authorizes debit card transactions on positive
26 available funds and places an "authorization hold" for the amount of the transaction, not allowing
27 it to be used for anything else, it then violates these Account Contract terms when it later charges
28 OD Fees on such debit card transactions.

51. On page 19 of that Account Agreement, PATELCO further reinforces this by
stating that an overdraft occurs "when there is not enough money to cover a transaction", but in
practice PATELCO sequesters enough money to cover the transaction but charges an overdraft
fee anyway when the transaction later posts:

WHAT YOU NEED TO KNOW ABOUT OVERDRAFTS AND OVERDRAFT FEES

An overdraft occurs when you do not have enough money in your account to cover a transaction but we pay it anyway. We can cover your overdrafts in two ways:

52. Only when an Account Agreement dated May 1, 2020, became effective did PATELCO for the first time actually contract with its members to charge overdraft fees and NSF fees as it had been doing. Specifically, in the Account Agreement dated May 1, 2020, PATELCO drastically rewrote its contractual term on how it would charge overdraft fees to now match the practice in which it previously had been wrongfully engaging and breaching its prior contracts with its members. The new Account Agreement dated May 1, 2020, for the first time now states, on pages 11-12, as follows:

For Debit Card Transactions, we use your available balance at the time a transaction posts to determine when your account is overdrawn and whether fees will be assessed. For Debit Card transactions involving merchant authorization holds (see the Authorization Holds for Debit Card Transactions section of this handbook), because there may be a longer delay between an authorization hold being applied and the transaction posting, **this can sometimes result in a Debit Card Paid NSF Fee based on an insufficient available balance at the time of a transaction posting, even if the available balance was sufficient earlier at the time of the authorization hold being applied.**

It is important to keep in mind that for Debit Card transactions, we check your available balance at two separate times – first, at the time a merchant authorization request is received, and second, when the transaction “settles” and posts to your account. If your available balance is insufficient to pay the pre- authorization amount requested by a merchant, we will decline the request. If your available balance is sufficient to cover a merchant’s authorization request, the authorization request will be approved and an authorization hold will be placed on your account in the amount of the merchant’s authorization request. If the transaction later “settles” and posts to your account at a time when the available balance is insufficient to pay the posted transaction without causing an overdraft (i.e., paying the posted transaction results in an available balance of less than \$0), **we will charge a Debit Card Paid NSF Fee on that transaction even though the available balance was sufficient to cover it at the time the transaction was authorized.**

The following example illustrates how this works:

Assume your current and available balance are both \$40, and you use your Debit Card at a restaurant for \$30. If the restaurant requests preauthorization in the amount of \$30, an authorization hold is placed on \$30 in your account, so your available balance is only \$10. Your current balance would remain \$40. Before the restaurant charge is sent to us for

1 payment, a check that you wrote for \$40 clears. Because your available balance is only
 2 \$10 (due to the authorization hold of \$30), your account will be overdrawn by \$30, even
 3 though your current balance is \$40. In this case, if we pay the \$40 check under our
 4 Discretionary Overdraft Services, we will charge you a Paid NSF Fee of \$28, which will
 5 be deducted from your account, further increasing the overdrawn amount. In addition,
 6 when the restaurant charge is finally submitted to us for payment, we will release the
 7 authorization hold and pay the transaction amount (which may be \$30 or even a different
 amount, for example, if you added a tip) to the restaurant. Because the amount of the
 restaurant charge exceeded your available balance at the time the restaurant charge
 "settled" (i.e., posted to your account), we will charge you a Debit Card Paid NSF Fee of
 \$28, even though the restaurant transaction was authorized and approved with a sufficient
 available balance.

(emphasis added).

8
 9 53. As such, Plaintiffs end the class period for the APPN damages at issue in this
 10 complaint the day before the Account Agreement dated May 1, 2020 actually became effective
 11 since this new contract now allowed PATELCO to charge overdraft fees using the APPN
 12 gimmick it previously had been using without authority.

13 54. This APPN gimmick also breached a second PATELCO contract, the Regulation E
 14 required contract, the Opt-In Contract. It states, "An overdraft occurs when you do not have
 15 enough money in your account to cover a transaction, but we pay it anyway." When PATELCO
 16 therefore engages in the APPN gimmick it is breaching this term since it literally has set-aside the
 17 money to pay for the transaction at issue when there was "enough money in [the] account to cover
 18 [the] transaction," but then may charge an overdraft fee on that transaction regardless.

19 55. PATELCO also violates the Opt-In Contract provision which states: "Even if you
 20 do not request overdraft coverage for signature-based debit card purchases, we may still pay your
 21 overdrafts for other types of transactions, including checks and electronic transfer (ACH). **If we**
 22 **do not authorize and pay an overdraft**, your transaction will be declined." (emphasis added)
 23 The "authorize and pay" promise means that authorization and payment are coterminous, and
 24 overdrafts are determined at the time of authorization.

25 56. PATELCO also has an improper practice of charging multiple NSF fees, or an
 26 NSF fee followed by an overdraft fee, for the same electronic item. PATELCO charges a \$28 fee
 27 when an electronic item is first processed for payment and PATELCO determines that, in its
 28 opinion, there is not enough money in the account to cover the item. PATELCO then charges an

1 additional NSF fee, or an overdraft fee following the NSF fee, if the same item is presented for
2 processing again, even though the account holder took no action to resubmit the transaction.

3 57. This charging of more than one fee for the same item breaches PATELCO's
4 Account Agreement. The Account Agreement states at page 9:

5 e. Whether we pay the overdrafting item or return/decline it, we may assess either the
6 Paid NSF fee (but in the case of payments) or the returned NSF fee, as applicable.
(emphasis added)

7 58. As can be seen, PATELCO uses the singular "fee" not the plural "fees." Further,
8 it does not state "per each presentment of an item" but rather states per "item." PATELCO also
9 does not state that it ever will charge both "an NSF fee and an overdraft fee," for an item, but
10 rather states it will be "or."

11 59. A second presentment or "re-presentment" or a "retry" of an "item" does not
12 change it into a new or different "item." It is still the same "item" being presented by the same
13 merchant in the same dollar amount, not a new "item." A check or electronic item reprocessed
14 after an initial return for insufficient funds, especially through no action by the customer, cannot
15 and does not fairly become a new, unique additional "item" for fee assessment purposes.
16 Nowhere did the Account Agreement or Fee Schedule effective during the class periods state that
17 PATELCO may charge multiple overdraft or NSF fees per item.

18 60. PATELCO dramatically changed its Account Agreement on this issue of charging
19 more than one NSF for the same "item" with its Account Agreement dated May 1, 2020, when it
20 now contracted for the first time that it would charge an NSF Fee each time the same "item" was
21 "presented" or "re-presented," when it contracted for the first time ever on page 17 as follows:

22 If your account does not have sufficient available funds when a transaction or item is
23 presented to us for payment and, as a result, returned unpaid, the merchant or payee of
24 your transaction or item may choose to resubmit the same transaction, and may do so
25 multiple times; this may also occur when you initiate transfers and payments through your
26 Credit Union online banking or Bill Pay services and your account lacks sufficient avail-
27 able funds at the time the transaction is scheduled to occur, as we may decline the
28 transaction, charge a NSF Fee, and then resubmit the same transaction at a later time in an
attempt to process your requested transaction. In the event a transaction or item is
resubmitted for payment at a time when your account lacks sufficient available
funds to pay it and we decline it, we will charge a related NSF Fee for each such
resubmitted item each time that same transaction is returned unpaid or a Paid NSF

Fee if a resubmitted item is paid when your account lacks sufficient available funds to pay it. (emphasis added.)

61. At all times during the relevant class period in this lawsuit, PATELCO's had no such Account Agreement language.

62. Further, its Account Agreement language on this issue at all times during the class period also specifically referred its members to the Fee Schedule, as follows, on page 9:

3. If we return a check unpaid, we will charge a "NSF" (non-sufficient fund) fee for any checks presented for payment to the payee's financial institution. See the Fee Schedule for charges on NSF checks.

63. The Fee Schedule to which the Account Agreement directs members to look for what will be charged for NSF Fees at all times during the class period stated as follows:

Non-Sufficient Funds (NSF) Charges

ACH Returned Item	\$28.00
NSF Fee	\$28.00
Paid NSF Fee	\$28.00
NSF Bill Pay Fee	\$28.00
NSF POS Fee	\$28.00

64. Only as of March 1, 2019, did PATELCO change its Fee Schedule to indicate it

65. Throughout the class period, Patelco thereby represented a single NSF Fee per item. Only when it amended its Fee Schedule on March 1, 2019 did Patelco first state that it would charge such fees "per presentment", every time the item was presented:

Non-Sufficient Funds (NSF) Charges per Presentment

ACH Returned Item	\$28.00
NSF Fee	\$28.00
Paid NSF Fee	\$28.00
NSF Bill Pay Fee	\$28.00
NSF POS Fee	\$28.00

66. Prior to that change in both the Fee Schedule and the Account Agreement, contract, PATELCO had not contracted to charge the fee “per presentment” or “per retry of the item.” A “re-presentment” or a “retry” of an “item” does not change it into a new or different “item.” It is still the same “item” being presented by the same merchant in the same dollar amount, not a new “item.” 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 additional “item” for fee assessment purposes. Only when its Fee Schedule and Account Agreement changing the terms of the contract to each presentment of the item did PATELCO arguably contract to charge an NSF Fee for the same item every time it was presented.

67. Of note, many financial institutions that do engage in this same or similar abusive practice of charging repeat NSF fees for the same “item” at least at a minimum make this clear in their Account Agreements, Fee Schedules, or Opt-Ins, unlike Defendant. They typically use terminology such as “per presentment” or “per each presentment” to make this clear, and often also add far more in explaining this to be sure it not ambiguous, the way PATELCO did for the first time in its May 1, 2020, Account Agreement or February 1, 2019, Fee Schedule. The following are some examples from other banks and credit unions that make clear what PATELCO was contractually required to do, if it was going to engage in charging multiple \$25 NSF fees, or overdraft fees following an NSF fee, for the same item.

68. Air Academy Federal Credit Union contracts for its NSF fee as follows:

“\$25.00 per presentment.”

See, <https://www.Patelco.com/fees.html> (emphasis added) [last visited on or about March 17, 2020].

69. Central Pacific Bank contracts unambiguously:

Items and transactions (such as, for example, checks and electronic transactions/payments) returned unpaid due to insufficient/non-sufficient (“NSF”) funds in your account, may be resubmitted one or more times for payment, and a \$25 fee will be imposed on you each time an item and transaction resubmitted for payment is returned due to insufficient/nonsufficient funds.

1 See, <https://www.cpb.bank/media/1618/fee-001-rev-10-24-2019-misc-fee-schedule.pdf>
 2 (emphasis added) [last visited on or about March 17, 2020].

3 70. Community Bank, N.A. unambiguously contracts:

4 **You may be charged more than one Overdraft or NSF Fee if a merchant submits a**
 5 **single transaction multiple times after it has been rejected or returned.**

6 See, [https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-](https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-FINAL-1.14.2020.pdf)
 7 [Disclosure-FINAL-1.14.2020.pdf](https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-FINAL-1.14.2020.pdf) (emphasis added) [last visited on or about March 17, 2020].

8 71. Delta Community Credit Union contracts unambiguously as follows:

9 **“\$30 per presentment.”**

10 See, <https://www.deltacommunitycu.com/home/fees.aspx> (emphasis added) [last visited
 11 on or about March 17, 2020]. Further, in its Account Contract, Delta unambiguously states as
 12 follows:

13 The Credit Union reserves the right to charge you an overdraft/insufficient funds fee if
 14 you write a check or initiate an electronic transaction that, if posted, would overdraw your
 15 Checking Account. **Note that you may be charged an NSF fee each time a check or ACH is**
 16 **presented to us, even if it was previously submitted and rejected.**

17 See, [https://www.deltacommunitycu.com/home/forms/member-savings-services-](https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-agreements.aspx)
 18 [disclosures-and-agreements.aspx](https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-agreements.aspx) (emphasis added) [last visited on or about March 17, 2020].

19 72. First Financial Bank contracts unambiguously:

20 Merchants or payees may present an item multiple times for payment if the initial or
 21 subsequent presentment is rejected due to insufficient funds or other reason
 22 (representment). **Each presentment is considered an item and will be charged**
 23 **accordingly.”**

24 See, [https://www.bankatfirst.com/content/dam/first-financial-](https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf)
 25 [bank/eBanking_Disclosure_of_Charges.pdf](https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf) (emphasis added) [last visited on or about March 17,
 26 2020].

27 73. First Hawaiian Bank unambiguously contracts:

28 You agree that multiple attempts may be made to submit a returned item for payment and
 that multiple fees may be charged to you as a result of a returned item and resubmission.

1 See,

2 [https://www.fhb.com/en/assets/File/Home Banking/FHB Online/Terms and Conditions of FH](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FH)
 3 [B Online Services RXPI.pdf](#) (emphasis added) [last visited on or about March 17, 2020].

4 74. First Northern Credit Union unambiguously contracts its NSF fee as,

5 “\$22.00 per each presentment and any subsequent representment(s).”

6 See, https://www.fncu.org/feeschedule/?scpage=1&scupdated=1&scorder=-click_count
 7 (emphasis added) [last visited on or about March 17, 2020].

8 Further, in its Account Contract, First Northern unambiguously contracts as follows:

9 You further agree that we may charge a NSF fee each time an item is presented for
 10 payment even if the same item is presented for payment multiple times. For example,
 11 if you wrote a check to a merchant who submitted the payment to us and we returned the
 12 item (resulting in a NSF fee), the merchant may re-present the check for payment again.
 13 If the second and any subsequent presentments are returned unpaid, we may charge a
 14 NSF fee for each time we return the item. You understand this means you could be
 15 charged multiple NSF fees for one check that you wrote as that check could be
 16 presented and returned more than once. Similarly, if you authorize a merchant (or other
 17 individual or entity) to electronically debit your account, such as an ACH debit, you
 18 understand there could be multiple submissions of the electronic debit request which
 19 could result in multiple NSF fees

20 See,

21 ([https://www.fncu.org/SecureAsset.aspx?Path=/7/Member Agreement November 1 2019.pdf](https://www.fncu.org/SecureAsset.aspx?Path=/7/Member_Agreement_November_1_2019.pdf))
 22 (emphasis added) [last visited on or about March 17, 2020].

23 75. Glendale Federal Credit Union unambiguously contracts its NSF fee as,

24 “\$30 per presentment.”

25 See, <https://glendalefcu.org/pdf/fees.pdf> (emphasis added) [last visited on or about March
 26 17, 2020].

27 76. Klein Bank contracts unambiguously:

28 [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.

See, <https://kleinbankonline.com/bridge/disclosures/ib/disclose.html> (emphasis added) [last visited on or about March 17, 2020].

77. Liberty Financial contracts its NSF fee unambiguously as:

“\$27.00 per presentment.”

See, <https://liberty.financial/about/fee-schedule/> (emphasis added) [last visited on or about March 17, 2020].

78. Los Angeles Federal Credit Union contracts its NSF fee unambiguously as:

“\$29 per presentment.”

See, https://www.lafcu.org/pdf/currentfees_bus.pdf (emphasis added) [last visited on or about March 17, 2020].

79. Members First Credit Union contracts unambiguously:

We reserve the right to charge an Non-Sufficient Funds Fee (NSF Fee) each time a transaction is presented if your account does not have sufficient funds to cover the transaction at the time of presentment and we decline the transaction for that reason. **This means that a transaction may incur more than one Non-Sufficient Funds Fee (NSF Fee) if it is presented more than once...we reserve the right to charge a Non-Sufficient Funds (NSF Fee) for both the original presentment and the representment** [.]

See,

http://www.membersfirstfl.org/files/mfcuf1/1/file/Membership_and_Account_Agreement.pdf (emphasis added) [last visited on or about March 17, 2020].

80. Meriwest Credit Union unambiguously contracts its fee as:

“\$35.00/item per presentment”.

https://www.merwest.com/sites/www.merwest.com/files/media/consumer_feesched.pdf (emphasis added) [last visited on or about March 17, 2020].

81. Partners 1st Federal Credit Union contracts unambiguously:

Consequently, because **we may charge a fee for an NSF item each time it is presented, we may charge you more than one fee for any given item**. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission 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 item.

See, https://www.partners1stcu.org/uploads/page/Consumer_Account_Agreement.pdf

(emphasis added) [last visited on or about March 17, 2020].

82. RBC Bank unambiguously contracts:

“We may also charge against the Account an NSF fee for each item returned or rejected, **including for multiple returns or rejections of the same item.**”

See, [https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-](https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf)

[Accounts.pdf](https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf) (emphasis added) [last visited on or about March 17, 2020].

83. Regions Bank contracts unambiguously:

If an item is presented for payment on your account at a time when there is an insufficient balance of available funds in your account to pay the item in full, you agree to pay us our charge for items drawn against insufficient or unavailable funds, whether or not we pay the item. **If any item is presented again after having previously been returned unpaid by us, you agree to pay this charge for each time the item is presented for payment and the balance of available funds in your account is insufficient to pay the item.**

See, https://www.regions.com/virtualdocuments/Deposit_Agreement_6_1_2018.pdf

(emphasis added) [last visited on or about March 17, 2020].

84. Tyndall Federal Credit Union lists its NSF fee as:

“\$28.00 **per presentment** (maximum 5 per day).”

See, https://tyndall.org/member_center/document_center/fee_schedule (emphasis added)

[last visited on or about March 17, 2020].

85. USE Credit Union contracts unambiguously:

“**Fees are charged per presentment, meaning the same item is subject to multiple fees if presented for payment multiple times.**”

See, https://www.usecu.org/home/Files/static/documents/Schedule_of_Fees.pdf (emphasis

added) [last visited on or about March 17, 2020].

86. Therefore, if PATELCO wanted to engage in this abusive practice, it was at least required to state and contract so, as these other financial institutions all do. All these quotations show that the financial institutions differentiate between an “item” and a “presentment” of an item when calculating NSF or overdraft fees. PATELCO did not use the term “per presentment”

1 in its contract, but in practice PATELCO charged the fee “per presentment” not “per item” as it
2 contracted. Only on May 1, 2020 did PATELCO contend it changed its Account Agreement
3 contract and on March 1, 2019, its Fee Schedule with its members to arguably allow an NSF fee
4 “per presentment.” The fact that PATELCO made these changes shows that it too differentiates
5 between a charge “per item” and a charge “per presentment.”

6 87. Plaintiffs were harmed by Defendant’s policy and practice of charging multiple
7 fees on the same item. It will be necessary to obtain Defendant’s records to determine each
8 instance of such wrongful overdraft or NSF fees, but PATELCO breached its contracts with
9 Plaintiff by charging multiple NSF fees on the same item, and by charging an overdraft fee
10 following an NSF fee, at least on the following occasion. On information and belief, Plaintiff
11 Saldivar was charged a \$28 NSF fee on July 26, 2018, and then was charged an additional \$28
12 NSF fee on July 31, 2018, for this same item when this same item was presented again.
13 PATELCO therefore charged Plaintiff two \$28 NSF fees for the same item. On information and
14 belief, Plaintiff Bustamante was charged a \$28 NSF Fee on December 3, 2017, and then was
15 charged an additional \$28 NSF fee on December 7, 2017, for this same item when this same item
16 was presented again. PATELCO therefore charged Plaintiff two \$28 NSF fees for the same item.
17 On information and belief, the above are just a few examples, and Plaintiffs believe that upon
18 discovery Defendant’s database will reveal numerous other and different examples of the
19 improper charging of such fees.

20 88. PATELCO’s practice of charging multiple NSF fees, or an overdraft fee following
21 an NSF fee, for a single item is particularly egregious because, as described, PATELCO assesses
22 such fees using an improper APPN calculation which leads to overdraft fees that should not be
23 assessed at all. These improper fees lead to a further lowering of the balance and, under
24 PATELCO’s policy of charging multiple NSF or overdraft fees on the same item, to additional
25 improper fees compounded upon the first improper fee.

26 89. In conjunction with its improper use of the APPN calculation, this resulted in fees
27 which should not have been charged Plaintiff and class members. Discovery of PATELCO’s
28 databases will be required to confirm this.

90. Plaintiffs and the Class Members have performed all conditions, covenants, and promises required by each of them in accordance with the terms and conditions of the contracts. Plaintiffs did not and could not have, exercising reasonable diligence, discovered both that they had been injured and the actual cause of that injury until they met with their attorneys in or about 2020. While Plaintiffs understood that they were assessed fees, they did not understand the cause of those fees until then, because Defendant hid its actual practice from its members by describing a different practice in its contracts. It also mis-labeled fees and made it next to impossible for a reasonable person to understand which fees applied to which transactions or were authorized, or that Defendant had violated obscure federal laws, including Regulation E. This not only reasonably delayed discovery, but Defendant's affirmative representations and actions also equitably toll any statute of limitations, and also additionally equitably estop Defendant.

91. Plaintiffs and the class members were harmed by these practices when they were assessed such fees when they should not have been. A complete evaluation of PATELCO's records is necessary to determine the full extent of Plaintiffs' harms from these practices.

CLASS ACTION ALLEGATIONS

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

93. Plaintiff brings this case, and each of her respective causes of action, as a class action on behalf of the following classes:

Class One: The APPN Class

All United States residents who have or have had accounts with PATELCO who incurred an overdraft fee on a transaction that was authorized into a positive available balance beginning four years preceding the filing of this Complaint and ending on the day the Account Agreement dated May 1, 2020 became effective.

The APPN Sub-Class

All California residents who have or have had accounts with PATELCO who incurred an overdraft fee on a transaction that was authorized into a positive available

balance beginning four years preceding the filing of this Complaint and ending on the day the Account Agreement dated May 1, 2020 became effective.

Class Two: The Repeat NSF Class

All United States residents who have or have had accounts with PATELCO who incurred an NSF fee more than once for the same item, or an overdraft fee following an NSF fee for the same item, during the period beginning four years preceding the filing of this Complaint and ending one day before the effective date of the March 1, 2019, New Fee Schedule.

The Repeat NSF Sub-Class

All California residents who have or have had accounts with PATELCO who incurred an NSF fee more than once for the same item, or an overdraft fee following an NSF fee for the same item, during the period beginning four years preceding the filing of this Complaint and ending one day before the effective date of the March 1, 2019, New Fee Schedule.

94. Excluded from the Classes are: (1) any entity in which Defendant has a controlling interest; (2) officers or directors of Defendant; (3) this Court and any of its employees assigned to work on the case; and (4) all employees of the law firms representing Plaintiff and the Class Members.

95. This action has been brought and may be properly maintained on behalf of each member of the Class pursuant to California Code of Civil Procedure section 382.

96. **Numerosity** – The members of the Class are so numerous that a joinder of all members would be impracticable. While the exact number of Class Members is presently unknown to Plaintiff, and can only be determined through appropriate discovery, Plaintiff believes that the Classes are likely to include thousands of members based on the fact that PATELCO has approximately \$7 billion in assets and 360,000 members.

97. Upon information and belief, Defendants have databases, and/or other documentation, of its customers' transactions and account enrollment. These databases and/or

documents can be analyzed by an expert to ascertain which of PATELCO's members have been harmed by its practices and thus qualify as Class Members. Further, the Class definition identifies groups of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover. Other than by direct notice by mail or email, alternatively proper and sufficient notice of this action may be provided to the Class Members through notice published in newspapers or other publications.

98. **Commonality** – This action involves common questions of law and fact. The questions of law and fact common to both Plaintiff and the Class Members include, but are not limited to, the following:

1. Whether, pursuant to the Account Agreements prior to the one dated May 1, 2020, Defendant contracted that it would charge more than one NSF fee for the same item, each time that same item was presented or re-presented;
2. Whether, pursuant to the Fee Schedules prior to the one dated March 1, 2019, Defendant contracted it would charge more than one NSF for the same item, charging an NSF each time the same item was re-presented;
3. Whether pursuant to the Account Agreements prior to the one dated May 1, 2020, Defendant contracted to charge an overdraft fee for transactions for which it had held sufficient funds while the balance was positive;
4. Whether the Account Agreements prior to the one dated May 1, 2020, were ambiguous as to whether Defendant could charge an overdraft fee for transactions for which it held sufficient funds when the available balance was positive;
5. Whether the Account Agreement contracted for Defendant to charge an overdraft fee based on an APPN calculation;
6. Whether the Opt-In Contract was ambiguous on whether PATELCO would use an APPN calculation for assessing overdraft fees;

1 7. Whether the contracts are ambiguous on what fees will be charged under
2 what circumstances, or referred to inconsistently

3 99. **Typicality** – Plaintiffs’ claims are typical of all of the members of the Class. The
4 evidence and the legal theories regarding Defendant’s alleged wrongful conduct committed
5 against Plaintiffs and all of the Class Members are substantially the same because all of the
6 relevant agreements between Defendant and its customers, including the Account Agreement and
7 Fee Schedules, were identical as to all relevant terms, and also because, *inter alia*, the challenged
8 practices of charging customers for overdraft fees or NSF fees are uniform for Plaintiffs and all
9 Class Members. Accordingly, in pursuing their own self-interest in litigating their claims,
10 Plaintiffs will also serve the interests of the other Class Members.

11 100. **Adequacy** – Plaintiffs will fairly and adequately protect the interests of the Class
12 Members. Plaintiffs have retained competent counsel experienced in class action litigation to
13 ensure such protection. There are no material conflicts between the claims of the representative
14 Plaintiffs and the members of the Class that would make class certification inappropriate.
15 Plaintiffs and their counsel intend to prosecute this action vigorously.

16 101. **Predominance and Superiority** – The matter is properly maintained as a class
17 action because the common questions of law or fact identified herein and to be identified through
18 discovery predominate over questions that may affect only individual Class Members. Further,
19 the class action is superior to all other available methods for the fair and efficient adjudication of
20 this matter. Because the injuries suffered by the individual Class Members are relatively small,
21 the expense and burden of individual litigation would make it virtually impossible for Plaintiffs
22 and Class Members to individually seek redress for Defendant’s wrongful conduct. Even if any
23 individual person or group(s) of Class Members could afford individual litigation, it would be
24 unduly burdensome to the courts in which the individual litigation would proceed. The class
25 action device is preferable to individual litigation because it provides the benefits of unitary
26 adjudication, economies of scale, and comprehensive adjudication by a single court. In contrast,
27 the prosecution of separate actions by individual Class Members would create a risk of
28 inconsistent or varying adjudications with respect to individual Class Members that would

1 establish incompatible standards of conduct for the party (or parties) opposing the Class and
2 would lead to repetitious trials of the numerous common questions of fact and law. Plaintiffs
3 know of no difficulty that will be encountered in the management of this litigation that would
4 preclude its maintenance as a class action. As a result, a class action is superior to other available
5 methods for the fair and efficient adjudication of this controversy. Absent a class action,
6 Plaintiffs and the Class Members will continue to suffer losses, thereby allowing Defendant's
7 violations of law to proceed without remedy and allowing Defendant to retain the proceeds of
8 their ill-gotten gains.

9 102. Plaintiffs do not believe that any other Class Members' interest in individually
10 controlling a separate action is significant, in that Plaintiffs have demonstrated above that their
11 claims are typical of the other Class Members and that they will adequately represent the Class.
12 This particular forum is a desirable forum for this litigation because, among other reasons,
13 Defendant resides in this district. Plaintiffs do not foresee significant difficulties in managing the
14 class action in that the major issues in dispute are susceptible to class proof.

15 103. Plaintiffs anticipate the issuance of notice, setting forth the subject and nature of
16 the instant action, to the proposed Class Members. Upon information and belief, Defendant's
17 own business records and/or electronic media can be utilized for the contemplated notices. To the
18 extent that any further notices may be required, Plaintiffs anticipate the use of additional media
19 and/or mailings.

20 104. This matter is properly maintained as a class action in that:

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

24 1. Inconsistent or varying adjudications with respect to individual members
25 of the Class which would establish incompatible standards of conduct for
26 the parties opposing the Class; or
27
28

1 2. Adjudication with respect to individual members of the Class, which
 2 would as a practical matter be dispositive of the interests of the other
 3 members not parties to the adjudication or substantially impair or impede
 4 their ability to protect their interests. The parties opposing the Class have
 5 acted or refused to act on grounds generally applicable to each member
 6 of the Class, thereby making appropriate final injunctive or
 7 corresponding declaratory relief with respect to the Class as a whole.

8 b. Common questions of law and fact exist as to the members of the Class and
 9 predominate over any questions affecting only individual members, and a class
 10 action is superior to other available methods of the fair and efficient adjudication
 11 of the controversy.

12 **FIRST CAUSE OF ACTION**
 13 **(Breach of Contract)**

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

16 106. Plaintiffs and each of the Class Members entered into an Account Agreement with
 17 Defendant covering the subject of overdraft and NSF transactions. This contract was drafted by
 18 and is binding upon Defendant.

19 107. Nowhere did the Account Agreement or Opt-In Contract state that PATELCO
 20 would hold sufficient funds upon authorization for a transaction and not allow it to be used for
 21 anything else, but then charge an overdraft fee at the time of the posting of the same transaction
 22 when there had been enough money to cover it when funds were placed on hold. Further,
 23 nowhere did the Account Agreement or Fee Schedule at issue state that PATELCO would assess
 24 an additional NSF fee every time the same electronic item was re-presented for processing or
 25 submitted as a "retry." Also, nowhere did the Account Agreement or Fee Schedule at issue state
 26 that PATELCO would assess an overdraft fee following an NSF fee on the same item when the
 27 same item was re-presented for processing or submitted as a "retry." PATELCO wrongfully
 28 treated a "retry" as a new and separate "item" in violation of the terms of the Account Agreement.

1 This also contradicted its own Fee Schedules prior to the one dated March 2019. Further, in the
 2 contracts Additionally, the operative contracts governed which fees could be charged and under
 3 which circumstances, and PATELCO breached these contracts by charging fees under
 4 circumstances not permitted by the contracts, or fees not authorized or disclosed by the contracts.

5 108. Plaintiffs and the Class Members have performed all conditions, covenants, and
 6 promises required by each of them on their part to be performed in accordance with the terms and
 7 conditions of the Account Agreement, except for those they were prevented from performing or
 8 which were waived or excused by Defendant's misconduct.

9 109. Defendant breached the express and implied terms of the Account Agreement and
 10 Opt-In Contract and Fee Schedules effective prior to May 2020 by, *inter alia*, charging overdraft
 11 fees when a transaction had been authorized on a positive balance and the money sequestered for
 12 that transaction, and assessing multiple fees for the same electronic item.

13 110. As a proximate result of Defendant's breaches, Plaintiffs and the Class Members
 14 have been damaged in an amount to be proven at trial and seek relief as set forth in the Prayer
 15 below.

16 SECOND CAUSE OF ACTION

17 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

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

20 112. Plaintiffs and each of the Class Members entered into contracts with Defendant
 21 covering the subject of overdraft transactions, which has been identified herein as the Account
 22 Agreement contract which covers overdraft fees and NSF fees, as well as the Fee Schedule. The
 23 contracts were drafted by and are binding upon Defendant.

24 113. In the contracts, PATELCO promised that it would only assess a "fee" (singular)
 25 when it determined a member did not have enough money in his or her account to cover an
 26 "item," not "multiple fees" for the same "item." In the Fee Schedule it stated the NSF fee or
 27 overdraft fee would be for each item, not "per each presentment of an item." Nowhere in its
 28 contracts did Defendant state that it could charge more than one NSF or overdraft fee for a single

1 item. Further, it did not state it would hold funds for a transaction and thereby reduce the
2 “available balance” by the amount of sequestered funds, yet potentially charge an overdraft fee at
3 the time of the positing of the transaction despite already having set those funds aside. Nowhere
4 did it state it would charge fees at all for certain fees it charged.

5 114. Good faith is an element of every contract. Whether by common law or statute, all
6 contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair
7 dealing, in connection with executing contracts and discharging performance and other duties
8 according to their terms, means preserving the spirit—not merely the letter—of the bargain.
9 Thus, the parties to a contract are mutually obligated to comply with the substance of their
10 contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify
11 terms, constitute examples of bad faith in the performance of contracts.

12 115. The material terms of the contracts therefore included the implied covenant of
13 good faith and fair dealing, whereby Defendant covenanted that it would, in good faith and in the
14 exercise of fair dealing, deal with Plaintiffs and each Class member fairly and honestly and do
15 nothing to impair, interfere with, hinder, or potentially injure Plaintiffs’ and the Class Members’
16 rights and benefits under the contracts.

17 116. Plaintiffs and the Class Members have performed all conditions, covenants, and
18 promises required by each of them on their part to be performed in accordance with the terms and
19 conditions of the contract, except for those they were prevented from performing or which were
20 waived or excused by Defendant’s misconduct.

21 117. Defendant breached the implied covenant of good faith and fair dealing based,
22 *inter alia*, on its practices of assessing multiple overdraft and NSF fees for the same electronic
23 item. Defendant could easily have avoided acting in this manner by simply changing the
24 programing in its software to charge only an NSF “per item” as its own Fee Schedule stated it
25 would do. Defendant equally easily could have avoided charging both an overdraft fee following
26 an NSF fee for the same item, and instead charged only an overdraft fee or an NSF fee, as its
27 Account Agreement stated, by simply changing the programing in its software to charge only one
28

1 fee or the other for the "item," rather than both fees for the same item. PATELCO acted in
 2 breach of the covenant of good faith and fair dealing when electing to charge an NSF fee
 3 followed by a later overdraft fee for the same item, because if it instead had first charged an
 4 overdraft fee rather than an NSF fee, the item could not have been re-presented to generate a
 5 second fee, since it already would have been paid. PATELCO also acted in bad faith when after
 6 sequestering funds for a particular transaction and not making them available for any other use,
 7 nonetheless at the time of posting charging an overdraft fee on that same transaction for which
 8 funds already had been set aside. Defendant unilaterally elected to and did program its software to
 9 create accounting gimmicks such as this which would maximize its overdraft and NSF fees. In
 10 so doing, and in implementing its overdraft and NSF fee programs for the purpose of increasing
 11 and maximizing overdraft fees, Defendant executed its contractual obligations in bad faith,
 12 depriving Plaintiff and the Class Members of the full benefit of the contracts.

13 118. As a proximate result of Defendant's breach of the implied covenant of good faith
 14 and fair dealing, Plaintiff and the Class Members have been damaged in an amount to be proven
 15 at trial and seek relief as set forth in the Prayer below.

16 **THIRD CAUSE OF ACTION**
 17 **(Unjust Enrichment/Restitution)**

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

20 120. As a result of the wrongful misconduct alleged above, Defendant unjustly received
 21 millions of dollars in overdraft and NSF fees.

22 121. Because Plaintiff and the Class Members paid the erroneous overdraft and NSF
 23 fees and repeat NSF and other fees assessed by Defendant, Plaintiffs and the Class Members have
 24 conferred a benefit on Defendant, albeit undeservingly. Defendant has knowledge of this benefit,
 25 as well as the wrongful circumstances under which it was conveyed, and yet has voluntarily
 26 accepted and retained the benefit conferred. Should it be allowed to retain such funds, Defendant
 27 would be unjustly enriched. Therefore, Plaintiffs and the Class Members seek relief as set forth
 28 in the Prayer below.

FOURTH CAUSE OF ACTION**(Money Had and Received)**

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

123. Defendant has obtained money from Plaintiffs and the Class Members by the exercise of undue influence, menace or threat, compulsion or duress, and/or mistake of law and/or fact.

124. As a result, Defendant has in its possession money which, in equity, belongs to Plaintiffs and the Class Members, and thus, this money should be refunded to Plaintiffs and the Class Members. Therefore, Plaintiffs and the Class Members seek relief as set forth in the Prayer below.

FIFTH CAUSE OF ACTION**(Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*)**

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

126. PATELCO's conduct described herein violates California's Unfair Competition Law (the "UCL"), codified as Business and Professions Code section 17200, *et seq.* The UCL prohibits and provides civil remedies for unlawful and unfair competition. Its purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. In service of that purpose, the Legislature framed the UCL's substantive provisions in broad, sweeping language. By defining unfair competition to include "any unlawful, unfair or fraudulent business act or practice," the UCL permits violations of other laws to be treated as unfair competition that is independently actionable, and sweeps within its scope acts and practices not specifically proscribed by any other law.

127. The UCL expressly provides for injunctive relief, and also contains provisions denoting its public purpose. A claim for injunctive relief under the UCL is brought by a plaintiff acting in the capacity of a private attorney general. Although the private litigant controls the litigation of an unfair competition claim, the private litigant is not entitled to recover compensatory damages for her own benefit, but only disgorgement of profits made by the

1 defendant through unfair or deceptive practices in violation of the statutory scheme or restitution
2 to victims of the unfair competition.

3 128. As further alleged herein, PATELCO's conduct violates the UCL's "unfair" prong
4 insofar as PATELCO charges multiple NSF fees on a single item, charges overdraft fees when
5 there was enough money in the account to cover a transaction, and charged fees that were not
6 listed in either the Account Agreement or Fee Schedule, and also charged fees on transactions for
7 which it previously already had sequestered aside money to cover and made unavailable for other
8 purposes. PATELCO's conduct was not motivated by any legitimate business or economic need
9 or rationale. The harm and adverse impact of PATELCO's conduct on members of the general
10 public was neither outweighed nor justified by any legitimate reasons, justifications, or motives.
11 The harm to Plaintiffs and Class Members arising from PATELCO's unfair practices relating to
12 the imposition of the improper fees outweighs the utility, if any, of those practices.

13 129. Further, with regard to the APPN practice, Plaintiff alleges that conduct already
14 has been found by the Consumer Financial Protection Bureau to be both "unfair" and deceptive:"
15

16 A financial institution authorized an electronic transaction, which reduced a customer's
17 available balance but did not result in an overdraft at the time of authorization; settlement
18 of a subsequent unrelated transaction that further lowered the customer's available balance
19 and pushed the account into overdraft status; and when the original electronic transaction
20 was later presented for settlement, because of the intervening transaction and overdraft
21 fee, the electronic transaction also posted as an overdraft and an additional overdraft fee
22 was charged. Because such fees caused harm to consumers, one or more supervised
23 entities were found to have acted unfairly when they charged fees in the manner described
24 above. Consumers likely had no reason to anticipate this practice, which was not
25 appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft
26 fees charged. Consistent with the deception findings summarized above, examiners found
27 that the failure to properly disclose the practice of charging overdraft fees in these
28 circumstances was deceptive. At one or more institutions, examiners found deceptive
practices relating to the disclosure of overdraft processing logic for electronic
transactions. Examiners noted that these disclosures created a misimpression that the
institutions would not charge an overdraft fee with respect to an electronic transaction if
the authorization of the transaction did not push the customer's available balance into
overdraft status. But the institutions assessed overdraft fees for electronic transactions in
a manner inconsistent with the overall net impression created by the disclosures.
Examiners therefore concluded that the disclosures were misleading or likely to mislead,
and because such misimpressions could be material to a reasonable consumer's decision-
making and actions, examiners found the practice to be deceptive. Furthermore, because

1 consumers were substantially injured or likely to be so injured by overdraft fees assessed
2 contrary to the overall net impression created by the disclosures (in a manner not
3 outweighed by countervailing benefits to consumers or competition), and because
4 consumers could not reasonably avoid the fees (given the misimpressions created by the
5 disclosures), the practice of assessing fees under these circumstances was found to be
6 unfair.

7 Consumer Financial Protection Bureau, Winter 2015 "Supervisory Highlights".

8 130. PATELCO's unfair business practices as alleged herein are immoral, unethical,
9 oppressive, unscrupulous, unconscionable and/or substantially injurious to Plaintiffs and Class
10 Members, and the general public. PATELCO's conduct was substantially injurious to consumers
11 in that they have been forced to pay improper, abusive, and/or unconscionable NSF, overdraft,
12 and other non-contracted fees.

13 131. As a result of PATELCO's violations of the UCL, Plaintiffs and Class Members
14 have paid, and/or will pay improper NSF, overdraft, and other non-contracted fees in the future
15 and thereby have suffered actual loss of money and may similarly suffer in the future if the
16 misrepresentations allowed to continue. Absent injunctive relief forcing PATELCO to disgorge
17 itself of its ill-gotten gains and public injunctive relief prohibiting PATELCO from
18 misrepresenting and omitting material information concerning its NSF and overdraft fee policy
19 and other fees policy at issue in this action in the future, Plaintiff and other existing
20 accountholders, and the general public, will suffer from and be exposed to PATELCO's conduct
21 violative of the UCL.

22 **PRAYER**

23 WHEREFORE, Plaintiffs and the Class pray for judgment as follows:

- 24 1. For an order certifying this action as a class action;
- 25 2. For compensatory damages on all applicable claims and in an amount to be
26 proven at trial;
- 27 3. For an order requiring Defendant to disgorge, restore, and return all monies
28 wrongfully obtained together with interest calculated at the maximum legal rate;
4. For statutory damages;

5. For an order enjoining the wrongful conduct alleged herein;
6. For costs;
7. For pre-judgment and post-judgment interest as provided by law;
8. For attorneys' fees under the common fund doctrine, and all other applicable law and sources; and,
9. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members demand a trial by jury on all issues so triable.

Dated: May 19, 2020

Respectfully submitted,

THE KICK LAW FIRM, APC

By: /s/ Taras Kick

Taras Kick, CA Bar No. 143379

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the Putative Class

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Taras Kick, SBN 143379, taras@kicklawfirm.com The Kick Law Firm, APC 815 Moraga Drive Los Angeles, CA 90049 TELEPHONE NO.: 310-395-2988 FAX NO.: 310-395-2088 ATTORNEY FOR (Name): Plaintiffs Roxanne Wicks, Claudine Saldivar, et al.		FOR COURT USE ONLY FILED BY FAX ALAMEDA COUNTY May 20, 2020 CLERK OF THE SUPERIOR COURT By Xian-xii Bowie, Deputy CASE NUMBER: RG20061837	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 2233 Shoreline Drive MAILING ADDRESS: 2233 Shoreline Drive CITY AND ZIP CODE: Alameda, CA 94501 BRANCH NAME:		CASE NAME: Roxanne Wicks, Claudine Saldivar, et al. v. Patelco Credit Union	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
CASE NUMBER:		JUDGE:	
DEPT:		DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (18) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 19, 2020

Taras Kick

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10

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