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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

MAXINE AARONS GIVEN, Individually and
on behalf of All Others Similarly Situated,

Plaintiffs,

v.

M & T BANK CORPORATION, a New York
corporation, individually and operating by and
through M & T BANK,

Defendant.

**COMPLAINT -- CLASS ACTION
DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of herself and all similarly situated Maryland and United States residents, alleges the following:

INTRODUCTION

1. This is a civil action seeking injunctive relief, monetary damages, and restitution from Defendant arising out of its unfair, deceptive, and unconscionable assessment and collection of excessive overdraft fees.

2. While the Defendant collected thousands or millions of dollars of excessive overdraft fees from its customers, the Defendant applied for and received \$600,000,000 in taxpayers dollars from the U.S. Treasury Department's Capital Purchase Program in 2008.

3. Defendant provides debit cards and/or ATM cards (collectively herein "check cards") to its checking account customers. Through those check cards, customers may engage in transactions using funds directly from their accounts or may withdraw money from their accounts at automatic teller machines. These are called "point of sale" ("POS") or "debit" transactions.

4. If, according to the Defendant's accounting practices detailed below, a customer does not have sufficient funds in his or her account the transaction is considered an "overdraft." Defendant may honor or allow an overdraft to go through despite the lack of funds in the account.

1 If Defendant allows such a POS or debit transaction to proceed, it charges the customer's account
2 \$37 for each separate overdraft. These fees are known as "overdraft fees."

3 5. Before check cards existed, banks occasionally extended the courtesy of honoring
4 paper checks written on overdrawn or otherwise deficient accounts for customers who were
5 typically in good standing. Banks extended this courtesy largely because the third party involved
6 in a sales transaction allowed the customer to purchase goods or services with a check with an
7 expectation that funds would be available and that the check would clear. For example, if a
8 customer used a check to purchase groceries, the grocery store would only know if the check
9 cleared *after* the groceries had been purchased.

10 6. The same considerations are not present when the transaction is one with a check
11 card, because banks now have the ability to know instantaneously whether the customer has
12 sufficient funds and to communicate that information to the third party in the case of a retail
13 transaction or to the customer in the case of an ATM transaction. Defendant could simply decline
14 to honor debit or POS transactions made with check cards where there are insufficient funds in
15 the account. Retail and service transactions would simply not take place if the consumer were
16 unable to present an alternative form of payment, and ATM transactions would not proceed if
17 they exceeded the customer's balance. In fact, until a few years ago, most banks simply declined
18 debit and/or POS transactions that would overdraw an account.

19 7. Instead of declining debit and/or POS transactions when there are insufficient
20 funds, however, or warning the customer that an overdraft fee will be assessed if he or she
21 proceeds with the transaction, Defendant routinely processes such transactions in order to charge
22 its customers an overdraft fee of \$37, even when the transaction is for only a few dollars. This
23 automatic fee-based overdraft scheme (the \$37 fee per transaction is one of the largest charged by
24 a major bank) is designed and intended solely to increase overdraft fee revenue.

25 8. Although it is possible to do so, Defendant does not alert its check card customers
26 at the time a POS transaction or ATM withdrawal is made that the transaction will overdraw their
27 account and cause them to incur fees.
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1 9. Because Defendant’s check card customers are not notified of the potential
2 overdraft and are not given the option to decline the check card transaction or to provide another
3 form of payment, the customers frequently incur monetary damages in the form of overdraft fees.

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

11 11. Defendant’s overdraft policies make it difficult for a customer to avoid injury even
12 if, as Plaintiff does, a customer carefully tracks the balance in his or her account. In fact, the
13 Agencies have stated that “injury” resulting from such policies “is not reasonably avoid[able]” by
14 the consumer. 73 F.R. 28904-01, 28929 (“It appears that consumers cannot reasonably avoid this
15 injury if they are automatically enrolled in an institution’s overdraft service without having an
16 opportunity to opt out. Although consumers can reduce the risk of overdrawing their accounts by
17 carefully tracking their credits and debits, consumers often lack sufficient information about key
18 aspects of their account. For example, a consumer cannot know with any degree of certainty
19 when funds from a deposit or a credit for a returned purchase will be made available.”).

20 12. Defendant has not followed the list of “best practices” with respect to overdraft
21 programs set forth in the “Joint Guidance on Overdraft Protection Programs” (herein “Joint
22 Guidance”) (attached hereto as Exhibit A), issued by the United States Department of the
23 Treasury, the Office of the Comptroller of the Currency, the Board of Governors of the Federal
24 Reserve System, the Federal Deposit Insurance Corporation and the National Credit Union
25 Administration. These “best practices” include: “Provide election or opt-out of service. Obtain
26 affirmative consent of consumers to receive overdraft protection. Alternatively, where overdraft
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1 protection is automatically provided, permit consumers to ‘opt out’ of the overdraft program and
2 provide a clear consumer disclosure of this option.” 70 F.R. 9127-01, 9132.

3 13. The “best practices” listed in the Joint Guidance also advise banks to “[a]lert
4 customers before a transaction triggers any fees. When consumers attempt to withdraw or
5 transfer funds made available through an overdraft protection program, provide a specific
6 consumer notice, where feasible, that completing the withdrawal may trigger the overdraft fees.”
7 70 F.R.D. 9127, 9132. The “best practices” go on to advise that “[t]his notice should be
8 presented in a manner that permits consumers to cancel the attempted withdrawal or transfer after
9 receiving the notice.” *Id.*

10 14. The list of “best practices” set forth in the “Overdraft Protection: A Guide For
11 Bankers” issued by the American Bankers Association includes offering customers the option of
12 “opting out” of any overdraft programs, and informing customers, before they access funds, that a
13 particular POS or ATM transaction will cause them to incur overdraft fees. (*See Exhibit B,*
14 *attached, at pp. 18, 20.*)

15 15. Defendant does not clearly or reasonably disclose to its customers that they have
16 the right to opt out of its overdraft scheme. Defendant also fails to notify consumers when use of
17 a check card, such as an ATM or POS transaction, will cause an overdraft fee.

18 16. Defendant’s lack of reasonable disclosure regarding the ability to opt out of the
19 overdraft scheme and its failure to notify customers when the use of a check card, such as an
20 ATM or POS transaction, will cause an overdraft fee, is a violation of Maryland’s consumer
21 protection laws and the implied covenant of good faith and fair dealing in the Account
22 Agreement, governing its checking accounts.

23 17. Defendant seeks to maximize the number of overdraft fees it charges check card
24 customers because overdraft fees are a primary source of revenue for it.

25 18. On August 9, 2009, an article published in the *Financial Times* stated that United
26 States banks “stand to collect a record \$38.5 [billion] in fees for customer overdrafts this year,”
27 and that “fees are nearly double those reported in 2000.” The article goes on to find that
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1 “Overdraft fees accounted for more than three-quarters of service fees charged on customer
2 deposits.” *See* Exhibit C.

3 19. Defendant’s overdraft fees can cost the account holders hundreds of dollars in a
4 matter of days, or even hours, when they may be overdrawn only by a few dollars. Even more
5 egregious, a customer’s account may not actually be overdrawn at the time the overdraft fee is
6 charged or at the time of the POS transaction.

7 20. In an effort to cause as many overdrafts as possible, Defendant manipulates and
8 reorders debits and credits from highest to lowest during the course of a day.

9 21. Upon information and belief, Defendant has a computer-automated overdraft
10 system programmed to maximize the number of overdrafts, and thus the amount of fees charged,
11 per customer.

12 22. As a result of Defendant’s manipulation of customers’ transactions, funds in a
13 customer’s account are depleted more rapidly and more overdraft fees are likely to be charged for
14 multiple smaller transactions. Indeed, overdraft charges are likely to occur at times when, but for
15 the manipulation, there would be funds in the account and no overdraft would occur. For
16 example, if a customer has an account with a \$50 balance and makes four transactions of \$10 and
17 one later transaction of \$100 the same day, Defendant debits the transactions from the account
18 largest-to-smallest, thus subjecting the customer to four overdraft fees. Conversely, if the \$100
19 transaction were debited last (in the order it was made), the customer would only be subject to
20 one overdraft fee. *See* FDIC Study of Bank Overdraft Programs, November 2008, available at
21 <http://www.fdic.gov/bank/analytical/overdraft/>, at p. 11, n.12.

22 23. Thus, it is through manipulation of customers’ transaction records that Defendant
23 maximizes overdraft penalties imposed on customers.

24 24. Defendant reorders transactions for no reason other than to increase the number of
25 exorbitant overdraft fees it can charge. This practice is a violation of Maryland’s consumer
26 protection laws and the implied covenant of good faith and fair dealing in Defendant’s General
27 Deposit Account Agreement.
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1 **PARTIES**

2 32. Plaintiff is, and at all relevant times hereto has been, a resident of Baltimore
3 County, Maryland. She is a customer of Defendant who was charged improper overdraft fees.

4 33. Defendant, headquartered in Buffalo, New York, is a financial holding company
5 operating by and through a wholly-owned operating entity doing business as M & T BANK, has
6 over \$70 billion in assets as of June 30, 2009, and is one of the 20 largest commercial bank
7 holding companies in the U.S. Defendant has over 800 branches & 1,800 ATM's across
8 Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, New Jersey and
9 Washington, D.C.

10 **GENERAL FACTUAL ALLEGATIONS**

11 34. In addition to the foregoing, Defendant is a public company (symbol "MTB") with
12 a market capitalization of over \$7 billion.

13 35. Defendant is a national bank subject to the National Bank Act, 12 U.S.C. § 1, *et*
14 *seq.*, and OCC regulations.

15 36. The terms of Defendant's checking accounts are contained in a written standard
16 account holder agreement. The "General Deposit Account Agreement," effective April 2007, is
17 attached as Exhibit D (the "Account Agreement"). The Account Agreement is currently a 45-
18 page, single-spaced document written in six-point font.

19 37. The Account Agreement fails to clearly or reasonably disclose to depositors that
20 they have the option to "opt out" of Defendant's overdraft scheme.

21 38. At the time that Defendant's check card is used, for example at a POS or at an
22 ATM, Defendant is able to determine almost instantaneously whether there are sufficient funds in
23 a customer's account to cover that particular transaction. Defendant has the technological
24 capability to decline transactions or notify customers at that very moment that the particular
25 check card transaction would result in an overdraft. Defendant could give customers the option to
26 decline the transaction to avoid incurring the overdraft fee, but it does not do this because it seeks
27 to maximize its overdraft fees.

1 39. The Account Agreement also contains an arbitration clause and a provision that
2 arguably purports to act as a class action waiver.

3 40. The arbitration is not enforceable since it designates the American Arbitration
4 Association (“AAA”) as the forum for any arbitration and relies on its rules. AAA has suspended
5 arbitrations, such as this dispute, related to consumer debt collections. AAA’s July 23, 2009 Press
6 Release is attached as Exhibit E.

7 41. Such arbitration clause is also procedurally and substantively unconscionable and
8 unenforceable under Maryland law in that, among other things, the Account Agreement, to the
9 extent it may be deemed a contract at all, is a contract of adhesion because, among other reasons,
10 it is a standardized form, imposed and drafted by Defendant, which is a party of vastly superior
11 bargaining strength, and relegates to the depositor only the opportunity to adhere to it or reject it,
12 and because it leads to overly harsh results for consumers and prevents consumers from having a
13 meaningful opportunity to redress their grievances. The costs for the Plaintiff and class members
14 to arbitrate their claims will be substantially greater than the cost to pursue this matter before this
15 court.

16 42. Under applicable Maryland law, Defendant’s overdraft policies are unfair,
17 deceptive and unconscionable in the following respects, among others:

18 (a) Defendant does not clearly or reasonably disclose to customers that they
19 have the option to “opt out” of Defendant’s overdraft scheme;

20 (b) Defendant does not obtain the affirmative consent from checking account
21 customers prior to processing a transaction that would overdraw the account and result in an
22 overdraft fee;

23 (c) Defendant does not alert its customers that a check card transaction will
24 trigger an overdraft fee and does not provide the customer the opportunity to cancel that
25 transaction;

26 (d) The Account Agreement, to the extent it may be deemed a contract, is a
27 contract of adhesion in that it is a standardized form, imposed and drafted by Defendant, which is
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1 a party of vastly superior bargaining strength, and relegates to the depositor only the opportunity
2 to adhere to it or reject it;

3 (e) The Account Agreement provided to Defendant's customers is ineffective,
4 ambiguous, deceptive and misleading in [that it does not unambiguously state that it always
5 reorders debits from high to low (even though Defendant always reorders transactions in this way
6 so as to maximize overdrafts and revenue for Defendant), or] that its reordering of debits will
7 necessarily increase the number of overdraft charges; and

8 (f) The amounts of overdraft fees are disclosed in an ineffective, ambiguous,
9 misleading and deceptive manner, since they are not contained in the Account Agreement but
10 come, if at all, in separate documentation.

11 **ALLEGATIONS SPECIFIC TO PLAINTIFF**

12 43. Plaintiff is a current checking account customer of Defendant. She opened her
13 checking account with Defendant in 1987, later adding her husband's name to the account
14 although he does not use the account. She was issued a check card sometime after she opened
15 this account.

16 44. During her time as a checking account customer of Defendant, Plaintiff (a
17 Certified Public Accountant and Senior Director in the Office of Development at Johns Hopkins
18 University) scrupulously maintained a positive balance in her account. Nonetheless, in or around
19 April 14-15, 2008, and again in or around May 28-29, 2009, Plaintiff was charged with a total of
20 ten (10) overdraft charges totaling \$370 in fees.

21 45. All four of the April 2008 charges were the result of Defendant's reordering of
22 Plaintiff's debit and check transactions, including two POS transactions as well as an online
23 transaction, from highest to lowest. But for the reordering, Plaintiff would have had sufficient
24 funds in her account to cover the transaction(s) at issue at the time of the transaction(s) at issue
25 and would not have incurred some or all of the overdraft fees. For example, the last charge that
26 appears on Plaintiff's account statement for April 14th was for \$12.08, a payment made for lunch
27 at a local Baltimore creperie. However, chronologically, that charge came before some or all of
28

1 the other charges debited to the account that day. As a result of Defendant's scheme, Plaintiff
2 ended up paying almost \$50 for that lunch. Further, the largest transaction, a debit for a check in
3 an amount over \$2,800, appearing first in order on Plaintiff's account statement for April 14th
4 (and theoretically putting every transaction coming "after" it on that statement for that day in an
5 overdraft position), was reversed by Defendant the very next day. In other words, Defendant
6 dishonored the check and failed to pay it – meaning that there were sufficient funds for every
7 other transaction recorded for April 14th. Nonetheless, because the \$2,800 debit appeared on
8 April 14th and the credit for its reversal appeared on April 15th, three additional overdraft charges
9 were debited to Plaintiff's account.

10 46. Similarly, the first four of the six May 2009 charges were the result of Defendant's
11 reordering of Plaintiff's debit and check transactions, including a POS and online transaction,
12 from highest to lowest. But for the reordering, Plaintiff would have had sufficient funds in her
13 account to cover the transaction(s) at issue at the time of the transaction(s) at issue and would not
14 have incurred some or all of the overdraft fees.

15 47. The last two of those six charges were the result of Plaintiff's being in a debit
16 position as a result of the first four overdraft charges. These two charges were eventually
17 reversed by Defendant following Plaintiff's inquiry into them; but upon information and belief,
18 many other such charges to other customers that are the result of earlier unlawful charges are not.

19 48. Defendant did not reasonably provide Plaintiff with notice that she could opt out of
20 its overdraft program.

21 49. Defendant has never notified Plaintiff at the time she made these transactions,
22 including her online payments as well as the POS transactions, that her account was overdrawn or
23 that it would charge her an overdraft fee as a result thereof.

24 50. Even when in an overdraft position as a result of overdraft fees, Defendant never
25 declined to pay any of the additional debits. Rather, Defendant paid such charges and charged
26 Plaintiff with additional overdraft fees.

CLASS ACTION ALLEGATIONS

1
2 51. Plaintiff brings this lawsuit as a class action pursuant to Federal Rule of Civil
3 Procedure 23, on behalf of herself and all others similarly situated. The “Class” is defined as:

4 All individuals residing in United States who, during the last four
5 years, have had a checking account with M&T Bank, have been
6 issued a check card with that account, and who have been charged
7 overdraft fees, including those made in connection with a
8 “Class,” “Class members,”
9 “Consumer,” and/or “Consumers”).

10 52. In addition, some of Plaintiff’s claims are brought on behalf of a “Maryland
11 Subclass,” defined as follows:

12 All individuals residing in Maryland who, during the last four
13 years, have had a checking account with M&T Bank, have been
14 issued a check card with that account, and who have been charged
15 overdraft fees, including those made in connection with a
16 transactions involving a check card.

17 53. The following persons shall be excluded from the Class and Maryland Subclass:
18 (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be
19 excluded from the proposed Class and/or Maryland Subclass; (3) governmental entities; and
20 (4) the Judge(s) to whom this case is assigned and any immediate family members thereof.

21 54. Plaintiff reserves the right to modify or amend the Class and/or Maryland Subclass
22 definition(s) before the Court determines whether certification is appropriate.

23 55. Certification of Plaintiff’s claims for class-wide treatment is appropriate because
24 Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as
25 would be used to prove those elements in individual actions alleging the same claims.

26 (a) Numerosity Under Rule 23(a)(1): The members of the Class and Maryland
27 Subclass are so numerous that individual joinder of all the members is impracticable. Plaintiff is
28 informed and believes that there are at least many thousands of Defendant customers, including at
least thousands of Defendant customers in Maryland, who have been damaged by Defendant’s
unfair, deceptive, and illegal conduct alleged herein.

1 (b) Commonality Under Rule 23(a)(2): This action involves common
2 questions of law and fact, including, but not limited to, the following:

- 3
- 4 • Whether Defendant does not clearly disclose to check card customers that they
5 have the right to “opt out” of Defendant’s overdraft scheme;
 - 6 • Whether Defendant does not obtain affirmative consent from checking account
7 customers prior to processing a transaction that would overdraw the account and
8 result in an overdraft fee;
 - 9 • Whether Defendant does not alert its customers that a check card transaction will
10 trigger an overdraft fee and does not provide customers the opportunity to cancel
11 such transactions;
 - 12 • Whether Defendant manipulates and reorders transactions so that it can increase
13 the number of overdraft charges it imposes on customers;
 - 14 • Whether Defendant manipulates and reorders debits from highest to lowest in
15 order to maximize overdrafts;
 - 16 • Whether Defendant imposes overdrafts and overdraft fees when, but for reordering
17 transactions, there would otherwise be sufficient funds in the account;
 - 18 • Whether Defendant engages in practices that have damaged Plaintiff and members
19 of the Class and Maryland Subclass;
 - 20 • Whether Defendant engages in deceptive or unfair acts and practices in violation
21 of the Maryland’s Unfair and Deceptive Trade Practices Act, for which Plaintiff
22 and the other members of the Maryland Subclass are entitled to recover;
 - 23 • Whether Defendant converts the funds of Plaintiff and members of the Class and
24 Maryland Subclass;
 - 25 • Whether Defendant breaches the implied covenants of good faith and fair dealing;
 - 26 • Whether Defendant is unjustly enriched as a result of its overdraft fee policies and
27 practices;
 - 28 • Whether Defendant causes injury to Plaintiff and the other members of the Class
and Maryland Subclass;
 - Whether Defendant engages in practices that warrant equitable and injunctive
relief; and
 - Whether Defendant engages in practices that warrant the award of treble damages.

25 (c) Typicality Under Rule 23(a)(3): The named Plaintiff’s claims are typical
26 of (and not antagonistic to) the claims of the members of the Class and Maryland Subclass.
27 Plaintiff, like all members of the Class and Maryland Subclass, has been subject to Defendant’s
28 overdraft charge policies and practices and has damaged by Defendant’s misconduct in that she

1 incurred unlawful overdraft charges. Furthermore, the factual bases of Defendant's misconduct
2 are common to all members of the Class and Maryland Subclass and represent a common thread
3 of unconscionable, unfair and/or deceptive misconduct resulting in injury to all members of the
4 Class and Maryland Subclass.

5 (d) Adequacy of Representation under Rule 23(a)(4): Plaintiff is committed to
6 the vigorous prosecution of this action. Plaintiff will fairly and adequately protect the interests of
7 the members of the Class and Maryland Subclass, and Plaintiff's interests are coincident with and
8 not antagonistic to those of the other class members she seeks to represent. Plaintiff has retained
9 competent counsel experienced in the prosecution of class actions to represent them and the Class
10 and Maryland Subclass.

11 (e) The Class and Maryland Subclass Can be Properly Maintained Under
12 Rules 23(b)(2) and(c). Defendant has acted or refused to act, with respect to some or all issues
13 presented in this Complaint, on grounds generally applicable to the Class and Maryland Subclass,
14 thereby making appropriate final injunctive relief with respect to the Class and Maryland
15 Subclass as a whole.

16 (f) The Class and Maryland Subclass Can Be Properly Maintained Under
17 Rules 23(b)(3) and (c). Questions of law common to the members of the Class and Maryland
18 Subclass predominate over any questions affecting only individual members with respect to some
19 or all issues presented in this Complaint. A class action is superior to other available methods for
20 the fair and efficient adjudication of this controversy. Individual litigation of the claims of all
21 class members is impracticable because the cost of litigation would be prohibitively expensive for
22 each class member and would impose an immense burden upon the courts. Individualized
23 litigation would also present the potential for varying, inconsistent, or contradictory judgments
24 and would magnify the delay and expense to all parties and to the court system resulting from
25 multiple trials of the same complex factual and legal issues. By contrast, the conduct of this
26 action as a class action, with respect to some or all of the issues presented in this Complaint,
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1 presents fewer management difficulties, conserves the resources of the parties and of the court
2 system, and is the only means to protect the rights of all class members.

3
4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **(Maryland Subclass Only)**

7 **(Violation of Maryland Consumer Protection Act)**

8 56. Plaintiff, individually and on behalf of the Maryland Subclass, hereby incorporates
9 by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

10 57. This cause of action is brought pursuant to Maryland's Consumer Protection Act,
11 MD ANN. CODE., COMM. LAW. § 13-101, et seq. ("MCPA").

12 58. The Maryland legislature has stated:

13 The General Assembly recognizes that there are federal and State laws which offer
14 protection in these areas, especially insofar as consumer credit practices are
15 concerned, but it finds that existing laws are inadequate, poorly coordinated and
16 not widely known or adequately enforced. MD ANN. CODE., COMM. LAW. § 13-102
17 (a)(2).

18 The legislature's purpose in enacting the MCPA:

19 The General Assembly concludes, therefore, that it should take strong protective
20 and preventive steps to investigate unlawful consumer practices, to assist the
21 public in obtaining relief from these practices, and to prevent these practices from
22 occurring in Maryland. It is the purpose of this title to accomplish these ends and
23 thereby maintain the health and welfare of the citizens of the State. MD ANN.
24 CODE., COMM. LAW. § 13-102 (b)(3).

25 59. MD ANN. CODE., COMM. LAW. § 13-101 (c) defines a Consumer as: "an actual or
26 prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer
27 realty, or consumer credit.

28 60. MD ANN. CODE., COMM. LAW. § 13-101 (d) provides:

"Consumer credit", "consumer debts", "consumer goods", "consumer realty", and
"consumer services" mean, respectively, credit, debts or obligations, goods, real
property, and services which are primarily for personal, household, family, or
agricultural purposes.

1 61. Plaintiff and Subclass Members are Consumers. The transactions are primarily for
2 their personal, household or family purpose.

3 62. MD Ann. Code., Comm. Law. § 13-101 (g) provides:

4 "Merchant" means a person who directly or indirectly either offers or makes
5 available to consumers any consumer goods, consumer services, consumer realty,
6 or consumer credit.

7 63. The Bank is a merchant.

8 64. The Bank has committed unfair or deceptive trade practices in violation of the
9 MCPA by:

10 (a) the acts of the Bank complained of herein possess the tendency or capacity to mislead,
11 or create the likelihood of deception;

12 (b) the acts of the Bank complained of herein violate public policy, amount to an
13 inequitable assertion of its power and position, are immoral, unethical, oppressive, unscrupulous,
14 and/or substantially injurious to consumers; and

15 (c) the acts of the Bank complained of herein are unconscionable.

16 65. Plaintiff and the Class Members have been damaged by the Defendant's false
17 statements and omissions.

18 66. The unfair and deceptive acts of the Bank complained of herein were committed
19 willfully.

20 67. The unfair and deceptive acts of the Bank complained of herein were acts and
21 practices that affected commerce.

22 68. As a result of the Bank's violation of the MCPA, Plaintiff and members of the
23 Maryland Subclass paid excessive amounts of money for banking services and paid excessive
24 fees, and thereby suffered actual injury proximately caused by the Bank's conduct.

25 69. Plaintiff and the members of the Maryland Subclass are therefore entitled to:

26 (a) an Order requiring the Bank to cease its unfair and deceptive trade
27 practices alleged herein;

1 (b) an Order enjoining the Bank from continuing to collect overdraft fees from
2 Maryland consumers on check-card transactions, including POS and ATM transactions, unless
3 the consumer is notified at the time of the transaction that an overdraft fee will be charged and
4 unless the consumer is given the option to decline the transaction without incurring an overdraft
5 fee;

6 (c) full restitution of all overdraft fees paid to the Bank on check-card
7 transactions, including POS and ATM transactions;

8 (d) compensatory damages and other damages pursuant to the MCPA;

9 (e) pre-judgment interest at the highest rate allowable by law; and

10 (f) payment of their attorneys' fees and costs.
11

12 **SECOND CAUSE OF ACTION**
13 **(Conversion)**

14 70. Plaintiff, individually and on behalf of the Class, hereby incorporates by reference
15 the allegations contained in the foregoing paragraphs as if fully set forth herein.

16 71. Plaintiff and Class members own and have the right to possess the money in their
17 checking accounts.

18 72. Defendant interfered with Plaintiff's and Class members' possession of this money
19 and wrongfully converted the funds by assessing unwarranted and unlawful overdraft fees as the
20 result of check card transactions, including POS and ATM transactions, despite the fact that
21 Plaintiff and the Class members had and/or have sufficient funds in their accounts to cover these
22 transactions at the time they were and/or are made.

23 73. Plaintiff and Class members never affirmatively consented to Defendant's direct
24 debit of overdraft fees from their checking accounts as a result of check card transactions,
25 including POS and ATM transactions that occurred at a time when there were sufficient funds in
26 their accounts to cover these transactions.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the members of the Class and Maryland Subclass, demands a jury trial and judgment as follows:

1. Preliminary and permanent injunctive relief enjoining Defendant from charging overdraft fees under its current policies and from engaging in the unfair and deceptive trade practices alleged herein;
2. Restitution of all overdraft fees paid to Defendant by Plaintiff and the Class and Maryland Subclass in the past four years in an amount to be determined at trial;
3. Disgorgement of the ill-gotten gains derived from Defendant’s misconduct;
4. Actual damages in an amount according to proof;
5. Prejudgment interest at the highest rate permitted by law;
6. The costs and disbursements incurred by Plaintiff and the Class and Maryland Subclass in connection with this action, including reasonable attorneys’ fees; and
7. Such other and further relief as the Court deems just and proper.

1 Dated: August __, 2009

LEGG LAW FIRM, LLC

2
3 By: /s/ Scott C. Borison_____

4 Scott C. Borison

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