

**COMMONWEALTH OF KENTUCKY
MCCRACKEN COUNTY CIRCUIT COURT**

CASE NO. _____

DIV. _____

ELECTRONICALLY FILED

**JULIE ALMON, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

INDEPENDENCE BANK,

Defendant.

JURY DEMAND

CLASS ACTION COMPLAINT

Plaintiff, Julie Almon, by counsel, brings this Class Action Complaint against Defendant Independence Bank, and alleges as follows:

INTRODUCTION

1. This is a civil action seeking monetary damages, restitution, and declaratory relief from Defendant Independence Bank, arising from the unfair and unconscionable assessment and collection of multiple \$35 Return Item Fees (“RI Fees”) on the same item.

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

3. Plaintiff and other Independence Bank customers have been injured by Defendant’s practices. Plaintiff, individually and on behalf of the class of individuals preliminarily defined below, seeks damages, restitution, and injunctive and declaratory relief for Defendant’s breach of contract and the duty of good faith and fair dealing, unjust enrichment, and violation of the Kentucky Consumer Protection Act, KRS §§ 367.110-367.300.

PARTIES

4. Plaintiff is a citizen and resident of Kentucky and has had a checking account with Independence Bank at all times material hereto.

5. Defendant is a Kentucky-chartered bank with its headquarters and principal place of business located in Owensboro, Kentucky. Defendant has \$2.4 billion in assets and provides banking services to customers through 25 bank branches throughout Kentucky. Among other things, Defendant is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Class.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this matter because Defendant is at home in this Commonwealth.

7. Defendant regularly and systematically conducts business and provides retail banking services in this county and provides retail banking services to customers in this county, including Plaintiff and members of the putative class. As such, it is subject to the jurisdiction of this Court.

8. Venue is likewise proper in this district pursuant to KRS § 452.445 because Plaintiff resides and banks in McCracken County and the events or omissions giving rise to the claims asserted herein occurred and continue to occur in this county.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

I. Defendant Charges Two Or More RI Fees on the Same Item

9. Plaintiff has an Independence Bank checking account, which is currently governed by Defendant's standardized "Deposit Account Agreement" document (the "Deposit Agreement").
See Ex. A.

10. The Deposit Agreement and relevant contract documents covering RI Fees allow Defendant to take certain steps when a bank accountholder attempts an electronic payment transaction or Automated Clearing House (“ACH”) transaction but does not have sufficient funds to cover it. Specifically, Defendant may (a) authorize the transaction and charge a *single* \$35 Overdraft Fee; or (b) reject the transaction and charge a *single* \$35 RI Fee.

11. In contrast to its account documents, however, Defendant regularly assesses two or more RI Fees on the *same* item or transaction.

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

13. Specifically, Defendant unlawfully assesses *multiple* RI Fees on a single electronic payment transaction.

14. Unbeknownst to consumers, each time Independence Bank reprocesses an ACH transaction or check for payment after it was initially rejected for insufficient funds, Independence Bank chooses to treat the transaction as a new and unique item that is subject to yet another RI Fee. But Defendant’s account documents never disclose that this counterintuitive and deceptive result could be possible and, in fact, suggest the opposite.

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

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

17. Defendant's account documents never disclose its practice of charging multiple fees on the same transaction or item. To the contrary, its account documents indicate it will only charge a single RI Fee on an item.

A. Plaintiff's Experience

18. In support of her claim, Plaintiff offers an example of a RI Fee that should not have been assessed against her checking account. As alleged below, Independence Bank: (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

19. On February 13, 2019, Plaintiff attempted a payment to Progressive Insurance.

20. Independence Bank rejected payment of that item due to insufficient funds in Plaintiff's account and charged her a \$35 RI Fee for doing so. Plaintiff does not dispute this initial fee, as it is allowed by Defendant's account documents.

21. Unbeknownst to Plaintiff and without Plaintiff's request to Independence Bank to reprocess the item, however, on February 20, 2019, Defendant processed the same item yet again, and again rejected the transaction due to insufficient funds and charged Plaintiff *another* \$35 RI Fee.

22. *In sum, Defendant charged Plaintiff \$70 in RI Fees to attempt to process a single payment.*

23. Plaintiff understood the payment to be a single item as is laid out in Independence Bank's account documents, capable at most of receiving a single RI Fee (if Defendant returned it) or a single Overdraft Fee (if Defendant paid it).

B. The Imposition of Multiple RI Fees on a Single Item Violates Independence Bank's Express Promises and Representations

24. The account documents provide the general terms of Plaintiff's relationship with Defendant, and therein Defendant makes explicit promises and representations regarding how transactions will be processed, as well as when RI Fees and Overdraft Fees may be assessed.

25. The account documents contain explicit terms indicating that RI Fees will only be assessed once per item, when in fact Defendant regularly charges two or more RI Fees per item even though a customer only requested the payment or transfer once.

26. Defendant's account documents indicate that a singular RI Fee can be assessed on checks, ACH debits, and electronic payment transactions.

27. Defendant's account documents state that it will charge \$35 per item that is returned due to insufficient funds.

28. The Deposit Agreement repeatedly states that, at most, a single RI Fee may be assessed per "item":

If your account lacks sufficient funds to pay a check, preauthorized transfer, or other debit activity presented for payment as determined by the available balance or actual balance in your account, we may (1) **return the item**, or (2) **pay the item at our discretion**.

...

If we return the item without paying it, we may charge you a non-sufficient funds fee. If we do pay the item on your behalf, you will be responsible to pay the overdrawn balance and an overdraft fee. If applicable, overdrafts may be covered by our standard overdraft practice that comes with your account or an overdraft protection plan, such as a link to an account or a line of credit. As part of our offered standard overdraft practice, we do not authorize and pay overdrafts on ATM or

everyday debit card transactions unless you request us to do so. Our handling of these items may subject your account to a fee as disclosed in the Fee Schedule or other Disclosures. We will process checks and other debit items in the order identified in your Truth In Savings disclosure if one has been provided. Please refer to the Overdraft Services Consent Form for more information about overdrafts and our standard overdraft policies, if applicable, and refer to your Truth In Savings disclosure for more information about our overdraft privilege policy.

Ex. A at 12 (emphasis added).

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

30. There is zero indication anywhere in the account documents that the same “item” is eligible to incur multiple RI Fees. Indeed, to the contrary, Independence Bank’s statement uses the term “item” interchangeably with phrases like “check, preauthorized transfer, or other debit activity presented for payment.” *See* Ex. A at 12 (“If your account lacks sufficient funds to pay a check, preauthorized transfer, or other debit activity presented for payment . . . we may (1) return the item, or (2) pay the item at our discretion.”). Further, the Deposit Agreement always refers to RI Fees in the singular. *E.g., id.* (“If we return the item without paying it, we may charge you a non-sufficient funds fee.”).

31. These statements lead consumers to reasonably understand that Independence Bank will charge a *single* RI Fee per item or transaction that is returned for insufficient funds.

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

33. The Fee Schedule reinforces the Deposit Agreement’s promise that a *single* fee will be assessed per item or transaction—particularly where Plaintiff only submitted a single request for payment. The Fee Schedule states:

Return Item(s) Fee- per item returned	\$35.00
Overdraft Fee- per item paid	\$35.00

Ex. A at 6 (emphasis added).

34. The representations in the Fee Schedule explicitly promise that RI Fees will only be assessed “per item,” when in fact Independence Bank regularly charges two or more RI Fees “per item,” even though a customer only requested the payment or transfer once. Ex. A at 6.

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

36. In sum, Defendant promises that one \$35 RI Fee will be assessed per transaction or item, and these terms must mean all iterations of the same instruction for payment. As such, Defendant breached its contract when it charged more than one RI Fee on a single transaction.

37. Reasonable consumers understand any given authorization for payment to be one, singular “item,” as that term is used in Defendant’s account documents.

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

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

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

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

Because we may charge a service fee for an NSF item each time it is presented, **we may charge you more than one service fee for any given item.** All fees are charged during evening posting. When we charge a fee for NSF items, the charge reduces the available balance in your account and may put your account into (or further into) overdraft.

Deposit Account Agreement, First Citizen's Bank (Sept. 2018), <https://www.firstcitizens.com/personal/banking/deposit-agreement> (emphasis added).

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

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

Terms and Conditions of FHB Online Services, First Hawaiian Bank 40, https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RXP1.pdf (last accessed September 10, 2019) (emphasis added).

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

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

Consumer and Small Business Online Access Agreement, Klein Bank ¶ H,

<https://www.kleinbankonline.com/bridge/disclosures/ib/disclose.html> (last accessed September 10, 2019) (emphasis added).

44. First Financial Bank in Ohio, aware of the commonsense meaning of “item,” clarifies the meaning of that term to its accountholders:

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

Special Handling/Electronic Banking Disclosures of Charges, First Financial Bank 2 (Aug. 2018), https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf (emphasis added).

45. Defendant provides no such disclosures, and in so doing, deceives its accountholders.

C. The Imposition of Multiple RI Fees on a Single Transaction Breaches Independence Bank’s Duty of Good Faith and Fair Dealing

46. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are invested with a discretionary power over the other party. This creates an implied promise to act in accordance with the parties’ reasonable expectations and means that Defendant is prohibited from exercising its discretion to enrich itself

and gouge its customers. Indeed, Defendant has a duty to honor transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater penalties on the depositor. Here—in the adhesion agreements Defendant foisted on Plaintiff and its other customers—Defendant has provided itself numerous discretionary powers affecting customers' accounts. But instead of exercising that discretion in good faith and consistent with consumers' reasonable expectations, Defendant abuses that discretion to take money out of consumers' accounts without their permission and contrary to their reasonable expectations that they will not be charged multiple fees for the same transaction.

47. When Defendant charges multiple RI Fees, it uses its discretion to define the meaning of “item” in a way that violates common sense and reasonable consumer expectations. Defendant uses its contractual discretion to define that term to choose a meaning that directly causes more RI Fees.

48. In addition, Defendant exercises its discretion in its own favor and to the prejudice of Plaintiff and its other customers when it reprocesses a transaction when it knows a customer's account lacks funds and then charges additional RI Fees on a single item. Further, Defendant abuses the power it has over customers and their bank accounts and acts contrary to their reasonable expectations under the account documents. This is a breach of Defendant's duty to engage in fair dealing and to act in good faith.

49. It was bad faith and totally outside of Plaintiff's reasonable expectations for Defendant to use its discretion to assess two or more RI Fees for a single attempted payment.

50. Defendant abuses its discretion and acts in bad faith by defining contract terms in an unreasonable way that violates common sense and by charging multiple RI Fees on the same item.

51. Moreover, Defendant provides itself discretion to refuse to reprocess transactions that are initially rejected. It abuses that discretion when it repeatedly reprocesses transactions when it knows that the customer has insufficient funds in their account to pay the transaction and charges additional RI Fees each time.

CLASS ALLEGATIONS

52. Plaintiff brings this action on behalf of themselves and all others similarly situated pursuant to Kentucky Rules of Civil Procedure 23.01, 23.02(b), and 23.02(c). The proposed Class is defined as:

All citizens of Kentucky who, during the applicable statute of limitations, were charged a Return Item Fee by Independence Bank on an item that had previously been charged one or more Return Item Fees.

53. Excluded from the Class are Defendant, its subsidiaries and affiliates, its officers, directors, the members of their immediate families, and any entity in which Defendant has a controlling interest, to include the legal representatives, heirs, successors, or assigns of any such excluded party. Also excluded are the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

54. Plaintiff reserves the right to modify or amend the definition of the proposed Class if necessary, before this Court determines whether certification is appropriate.

55. This case is maintainable as a class action under Kentucky Rules of Civil Procedure 23.01, 23.02(b), and 23.02(c), and all requirements therein are met for the reasons set forth in the following paragraphs.

56. *Numerosity.* The members of the Class are so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to Class discovery, the Class consists of many thousands of members, the identity of whom are within the exclusive

knowledge of Defendant and can be ascertained only by resort to Defendant's records. Through the evaluation of Defendant's data, it is possible to identify all members of the Class and the amount of improper fees paid by each Class member. Such specific information is not otherwise available to Plaintiff, but must be maintained pursuant to federal law, and is subject to suitable discovery.

57. *Commonality.* There are numerous questions of law and fact common to the Class relating to Defendant's business practices challenged herein, and those common questions predominate over any questions affecting only individual Class members. The common questions include, but are not limited to:

- a. Whether Independence Bank breached its contract by charging more than one RI Fee on the same item;
- b. Whether Plaintiff and other members of the Class have sustained damages as a result of Independence Bank's assessment and collection of the improper fees;
- c. Whether Independence Bank breached the covenant of good faith and fair dealing;
- d. Whether Independence Bank unjustly enriched itself to the detriment of Plaintiff and members of the Class;
- e. the proper measure of damages; and
- f. the declaratory and injunctive relief to which the Class is entitled.

58. *Typicality.* Plaintiff's claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practice by Independence Bank, as described herein.

59. *Adequacy of Representation.* Plaintiff is an adequate representative of the Class because Plaintiff has an Independence Bank checking account and has suffered damages as a result of Defendant's assessment and collection of improper fees. In addition:

- a. Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;
- b. There is no hostility of interest between Plaintiff and the unnamed Class members;
- c. Plaintiff anticipates no difficulty in the management of this litigation as a class action; and
- d. Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal work associated with this type of litigation.

60. *Predominance.* The questions of law and fact common to the Class as set forth in the "commonality" allegation above predominate over any individual issues. As such, the "commonality" allegations are restated and incorporated herein by reference.

61. *Superiority.* A class action is superior to other available methods and highly desirable for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is very small relative to the complexity of the litigation and since the financial resources of Independence Bank are enormous, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Defendant's misconduct will proceed without remedy. In addition, even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation

would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

62. All conditions precedent to bringing this action have been satisfied and/or waived.

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

63. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

64. Plaintiff and Independence Bank have contracted for bank account deposit, checking, ATM, and debit card services.

65. Independence Bank mischaracterized in the account documents its true RI Fee practices and breached the express terms of the account documents.

66. No contract provision authorizes Independence Bank to charge more than one RI Fee on the same item.

67. Under Kentucky law, good faith is an element of every contract pertaining to the assessment of bank fees. Good faith is also mandated by the Uniform Commercial Code (“UCC”), which covers banking transactions.

68. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually

obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

69. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

70. Independence Bank has breached the covenant of good faith and fair dealing through its fee policies and practices as alleged herein.

71. Independence Bank harms consumers by abusing its contractual discretion in a number of ways that no reasonable customer would anticipate.

72. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them by the account documents.

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

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)
(On Behalf of Plaintiff and the Class)

74. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

75. Plaintiff, individually and on behalf of the Class, asserts a common law claim for unjust enrichment. This claim is brought solely in the alternative to Plaintiff's breach of contract claim and applies only if the parties' contract is deemed unconscionable or otherwise

unenforceable for any reason. In such circumstances, unjust enrichment will dictate that Independence Bank disgorge all improperly assessed RI Fees.

76. By means of Defendant's wrongful conduct alleged herein, Defendant knowingly assessed fees upon Plaintiff and the members of the Class that are unfair, unconscionable, and oppressive.

77. Independence Bank knowingly received and retained wrongful benefits and funds from Plaintiff and the members of the Class. In so doing, Defendant acted with conscious disregard for the rights of Plaintiff and the members of the Class.

78. As a result of Independence Bank's wrongful conduct as alleged herein, Independence Bank has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and the members of the Class.

79. Independence Bank's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

80. Under the common law doctrine of unjust enrichment, it is inequitable for Independence Bank to retain the benefits it received, and is still receiving, without justification, from the imposition of multiple RI Fees on Plaintiff and members of the Class in an unfair, unconscionable, and oppressive manner. Independence Bank's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

81. The financial benefits derived by Independence Bank rightfully belong to Plaintiff and the members of the Class. Independence Bank should be compelled to disgorge in a common fund for the benefit of Plaintiff the and members of the Class all wrongful or inequitable proceeds collected by Independence Bank. A constructive trust should be imposed upon all wrongful or

inequitable sums received by Independence Bank traceable to Plaintiff and the members of the Class.

82. Plaintiff and the members of the Class have no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Violation of the Kentucky Consumer Protection Act, KRS §§ 367.110-367.300)
(On Behalf of Plaintiff and the Class)

83. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

84. The Commonwealth of Kentucky believes that “the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services.” KRS § 367.120(1).

85. In furtherance of this public policy objective, the Kentucky Consumer Protection Act (the “KCPA”) was enacted in order to prevent “unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce.” KRS § 367.170(1).

86. Defendant is engaged in trade or commerce as defined in the KCPA because it offered and continues to offer its bank account deposit, checking, and debit card services to the people of Kentucky, including Plaintiff and members of the Class.

87. Plaintiff has standing to bring this action under KRS § 367.220 because she entered into a contract with Defendant for the purchase of Defendant’s bank account deposit, checking and debit card services primarily for personal, family or household purposes.

“Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce” are unlawful pursuant to the KCPA. KRS § 367.170(1).

88. Defendant engaged in unfair, false, misleading, or deceptive acts or practices or otherwise violated KCPA by, among other things, knowingly and intentionally employing a policy and practice of charging more than one RI Fee per item.

89. Defendant's conduct caused Plaintiff and the members of the Class to suffer ascertainable losses in the form of improper RI Fees that, but for Defendant's unfair, false, misleading, or deceptive practices and policies describe herein, would not have otherwise been imposed.

90. Plaintiff and Class members are entitled to damages, declaratory relief, injunctive relief, and attorneys' fees and costs. KRS § 367.220.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class demand a jury trial on all claims so triable and judgment including the following:

- a. Certification of the Class under Kentucky Rules of Civil Procedure 23.01, 23.02(b), and 23.02(c), designation of Plaintiff as Class Representative, and designation of the undersigned as Class Counsel;
- b. Restitution of all monies lost by Plaintiff and the Class as a result of the wrongs alleged herein in an amount to be determined at trial;
- c. Statutory and actual damages in an amount proven at trial;
- d. Pre-judgment interest at the maximum rate permitted by applicable law;
- e. Reimbursement of all fees, expenses, and costs incurred by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law;
- f. Attorneys' fees under the common fund doctrine and all other applicable law; and
- g. Such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

Dated: September 16, 2019

By: s/David O'Brien Suetholz

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**Pro Hac Vice Applications Forthcoming*

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