

Return Date: August 21, 2012 : SUPERIOR COURT
ALFONSE FORGIONE, on behalf of : JUDICIAL DISTRICT OF WATERBURY
Himself and all others similarly situated, : AT WATERBURY
v. :
WEBSTER BANK, N.A. : August 6, 2012

CLASS ACTION COMPLAINT

1. Plaintiff Alfonse Forgione (“Plaintiff”), on behalf of himself and all persons similarly situated, by and through his attorneys, alleges as follows.

INTRODUCTION

2. Plaintiff brings this action on behalf of himself and a class of all similarly situated Connecticut residents against Defendant Webster Bank, N.A., arising out of Webster’s improper, unfair, deceptive, unconscionable and bad faith assessment and collection of overdraft fees or fees for allegedly insufficient funds (collectively “overdraft fees”).

3. Webster issues debit cards to its checking account customers, including Plaintiff. These debit cards allow Webster’s customers to have electronic access to their checking accounts for purchases, payments, withdrawals and other electronic debit transactions.

4. Pursuant to its standard account agreement, Webster charges fees (currently in the amount of \$32) for debit card transactions that overdraw a customer’s account. However, Webster engages in a policy, contrary to its account agreement, which improperly multiplies the number of transactions which generate overdraft fees.

5. When a customer makes a purchase with a debit card, Webster immediately sequesters the funds needed to pay the transaction with a “hold,” subtracting them from a customer’s so-called “available” balance. But, Webster may not in fact pay the merchant for the purchase for several days. Webster charges an overdraft fee on any other transaction that is paid from the account after the “hold” is placed if the available balance is or becomes negative, on the grounds that the money being “held” has been allocated for payment of the first transaction and is not available for payment of other transactions. To add insult to injury, Webster charges an *additional* overdraft fee when it uses the money it has previously placed on “hold” and deleted from the available balance to subsequently pay the merchant for the first transaction. In this way, Webster can multiply a single mistake into a money-making machine capable of generating numerous overdraft fees.

6. Plaintiff, and other Webster customers who reside in Connecticut at the time of the filing of this Class Action Complaint have been injured by Webster’s improper and unlawful practices. On behalf of himself and the class, Plaintiff seeks damages, restitution and injunctive relief for Webster’s violations of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*, (“CUTPA”) (Count I), breaches of both the express terms of the Agreement and the covenant of good faith and fair dealing implied therein (Count II), unjust enrichment (Count III), conversion (Count IV) and statutory theft pursuant to Conn. Gen. Stat. § 52-564 (Count V).

PARTIES

7. Plaintiff Alfonse Forgione is a resident of Northford, Connecticut.

8. Defendant Webster Bank, N.A. is a national bank with its headquarters and principal place of business located in Waterbury, Connecticut. It conducts business throughout Connecticut.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction over Webster because Webster conducts business and maintains its headquarters and numerous bank branches in Connecticut.

10. Venue is proper in this Court because Webster resides in Waterbury, Connecticut.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

11. Plaintiff has had checking accounts with Webster since 2001.

A. Webster's Account Agreement

12. Plaintiff's checking account with Webster is, at all relevant times, governed by Webster's standardized contract for deposit accounts (the "Agreement"), the material terms of which are drafted by Webster, amended by Webster from time to time at its convenience and complete discretion, and imposed by Webster on all of its customers. Webster is the party of vastly superior bargaining strength, and the Agreement constitutes a contract of adhesion.

13. Within the 31 pages of 8.5-point font of this standardized Agreement are the following relevant provisions which, on information and belief, were imposed by Webster on all Class Members:

Overdrafts/Insufficient Funds. Unless you request and are approved for Overdraft Protection, *when a check or other item, including an electronic debit, is presented to us for payment and there are insufficient available funds in your Account to pay such check or item*, we will either (a) pay the check, item or electronic debit, or (b) return the check, item, or the electronic debit. If the check, item or electronic debit is paid, then your Account will be overdrawn. If your Account becomes overdrawn, you will be notified promptly and you agree to reimburse us for any amount

advanced as an overdraft or insufficient funds transaction, as well as any applicable fees, upon demand. If we return the check, item or electronic debit, you may be charged a returned item fee as set forth in the Fee Schedule. A determination of your Account balance for purposes of making the decision to dishonor a check or other item for insufficiency of available funds may be made at any time between the presentment of such check or item and the time of return of the check or item, and no more than one such determination need be made. It is solely our option whether to pay or to return the check or item. The fees for overdraft/insufficient funds are set forth in the Fee Schedule.

* * *

Visa® Debit Card Purchases. . . . A Visa Debit Card is issued exclusively for use with a checking account. ***When your Visa Debit Card is used for a purchase at any participating Visa member merchant, we may place a hold on the funds available in your Account (including any available Overdraft Protection) in an amount that corresponds to the transaction request that has been submitted by the merchant for authorization. Funds that are held will not be available for withdrawal or for checkwriting purposes during the Hold Period.*** Generally, the Hold Period will be no more than three (3) Banking Days for domestic transactions. You are responsible for resolving all disputes concerning the quality of goods and services purchased with the merchant that accepted the Visa Debit Card.

* * *

Other Information. . . . If there are ***insufficient available funds*** in your Account ***when an ATM or Visa Debit Card transaction is made, we will either (a) pay the transaction, or (b) refuse to pay the ATM or Visa Debit Card transaction.*** If the transaction is paid, then your Account will be overdrawn. If your Account becomes overdrawn, you will be notified promptly and you agree to reimburse us for any amount advanced as an overdraft or insufficient funds transaction, as well as any applicable fees, upon demand. If we pay the transaction, in our sole discretion, you agree that we have not waived our right to refuse to pay an ATM or Visa Debit Card transaction in the future if there are insufficient available funds in your Account. ***A fee will be imposed whether we pay or refuse the ATM or Visa Debit Card transaction if there are insufficient available funds in your Account.*** There are also fees associated with the use of your ATM or Visa Debit Card. These fees are set forth in the Fee Schedule.

* * *

You can make purchases using a Debit Card (ATM Card or Visa® Debit Card). At the time when you make a Debit Card purchase, a request for authorization is usually sent to us. When this occurs **we will immediately reduce your available balance by the amount of the authorization.** This will help you keep closer track of your balance available for spending. If we do not receive the transaction within (3) business days, we will adjust your available balance as if you had not done the transaction. . . . **When we receive the actual transaction, usually within two days, we will adjust your available balance if needed based on the amount of the transaction.**

* * *

. . . [T]ransactions are posted in dollar amount order, from highest to lowest. This means . . . that your balance will be depleted by large transactions first. If you have insufficient funds available to cover all the transactions that are processed in any day, overdraft/insufficient funds fees will be incurred, and there may be more fees than if we posted items in a different order such as lowest to highest.

Deposit Account Disclosure for Consumer Accounts (emphasis added).

14. The Agreement thus states that overdraft fees are assessed “if there are insufficient **available funds**” in an account “when an ATM or Visa Debit Card transaction **is made.**” “Available funds” do not include funds on which a “hold” has been placed, as the Agreement states that Webster will “immediately reduce [a customer’s] available account balance by the amount of the” transaction by placing a “hold” on the funds in the account in the amount of the transaction. The Agreement also expressly states that Webster may charge “a fee” in the event the available balance reflects insufficient funds, regardless of whether Webster pays the overdraft.¹

¹ While the Account Agreement provides that a “determination of your Account balance **for purposes of making the decision to dishonor a check or other item for insufficiency of available funds** may be made at any time between the presentment of such check or item and the time of return of the check or item,” this language expressly refers to Webster’s determination of whether or not to honor the transaction, and is not linked to whether or not Webster may charge an overdraft fee (as the Agreement provides that Webster charges an overdraft fee **regardless** of whether it honors the transaction).

B. Webster's Actual Practice Violates the Account Agreement

15. A debit card can be used to make a purchase in two ways: an "ACH" transaction in which a customer enters his or her PIN number at the point of sale, or an "offline signature" transaction. In the former, the money is debited from the account nearly instantaneously. In the latter, the "offline signature" transaction occurs in two parts. First, authorization for the purchase amount is obtained by the merchant. When a merchant swipes a customer's debit card, the credit card terminal connects, via an intermediary, to the customer's bank, which verifies that the customer's account is valid and that sufficient funds are available to cover the transaction's cost. At this step, the bank holds the funds and reduces the customer's available balance by a corresponding amount, but does not yet transfer the funds to the merchant. While the merchant has obtained an authorization from the customer's bank and the customer's available balance has been reduced, the customer's actual account balance at the bank is not debited because the merchant has not actually been paid. Thereafter, the payment is processed, wherein the funds are transferred from the customer's account to the merchant's account. This process is not instantaneous; it can take as long as several days. The actual payment is not made until the merchant submits the transaction to the bank and the bank actually transfers the funds to the merchant, at which time the customer's account is debited, the customer's actual balance is reduced by the amount of the payment, and the "hold" is released. However, the actual payment of the transaction and the release of the "hold" have no impact on the customer's available balance as the available balance has already been reduced by the amount of the transaction at the time of the transaction and the imposition of the hold.

16. Contrary to the express language in the agreement authorizing (1) reduction in the available balance only at the time a transaction is "immediately" authorized, and (2) charging an

overdraft fee if there are “insufficient available funds in your account when [a] transaction is made,” Webster effectively double-counts “offline signature” transactions by reducing the available balance at the time that the transaction occurs, and then charging an overdraft fee when the Bank subsequently pays the transaction from the funds it already sequestered.

17. For example, Plaintiff Forgione had an available balance of \$40.11 on April 27, 2012. He then made two purchases at Exxon Mobil on April 28 in the amounts of \$8.53 and \$3.99 respectively, and his available balance was reduced to \$27.62. He had sufficient “available” funds to pay both transactions when they were made.

18. On April 29, 2012, Mr. Forgione made a \$24.27 purchase at Wal-Mart and another purchase at Exxon Mobil in the amount of \$8.53. Since he had sufficient available funds in his account to pay either one of these transactions but not both of them, only one of the transactions should have triggered an overdraft fee based on Mr. Forgione’s available balance. Instead, Webster wrongfully charged *three* overdraft fees for a total of **\$96**.

19. Although the Agreement clearly states that overdraft fees are to be calculated based on the available balance, Mr. Forgione also should have incurred only a single overdraft fee if fees were calculated based on Plaintiff’s actual balance. As reflected on his account statement, Mr. Forgione had an “actual” account balance of \$57.17 at the end of the day on April 29, 2012. On April 30, all of the transactions alleged above, other than the second \$8.53 Exxon transaction, were paid and debited from his account, leaving an actual balance of \$3.32. No actual overdraft had occurred at this point. Only on May 1, 2012, when the second \$8.53 Exxon transaction was paid and debited from his account, did Mr. Forgione’s account have a negative actual balance, in the amount of \$5.21. While there was only one overdraft under this analysis, Mr. Forgione was charged *three* overdraft fees.

20. Upon information and belief, Webster used the following improper methodology to multiply the number of overdraft fees: (1) On April 29, Webster placed an immediate “hold” on Mr. Forgione’s account in the amount of the second \$8.53 Exxon transaction at the time of the transaction, thus removing those funds from Mr. Forgione’s available balance; (2) on April 30, when all of the pending transactions *other* than the second \$8.53 Exxon transaction were paid, Webster re-ordered these transactions according to dollar amount, highest to lowest, and deducted them from this now lower available balance, thus generating \$32 overdraft fees for each of the two smallest transactions paid that day (which were transactions actually made on April 28 in the amounts of \$8.53 and \$3.99, respectively); and (3) Webster charged Mr. Forgione a *third* overdraft fee on May 1, 2012, when the bank used the money it had placed on hold at the time of the second \$8.53 Exxon Transaction on April 29 to pay Exxon Mobil, *even though this action did not change Mr. Forgione’s available balance*. Rather, all that occurred was that Webster used the money it had already sequestered and deleted from Mr. Forgione’s available balance to pay the transaction. Thus, Webster was able to take a single five-dollar error and use it to generate \$96 dollars in fees. The account agreement does not authorize this practice, which, upon information and belief, is the Bank’s normal policy.

21. Webster has refused to give Plaintiff any credit for these improper overdraft charges.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this class action pursuant to Sections 9-7 and 9-8 of the Practice Book on behalf of himself and the following class of similarly situated persons:

All Connecticut residents at the time of the filing of this action who maintained a personal checking account with Webster and were charged overdraft fees on any

transaction for which positive available funds had previously been placed on “hold” by the bank for purposes of paying the transaction (the “Class”).

23. Plaintiff reserves the right to modify or amend the definition of the proposed Class.

24. Excluded from the Class are Defendant, including any parent, subsidiary, affiliate or controlled person of Defendant; Defendant’s officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families. Also excluded from the Class are all persons who are not residents of the state of Connecticut at the time this class action is commenced by the filing of this Class Action Complaint.

25. The proposed Class meets all requirements for class certification. The Class satisfies the numerosity standards. The Class is believed to number in the thousands of persons in the state of Connecticut. As a result, joinder of all class members in a single action is impracticable. On information and belief, class members can be identified by Webster’s banking records. Class members may be informed of the pendency of this action by published notice.

26. There are questions of fact and law common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Webster’s actions include, without limitation, whether Webster:

- a. Charges improper overdraft fees for debit card transactions;
- b. breaches its contract with the Plaintiff and the other members of the putative Class by charging improper overdraft fees for debit card transactions;
- c. breaches its covenant of good faith and fair dealing with Plaintiff and the other members of the putative Class by charging improper overdraft fees for debit card transactions;
- d. is unjustly enriched by charging improper overdraft fees for debit card transactions;

- e. violates CUTPA by charging improper overdraft fees for debit card transactions;
- f. commits conversion by charging improper overdraft fees for debit card transactions without authorization; and
- g. commits statutory theft by charging improper overdraft fees for debit card transactions.

27. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity to other available methods for the fair and efficient adjudication of this controversy.

28. Plaintiff is an adequate representative of the Class because he is a member of the Class and his interests do not conflict with the interests of the members of the Class he seeks to represent. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and his undersigned counsel, who have extensive experience prosecuting complex class action litigation.

29. Plaintiff's claims are typical of the claims of the Class because they arise out of the same conduct, policies, and practices of Webster with respect to overdraft fees, and the same or substantially similar provisions of Webster's account agreements and other related documents. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other putative class member.

30. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in

inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

31. Notice can be provided to Class members by using techniques and forms of notice similar to those customarily used in other class actions.

CLAIMS FOR RELIEF

COUNT I

CUTPA VIOLATION

32. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

33. Plaintiff and Class members are persons who banked with Webster primarily for personal, family or household purposes.

34. Webster is a corporation, and thus a “person” for purposes of CUTPA. Conn. Gen. Stat. § 42-110a(3).

35. Webster’s provision of banking services to its customers in Connecticut constitutes “trade or commerce” within the meaning of Conn. Gen. Stat. § 42-110a(4).

36. The acts and practices engaged in by Webster, and described herein, constitute “unfair or deceptive acts or practices in the conduct of [a] trade or commerce” in violation of CUTPA, Conn. Gen. Stat. § 42-110b(a).

37. Webster’s challenged act or practice is its unauthorized practice of improperly charging multiple overdraft fees based on a single overdraft, and Webster’s deception in failing to adequately inform consumers thereof.

38. Webster's policies and practices as alleged herein constitute "unfair trade practices" under CUTPA, as they offend the public policy of the State of Connecticut, are unethical, oppressive, and unscrupulous, and cause substantial injury to Connecticut consumers.

39. Webster's policies and practices as alleged herein constitute "deceptive trade practices" under CUTPA because the policies and practices have a tendency and capacity to deceive consumers.

40. As a result of Webster's employment of these unfair or deceptive acts and practices, Plaintiff and putative Class members suffered an ascertainable loss of money or property in the form of unlawful overdraft fees assessed by Webster.

41. Plaintiff and putative Class members are thus entitled to all relief available under CUTPA.

COUNT II

BREACH OF CONTRACT, INCLUDING BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

42. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

43. Webster breaches the express provisions of the contract as to calculation of the account balance for the purpose of assessing overdraft charges. As discussed above, Webster immediately places a hold on funds at the time a transaction occurs, thus lowering a customer's "available balance" and causing potential overdrafts on other pending transactions, even though those transactions were actually made at a time when there were sufficient "available" funds to pay them, on the theory that those funds are no longer available because they are being "held."

Then Webster assesses an *additional* overdraft fee when the Bank subsequently uses the funds it had already placed on hold to pay the transaction which caused the hold.

44. In addition, a covenant of good faith and fair dealing is implied in all contracts in Connecticut, including Plaintiff's and Class members' Account Agreements with Webster.

45. The Account Agreements give Webster discretion to determine whether and when an account is overdrawn, whether to pay the transaction that causes the account to be overdrawn, and whether to charge a fee for the transaction that caused the account to be overdrawn.

46. As alleged herein, Webster has abused its discretion to generate multiple overdraft fees from a single transaction.

47. No lay person could possibly read the Account Agreement to permit the imposition of overdraft fees in the manner employed by Webster, as alleged herein.

48. Webster's performance of its discretionary functions under the Account Agreements as alleged herein to maximize its revenue from overdraft fees impedes the right of Plaintiff and other Class Members to receive benefits that they reasonably expected to receive under the contract, as the money that they have entrusted to Webster for their banking activities is reduced.

49. On information and belief, Webster's actions as alleged herein were performed in bad faith, in that the purpose behind the practices and policies alleged herein was to maximize the bank's revenue from overdraft fees at the expense of its customers and in contravention of their reasonable expectations as customers of the bank.

50. Webster has breached the express terms of the Account Agreement and the covenant of good faith and fair dealing to generate multiple overdrafts as alleged herein.

51. Plaintiff and members of the putative Class have sustained damages as a result of Webster's breaches as alleged herein.

COUNT III

UNJUST ENRICHMENT (Pled in the Alternative to Count II)

52. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

53. Webster has been, and continues to be, unjustly enriched as a result of its wrongful conduct alleged herein to the detriment of Plaintiff and the Class.

54. Webster has been enriched by a benefit in the form of improper overdraft fees.

55. Webster's enrichment in the form of improper overdraft fees was at the expense of Plaintiff and the Class.

56. It would be unjust to allow Webster to retain the benefit.

57. Plaintiff and the Class are entitled to disgorgement and restitution of all wrongfully-obtained gains received by Webster as a result of its wrongful conduct alleged herein.

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

COUNT IV

CONVERSION

59. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

60. Plaintiff and members of the Class have property interests in the funds that they deposited in accounts maintained at Webster.

61. By automatically debiting improper overdraft fees from the accounts of Plaintiff and Class Members, Webster has permanently deprived Plaintiff and Class Members of their property.

62. Webster's debiting of improper overdraft fees from the accounts of Plaintiff and Class Members was not authorized by the contract nor was it otherwise authorized by law and was an improper conversion of property held in the accounts of Plaintiff and Class Members to Webster's own use.

63. Plaintiff and the members of the Class are entitled to disgorgement and restitution of all funds improperly debited from their accounts by Webster in the form of improper overdraft fees and damages.

COUNT V

STATUTORY THEFT: CONN. GEN. STAT. § 52-564

64. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

65. Plaintiff and members of the Class have property interests in the funds that they deposited in accounts maintained at Webster.

66. By automatically debiting improper overdraft fees from the accounts of Plaintiff and Class Members, Webster has permanently deprived Plaintiff and Class Members of their property.

67. Webster's debiting of improper overdraft fees from the accounts of Plaintiff and Class Members was not authorized by the contract nor was it otherwise authorized by law.

68. Webster's overdraft policy detailed above is designed and intended to improperly maximize the number of overdraft fees charged to Plaintiff and the members of the Class.

69. Webster intended to permanently deprive Plaintiff and the Class of the funds that it debited from their accounts for improper overdraft fees.

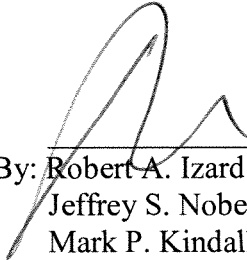
70. Plaintiff and the members of the Class have been damaged by Webster's acts in violation of Conn. Gen. Stat. § 52-564.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the putative Class, requests that this Court enter judgment against Defendant and in favor of Plaintiff and award the following relief:

- (a) Certification of the proposed Class;
- (b) Injunctive relief enjoining Webster from the improper practices alleged herein;
- (c) Damages in an amount to be determined at trial, including actual and punitive damages;
- (d) Disgorgement and restitution of all overdraft fees paid to Webster by Plaintiff and the putative Class as a result of the wrongs alleged herein;
- (f) Treble damages pursuant to Conn. Gen. Stat. § 52-54;
- (g) Pre- and post- judgment interest at the maximum rate permitted by applicable law; and
- (h) Attorneys' fees, costs, and expenses as available under the law.

PLAINTIFF

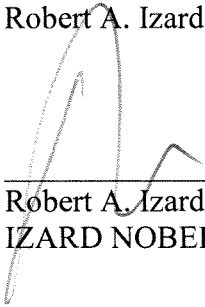

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APPEARANCE

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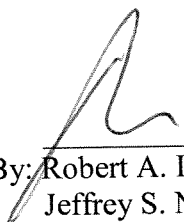

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STATEMENT OF AMOUNT IN DEMAND

The amount, legal interest or property in demand is in excess of FIFTEEN THOUSAND DOLLARS (\$15,000) exclusive of interest and costs.

PLAINTIFF


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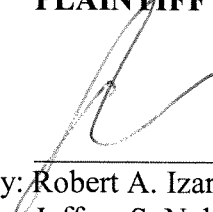
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JURY TRIAL DEMAND

Plaintiff hereby demands trial by jury.

PLAINTIFF


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