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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MATTHEW MCCRACKEN, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

HOMESTREET BANK,

Defendant.

NO.

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

Plaintiff Matthew McCracken, individually and on behalf of the Class of persons preliminarily defined below, makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

NATURE OF THE ACTION

1. Plaintiff brings this action individually and on behalf of Class of all similarly situated consumers against Defendant HomeStreet Bank (“Defendant” or “HomeStreet”), arising from routinely charging more than one overdraft fee (“OD Fee”) or non-sufficient funds fees (“NSF Fee”) on a single transaction.

2. HomeStreet misleadingly and deceptively misrepresents its Fee practices, including in its own account contracts.

1 11. Venue is likewise proper in this county pursuant to RCW 4.12.025(1) and (3)
2 because Defendant resides in this County and transacts business in this county, and the events or
3 omissions giving rise to the claims asserted herein occurred and continue to occur in this County.

4 **BACKGROUND FACTS**

5 10. Overdraft fees and insufficient funds fees (“NSF fees”) are among the primary fee
6 generators for banks. According to a banking industry market research company, Moebs Services,
7 in 2018 alone, banks generated an estimated \$34.5 billion from overdraft fees. Overdraft Revenue
8 Inches Up in 2018, <https://bit.ly/3cbHNKV>.

9 11. Unfortunately, the customers who are assessed these fees are the most vulnerable
10 customers. Younger, lower-income, and non-white account holders are among those who were
11 more likely to be assessed overdraft fees. Overdrawn: Consumer Experiences with Overdraft,
12 Pew Charitable Trusts 8 (June 2014), <https://bit.ly/3ksKD0I>.

13 12. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo,
14 Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See Hugh*
15 *Son, Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1,
16 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check*
17 *Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

18 13. In line with this industry trend, the New York Attorney General recently asked
19 other industry leading banks to end the assessment of all OD Fees by the summer of 2022. *NY*
20 *Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6,
21 2022).

1 14. Through the imposition of these fees, Defendant has made substantial revenue to
2 the tune of tens of millions of dollars, seeking to turn its customers' financial struggles into
3 revenue.

4 **I. DEFENDANT ASSESSES TWO OR MORE FEES ON THE SAME ITEM**
5 **RETURNED FOR INSUFFICIENT FUNDS**

6 15. Defendant unlawfully maximizes its already profitable fees through the deceptive
7 and contractually-prohibited practice of charging multiple NSF fees, or an NSF fee followed by
8 an overdraft fee, on an item.

9 16. Unbeknownst to consumers, when Defendant reprocesses an electronic payment
10 item, ACH item, or check for payment after it was initially rejected for insufficient funds,
11 Defendant chooses to treat it as a new and unique item that is subject to yet another fee. But
12 Defendant's contract never states that this counterintuitive and deceptive result could be possible
13 and, in fact, promises the opposite.

14 17. The Federal Deposit Insurance Corporation (the "FDIC") has expressed concern
15 with the practice of assessing multiple fees on an item. In 2012, the FDIC determined that one
16 bank's assessment of more than one NSF Fee on the same item was a "deceptive and unfair act."
17 *In the Matter of Higher One, Inc., Consent Order*, Consent Order, FDIC-1 1-700b, FDIC-1 1-
18 704k, 2012 WL 7186313.

19 18. In the latest issue of the CFPB's Supervisory Highlight, the Bureau scrutinized
20 junk fees, including the practice of charging multiple NSF fees, stating:

21 Supervision found that institutions engaged in unfair acts or practices by charging
22 consumers multiple NSF fees when the same transaction was presented multiple
23 times for payment against an insufficient balance in the consumer's accounts,
24 potentially as soon as the next day. The assessment of multiple NSF fees for the
same transaction caused substantial monetary harm to consumers, totaling
millions of dollars. These injuries were not reasonably avoidable by consumers,

1 regardless of account opening disclosures. And the injuries were not outweighed
2 by countervailing benefits to consumers or competition.

3 Consumer Financial Protection Bureau, “Supervisory Highlights Junk Fees Special Edition”
4 (March 2023).

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

9 20. Upon information and belief, the contract allows Defendant to take certain steps
10 when paying a check, electronic payment item, or ACH item when the accountholder does not
11 have sufficient funds to cover it. Specifically, Defendant may (a) pay the item and charge a \$30
12 fee; or (b) reject the item and charge a \$30 fee.

13 21. In contrast to the Contract, however, Defendant regularly assesses two or more
14 \$25 fees on an item.

15 **A. The Imposition of Multiple Fees on a Single Item Violates Defendant’s
16 Express Promises and Representations**

17 22. On information and belief, at the time Plaintiff incurred her fee, Defendant’s Fee
18 Schedule promised that a single fee will be assessed on an item:

Insufficient Funds Fees	
Overdraft Fee [±]	\$30 per item
NSF (Non-Sufficient Funds) Return Item Fee [±]	\$30 per item
± Overdraft Fees are assessed only if account is overdrawn more than \$10.00. Fees are limited to a daily maximum of four (4) Overdraft Fees and/or NSF Returned Item Fees per day.	

21 See Ex. A.
22
23
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1 23. The same “item” on an account cannot conceivably become a new one when it is
2 rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to
3 resubmit it.

4 24. There is zero indication anywhere in the contract that the same “item” is eligible
5 to incur multiple fees.

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

9 26. The contract never discusses a circumstance where Defendant may assess
10 multiple fees for a single check, electronic payment item, or ACH item that was returned for
11 insufficient funds and later reprocessed one or more times and returned again.

12 27. In sum, upon information and belief, Defendant promises that one fee will be
13 assessed on an item, and this term must mean all iterations of the same instruction for payment.
14 As such, Defendant breached the contract when it charged more than one fee per item.

15 28. Reasonable consumers understand any given authorization for payment to be one,
16 singular “item.”

17 29. Taken together, the representations and omissions identified above convey to
18 customers that all submissions for payment of the same item will be treated as the same “item,”
19 which Defendant will either authorize (resulting in an overdraft item) or reject (resulting in a
20 returned item) when it decides there are insufficient funds in the account.

21 30. Nowhere do Defendant and its customers agree that Defendant will treat each
22 reprocessing of a check, electronic payment item, or ACH item as a separate item, subject to
23 additional fees.

24

1 31. Customers reasonably understand that Defendant’s reprocessing of checks,
2 electronic payment items, and ACH items are simply additional attempts to complete the original
3 order or instruction for payment, and as such, will not trigger fees. In other words, it is always
4 the same item.

5 32. Banks and credit unions like Defendant that employ this abusive practice require
6 their accountholders to expressly agree to it—something Defendant here did not do.

7 33. Community Bank, NA, discloses its fee practice in its online banking agreement,
8 in all capital letters, as follows:

9 We cannot dictate whether or not (or how many times) a merchant will submit a
10 previously presented item. **You may be charged more than one Overdraft or
NSF Fee if a merchant submits a single transaction multiple times after it has
11 been rejected or returned.**

12 *Overdraft and Unavailable Funds Practices Disclosure*, Community Bank N.A. 5 (Nov. 12,
13 2019), <https://bit.ly/3uQafe7> (emphasis added).

14 34. Defendant’s contract provides no such authorization, and actually promises the
15 opposite— Defendant may charge, at most, a fee, per item.

16 **B. Plaintiff’s Experience**

17 35. In support of Plaintiff’s claim, Plaintiff offers an example of fees that should not
18 have been assessed against Plaintiff’s checking account. As alleged below, Defendant:
19 (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

20 36. In June of 2021, Plaintiff was assessed multiple fees on an item. Plaintiff
21 understood the payment to be a single item as is laid out in the contract, capable of receiving, at
22 most, a single fee if Defendant returned it, or a single fee if Defendant paid it.

1 **II. NONE OF THESE FEES WERE ERRORS.**

2 37. The improper fees charged by Defendant to Plaintiff’s account were not errors by
3 Defendant, but rather were intentional charges made by Defendant as part of its standard
4 processing of transactions.

5 38. Plaintiff therefore had no duty to report the fees as errors because they were not;
6 instead, they were part of the systematic and intentional assessment of fees according to
7 Defendant’s standard practices.

8 39. Moreover, any such reporting would have been futile as Defendant’s own contract
9 admits that Defendant made a decision to charge the fees.

10 **III. THE IMPOSITION OF THESE IMPROPER FEES BREACHES DEFENDANT’S**
11 **DUTY OF GOOD FAITH AND FAIR DEALING**

12 40. Parties to a contract are required not only to adhere to the express conditions of
13 the contract but also to act in good faith when they are invested with a discretionary power over
14 the other party. This creates an implied duty to act in accordance with account holders’ reasonable
15 expectations and means that the bank or credit union is prohibited from exercising its discretion
16 to enrich itself and gouge its customers. Indeed, the bank or credit union has a duty to honor
17 transaction requests in a way that is fair to its customers and is prohibited from exercising its
18 discretion to pile on even greater penalties on its account holders.

19 41. Here—in the adhesion agreements Defendant foisted on Plaintiff and its other
20 customers— Defendant has provided itself numerous discretionary powers affecting customers’
21 accounts. But instead of exercising that discretion in good faith and consistent with consumers’
22 reasonable expectations, Defendant abuses that discretion to take money out of consumers’
23 accounts without their permission and contrary to their reasonable expectations that they will not
24 be charged improper fees.

1 48. The Class consists of thousands of members, such that joinder of all Class
2 members is impracticable.

3 49. There are questions of law and fact that are common to all members of the Class
4 that relate to HomeStreet's practice of assessing improper Multiple Fees.

5 50. The claims of Plaintiff are typical of the claims of the proposed Class because
6 they are based on the same legal theories, and Plaintiff has no interests that are antagonistic to
7 the interests of the members of the Class.

8 51. Plaintiff is an adequate representative of the Class and has retained competent
9 legal counsel experienced in class actions and complex litigation.

10 52. The questions of law and fact common to the Class predominate over any
11 questions affecting only individual members of the Class, particularly because the focus of the
12 litigation will be on HomeStreet's conduct. The predominant questions of law and fact in this
13 litigation include, but are not limited to, whether HomeStreet:

- 14 A. Imposed Multiple Fees on a single item;
- 15 B. Breached its contract with Plaintiff and members of the Class by assessing these fees;
- 16 C. Breached the covenant of good faith and fair dealing imposed on it;
- 17 D. Was unjustly enriched by when it assessed these fees; and
- 18 E. Violated the Washington Consumer Protection Act.

19 53. Other questions of law and fact common to the Class include the proper method
20 or methods by which to measure damages.

21 54. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would not be
23 economically feasible for individual Class members, and certification as a class action will
24

1 preserve judicial resources by allowing the common issues of the Class members to be
2 adjudicated in a single forum, avoiding the need for duplicative hearings and discovery in
3 individual actions that are based on an identical set of facts. Since the amount of each individual
4 Class member's claim is small relative to the complexity of the litigation, and due to the financial
5 resources of HomeStreet, no Class member could afford to seek legal redress individually for the
6 claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer
7 losses and HomeStreet's misconduct will proceed without remedy. In addition, without a class
8 action, it is likely that many members of the Class will remain unaware of HomeStreet's conduct
9 and the claims they may possess.

10 55. It appears that other persons who fall within the definitions of the Class set forth
11 above are not pursuing similar litigation, such that individual Class members do not wish to
12 control the prosecution of separate actions.

13 56. This proposed class action does not present any unique management difficulties.

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

17 57. Plaintiff incorporates the preceding allegations by reference as if fully set forth
18 herein.

19 58. Plaintiff and HomeStreet have contracted for bank account deposit, checking,
20 ATM, and debit card services. *See Ex. A.*

21 59. HomeStreet mischaracterized in the Contract its true fee practices and breached
22 the express terms of the Contract.

23 60. No contract provision authorizes HomeStreet to charge Multiple Fees on a single
24 item.

1 61. Under Washington law, good faith is an element of every contract. Good faith is
2 also mandated by the Uniform Commercial Code (“UCC”), which covers banking transactions.
3 Whether by common law or statute, all contracts impose upon each party a duty of good faith
4 and fair dealing. Good faith and fair dealing, in connection with executing contracts and
5 discharging performance and other duties according to their terms, means preserving the spirit—
6 not merely the letter—of the bargain. Put differently, the parties to a contract are mutually
7 obligated to comply with the substance of their contract in addition to its form. Evading the spirit
8 of the bargain and abusing the power to specify terms constitute examples of bad faith in the
9 performance of contracts.

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

15 63. HomeStreet has breached the covenant of good faith and fair dealing through its
16 fee policies and practices as alleged herein.

17 64. HomeStreet harms consumers by abusing its contractual discretion in a number
18 of ways that no reasonable customer would anticipate.

19 65. Plaintiff and members of the Class have performed all, or substantially all, of the
20 obligations imposed on them by the Contract.

21 66. Plaintiff and members of the Class have sustained damages as a result of
22 HomeStreet’s breach of the Contract and breach of the covenant of good faith and fair dealing.
23
24

1 74. To achieve that goal, the CPA prohibits any person from using “unfair methods
2 of competition or unfair or deceptive acts or practices in the conduct of any trade or
3 commerce” RCW 19.86.020.

4 75. Plaintiff and members of the Class are “persons” as defined in RCW 19.86.010(1).

5 76. Defendant HomeStreet is a “person” as defined in RCW 19.86.010(1).

6 77. As alleged herein, HomeStreet’s routine policy and practices of assessing
7 Multiple Fees on a single transaction violates the CPA because it is unfair and deceptive.

8 78. HomeStreet’s policies and practices are deceptive because HomeStreet
9 deceptively misrepresents its fee practices, including in the Contract.

10 79. HomeStreet’s conduct was also unfair. These practices were, and are, likely to
11 cause substantial injury to consumers in the form of excessive, additional fees. These fees were
12 not reasonably avoidable by consumers and not outweighed by countervailing benefits.

13 80. Had Plaintiff and members of the Class been aware that they were going to be
14 charged fees in this manner, Plaintiff and members of the Class would not have entered into such
15 transactions and would not have incurred such fees.

16 81. As a direct and proximate result of HomeStreet’s deceptive acts and practices in
17 violation of the CPA, Plaintiff and members of the Class have been injured in their business or
18 property, as they have incurred more fees than they should have and have suffered monetary
19 damages for which HomeStreet is liable.

20 82. Plaintiff and members of the Class seek actual damages plus interest at the legal
21 rate, as well as all other just and proper relief afforded by the CPA. As redress for HomeStreet’s
22 repeated and ongoing violations, Plaintiff and members of the Class are entitled to, *inter alia*,
23 actual damages, treble damages, attorneys’ fees, and injunctive relief.

1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests
3 that the Court:

- 4 a. Certify this case as a class action, designating Plaintiff as Class Representatives
5 and designating the undersigned as Class Counsel;
- 6 b. Award Plaintiff and the Class actual and treble damages in an amount to be proven
7 at trial;
- 8 c. Award Plaintiff and the Class restitution in an amount to be proven at trial;
- 9 d. Award Plaintiff and the Class pre- and post-judgment interest in the amount
10 permitted by law;
- 11 e. Award Plaintiff and the Class attorneys’ fees and costs as permitted by law;
- 12 f. Declare HomeStreet’s practices outlined herein to be unlawful to the extent they
13 breach the contract;
- 14 g. Enjoin HomeStreet from breaching the contract;
- 15 h. Grant Plaintiff and the Class a trial by jury;
- 16 i. Grant leave to amend these pleadings to conform to evidence produced at trial;
17 and
- 18 j. Grant such other relief as the Court deems just and proper.

19 DATED this 8th day of January, 2024.

20 Respectfully submitted,

21 TOUSLEY BRAIN STEPHENS PLLC

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Counsel for Plaintiff and the Proposed Class

Exhibit A



SCHEDULE OF FEES FOR PERSONAL DEPOSIT ACCOUNTS EFFECTIVE AS OF AUGUST 5, 2022

ATM Fees	
HomeStreet Bank ATMs	Free
MoneyPass® Network ATMs	Free
Non-Affiliated Bank ATMs†	\$1.50 per transaction
† Non-affiliated ATM owner may apply a surcharge fee for using their ATM unless they participate in the MoneyPass® Network.	
Check Fees	
Cashier's Check	\$5 per check
Personal Check Orders	Varies by style
Temporary Checks (limited to a maximum of 4 sheets per year)	
Printed In-Branch	\$1 per sheet
Mailed to Customer	\$3 per sheet
Copies*	
Copy of Check or Deposit	\$3 per item
Statement Copy	\$5 per account per statement
* You can avoid this fee by viewing and downloading your available check images and statements in Online Banking, instead of ordering a copy from us.	
Collection Fees	
Domestic	\$25
Foreign (plus correspondent bank charge)	\$50
ATM Card and Debit Card Fees	
Replacement ATM or Debit Card	\$10 per card
Rush Delivery - new or replacement card	\$40 per card
Foreign Transactions‡	1% of transaction amount
‡ Foreign Transactions include ATM or Debit Card transactions made outside of the United States, even those in US dollars.	
Foreign Currency Orders	
Small Order Fee (for orders less than \$300 US equivalent)	\$10
For orders \$300 US equivalent or more	Free
Expedited Delivery	\$15
Notary Service	
HomeStreet Customer	Free
Non-HomeStreet Customer	As permitted by law

Online and Mobile Banking	
Online and Mobile Banking	Free
Online and Mobile Bill Pay	Free
eStatements	Free
Mobile Check Deposit	Free
Zelle Transactions (for incoming and outgoing Zelle payments)	Free
Insufficient Funds Fees	
Overdraft Fee [±]	\$30 per item
NSF (Non-Sufficient Funds) Return Item Fee [±]	\$30 per item
[±] Overdraft Fees are assessed only if account is overdrawn more than \$10.00. Fees are limited to a daily maximum of four (4) Overdraft Fees and/or NSF Returned Item Fees per day.	
Overdraft Protection Transfer Charge	\$8 each day a transfer is made
Research Fees	
Research Time (excluding research due to bank error)	\$75 per hour (1 hour minimum)
Item Copies	\$3 per copy
Safe Deposit Box Fees	
Annual Rental	Varies by box size
Key Deposit	\$10
Wire Tracer Fees	
Domestic	\$10
Foreign	\$55
Wire Transfer Fees	
Incoming - Domestic & Foreign	\$15
Outgoing - Domestic	\$35
Outgoing - Foreign	\$45
Other Fees	
Account Early Closure (within 90 days of opening)	\$15
Check Reject (due to poor check quality)	\$5 per item
Deposited Item Returned	\$10 per item
Garnishment or Levy	\$100 for each item
Returned Mail	\$5 per item
Stop Payment Request	\$30 per item
Verification of Deposit	\$10

HomeStreet Bank reserves the right to change this Schedule of Fees at any time, subject to applicable law. Please see Account Terms & Conditions for account-specific fees.