

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID JOHNSON, on behalf of himself)
 and all others similarly situated,)
)
 Plaintiff,)
)
 v.) Case No.)
)
 UMB BANK, N.A.)
)
 Serve: John C. Pauls)
 1010 Grand Ave. – P.O. Box 419226)
 Kansas City, Missouri 64141-9946,)
)
 And)
)
 UMB FINANCIAL CORPORATION, d/b/a)
 UMB BANK, N.A.)
)
 Serve: John C. Pauls)
 1010 Grand Ave. – P.O. Box 419226)
 Kansas City, Missouri 64141-9946,)
)
 Defendants.)
 _____)

Case No.

JURY TRIAL DEMANDED

FILED: CIRCUIT COURT
 JACKSON CO MO-KC
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CLASS ACTION PETITION

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

INTRODUCTION

2. Plaintiff David Johnson brings this action on behalf of himself and a class all similarly situated Missouri residents against Defendants UMB Bank, N.A. and UMB Financial Corporation, d/b/a UMB Bank, N.A. (collectively “UMB” or “the Bank” or “Defendant”), arising out of UMB’s unfair, deceptive, unconscionable, and bad faith assessment and collection of overdraft fees or insufficient funds fees (collectively “overdraft fees”).

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

4. UMB could simply and instantaneously decline a debit transaction when a customer has insufficient funds to complete the transaction, or warn the customer that an overdraft fee will be assessed if the transaction is completed. Instead, UMB routinely allows such transactions to proceed without adequate disclosure or notice to customers like Plaintiff, and then charges the customer an overdraft fee of \$36, even when the customer's purchase is relatively small, even less than \$1. As with Plaintiff David Johnson, UMB's overdraft fees often cost a customer hundreds of dollars in a matter of days or hours, even when the customer actually is overdrawn by only a few dollars or not at all. As described in detail herein, UMB achieves this result by systematically and unfairly manipulating its customers' transaction histories to maximize the number of overdraft fees assessed against a customer.

5. This deceptive scheme of charging exorbitant overdraft fees without adequate disclosure or notice to customers is intentionally designed to maximize overdraft fee revenue for UMB. And it is extraordinarily profitable. According to a 2008 FDIC study, nearly three-quarters of FDIC-regulated banks' service charge income was the result of overdraft fees—an amount estimated to exceed \$27 billion annually.

6. Plaintiff, on behalf of himself and the class, seeks damages, restitution, and injunctive relief for UMB's violations of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.* (Count I), breaches of contract and violations of the implied covenant of good faith and fair dealing (Count II), and for unjust enrichment (Count III).

7. Plaintiff, and other UMB customers who reside in Missouri at the filing of this Class Action Petition, have been injured by UMB's unlawful practices, including but not limited to: (a) re-ordering electronic debit transactions from the highest dollar amount to lowest dollar amount so as to deplete the customer's available funds as quickly as possible and thereby maximize the number of overdraft fees collected by UMB; (b) charging overdraft fees when in fact the Bank's customer has not overdrawn his or her checking account; (c) charging overdraft fees for purchases when UMB did not have to pay out more funds than were in the customer's checking account; (d) failing to disclose or properly disclose its overdraft policies; and (e); providing false and misleading account balance information at the point of sale and on the Bank's website.

PARTIES

8. Plaintiff David Johnson is a resident of Cass County, Missouri. At the time Plaintiff banked with UMB and incurred overdraft fees, he resided and banked in Jackson County, Missouri.

9. Defendant UMB Bank, N.A. is a national bank with its headquarters and principal place of business located in Kansas City, Jackson County, Missouri. It conducts business throughout Missouri, including in Jackson County, Missouri. Defendant UMB Bank, N.A. is controlled by and a subsidiary of Defendant UMB Financial Corporation, a Missouri corporation with its principal place of business in Kansas City, Jackson County, Missouri.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over UMB because UMB conducts business and maintains its headquarters and numerous bank branches in Missouri.

11. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 508.010.2(1) and Mo. Rev. Stat. § 407.025(1), because UMB resides in Kansas City, Jackson County, Missouri.

12. This case is not removable to federal court because Plaintiff, all putative class members, and Defendants are residents and/or citizens of Missouri at the time of this Petition. In addition, neither Plaintiff nor any member of the class asserts any federal question.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. UMB's Misleading, Unconscionable, Deceptive and Incomplete Disclosures in its Account Agreement

13. Plaintiff David Johnson has had checking accounts with UMB since 1998.

14. After opening a checking account with UMB, Plaintiff was provided with a booklet entitled "Important Information Regarding Your Deposit Accounts" ("Account Agreement"). That "Account Agreement" is attached hereto as Exhibit A. Such standardized agreements are drafted and imposed by UMB, which is the party of vastly superior bargaining strength, and thus constitute agreements of adhesion.

15. Within the 19 pages of 8-point font of this pamphlet is the following relevant provision:

"Electronic Presentment. Your account may be debited on the day an item is presented by electronic or other means, or at an earlier time based on notification received by us that an item drawn on your account has been deposited for collection in another financial institution. Any determination of your account balance for purposes of making a decision to honor or dishonor an item for insufficiency of available funds may be made at any time between the receipt of the presentment or notice and the time of return of the item, and no more than one determination need be made."

16. Such a provision directly states that a funds sufficiency determination may be made at "any time," even though this contradicts UMB's actual practice, as discussed herein, and contradicts another provision of the Account Agreement, discussed immediately below.

17. The term “available funds” is nowhere defined in the Account Agreement.

18. UMB also includes the following language in its Account Agreement:

“Insufficient Funds. If you do not have sufficient collected funds in your account to cover payment of checks you have written on your account or other debits when they are presented to the Bank for payment, the checks or debits will be posted to your account pending any decision to return or pay them. There will be a charge for each check or debit item so posted. We will reverse the posting and return the check or debit item unless you have arranged to be covered by Overdraft Protection . . . or unless in our sole discretion we decide to pay the check or debit item and create an overdraft in your account. Whether we decide to pay the check or debit item and create an overdraft will depend on various factors. These factors include the amount of the check or item and your banking history with us.”

19. In the foregoing, the Bank states, contrary to its actual practice, that the relevant time for determining whether a customer has “sufficient collected funds in your account to cover” debits is when those debits “are presented to the Bank for payment.” Further, UMB purports to give itself unfettered discretion to “create an overdraft in your account,” even if a customer has not “arranged to be covered by Overdraft Protection.” It uses this purported discretion to unfairly gouge customers, an unfair and deceptive trade practice and a violation of the covenant of good faith and fair dealing.

20. The contractual language relating to “Insufficient Funds” set forth above leads customers to believe that the Bank’s decision to create an overdraft is made on a case by case basis and depends on “various factors.” In reality, on information and belief UMB’s actual practice and policy is to uniformly and automatically create overdrafts for the purpose of maximizing overdraft fee revenue.

21. UMB makes no mention of a right to opt-out of overdraft coverage in its Account Agreement and otherwise hides from customers their right to opt-out of UMB’s “Overdraft Protection” scheme. And even if a customer did opt-out of Overdraft Protection, according to

UMB's Account Agreement, UMB would still retain the "sole discretion" to "create an overdraft in your account."

22. At no point does UMB state in its Account Agreement that its posting order will occur in anything other than the order in which transactions are made. Such a common sense policy would be the assumption of any reasonable account holder.

23. Because UMB does not follow its own Account Agreement as to the time of determining funds sufficiency, and because UMB's policies for making overdraft decisions are misleadingly left vague and obfuscatory in the Account Agreement, Plaintiff and the class members can have no idea how UMB will assess overdraft fees.

24. Even if Plaintiff was given a collection of discrete contractual clauses that purport to authorize or disclose UMB's practices described herein, this notice is neither sufficient nor effective. The interaction of several contractual clauses, themselves unclear, here combine to exert an unconscionable and materially deceptive effect which no lay person could possibly have foreseen. Furthermore, no collection of clauses or disclosure can grant UMB the right to manipulate and abuse checking account transactions for the sole purpose of achieving the most overdraft fees on a consumer's account, even if that account was not overdrawn.

25. UMB through its Account Agreement unfairly deceives and misleads customers by failing to adequately disclose and explain to Plaintiff and its other customers that UMB: (a) engages in a systematic policy of re-ordering electronic debit transactions from the highest dollar amount to lowest dollar amount so as to deplete the customer's available funds as quickly as possible while maximizing the number of overdraft fees; (b) charges overdraft fees even in situations where in fact a customer has not overdrawn his checking account; (c) charges overdraft fees even in situations where UMB in fact did not pay out more funds than were in the

customer's checking account; and (d) fails to provide accurate account balance information on the Bank's website or at the point of sale.

B. UMB Charges Overdraft Fees For Purchases Even When It Did Not Have to Pay Out More Funds Than Were in the Customer's Checking Account

26. 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. On the other hand, 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, but does not yet transfer the funds to the merchant. At some later time, the settlement process begins, wherein the funds are transferred from the customer's accounts to the merchant's accounts. This process is not instantaneous: it can take as long as several days for funds to be deposited in the merchant's account. The actual charge is not put through until the merchant submits its batch of transactions and the banking system transfers the funds. While the merchant has obtained an authorization from the individual's bank by swiping the card through its credit card terminal, the actual balance with the bank *does not change until settlement*, because the merchant has not actually collected the funds in question. The transaction is not actually "settled" (that is, money between the bank and the merchant changes hands) until the merchant submits the transaction to the bank some time after the customer's purchase.

27. UMB fails to disclose the difference between these two methods of using a debit card in its Account Agreement.

28. On information and belief, UMB uses this gap between authorization and settlement to its advantage to create an overdraft that never actually occurs and is strictly theoretical. The Bank retroactively constructs a picture of what the account balance *would have been had all transactions settled immediately, even when there are funds in the account to cover the purchases at the time of settlement.* That is, on information and belief, UMB makes overdraft fee determinations neither at the time of settlement, nor even at the time of authorization. Rather, at the time of settlement the Bank charges overdraft fees as if it had settled the transactions immediately. This is a fiction. Because the time between authorization and settlement is often one in which customers make deposits to their accounts to cover debits, UMB's policy is designed to charge more customers overdraft fees. These overdrafts are "theoretical" because due to the gap between authorization and settlement, the customer's account never actually was overdrawn for the purchase at issue, and overdraft fees are charged without cause ("Theoretical Overdraft"). Such Theoretical Overdrafts, further, are hidden on account statements issued by the Bank, which may show overdraft fees even where the account balance is never shown to be negative.

29. The Bank's use of Theoretical Overdrafts unlawfully caused financial losses to Plaintiff and improper gains to the Bank. For example, on June 26, 2009, a Friday, Plaintiff ended the day with an account balance of \$819.67, according to his account statement. Between the end of the business day on Friday, June 26 and Monday, June 29, Plaintiff made seventeen debits, in the amounts (as re-ordered by UMB) of \$420.00, \$74.51, \$53.02, \$40, \$31, \$21.03, \$12.71, \$10.15, \$6.31, \$5.71, \$5.69, \$5.38, \$4.37, \$4.13, \$1.62, \$1.45, and \$0.85, for a total of \$697.93. On June 29, Plaintiff was charged *seventeen* Overdraft fees of \$36 each, *even though he had a sufficient positive balance to cover all of those transactions at the time the overdraft*

fees were charged. These charges were incurred because the Bank manipulated the purchases and debits in the following manner in order to cause Theoretical Overdrafts:

- a. On June 26, Plaintiff's account balance ended the day at \$819.67.
- b. Between the end of June 26 and June 29, Plaintiff made 17 purchases and debits in the amount of \$697.93.
- c. Those purchases settled on June 29, leaving Plaintiff with an ending balance of \$215.74.
- d. Nonetheless, on June 30 the Bank charged Plaintiff seventeen overdraft fees in the total amount of \$612.
- e. Upon information and belief, UMB retroactively constructed a fictionalized account balance on June 29, deducting all "pending" transactions from Plaintiff's account even before settlement, in order to charge overdraft fees on June 30, even though Plaintiff had a positive account balance at that time.
- f. Moreover, UMB knew Plaintiff had deposited funds in his account well in excess of the amount actually needed by the Bank for settlement of the purchases.
- g. Upon information and belief, and contrary to what expressly appears on Plaintiff's bank statement and on UMB's website, the Bank did not apply Plaintiff's June 26 State of Kansas Direct Deposit in the amount of \$782.08 until June 29, and so considered Plaintiff overdrafted based on purchases made after the close of business on Friday, *even though it knew both that the Plaintiff had government-deposited funds available to settle such transactions and that such transactions could not in fact settle until June 29.*
- h. At no point did the Bank "lend" Plaintiff money or otherwise provide funds for a purchase not fully covered by Plaintiff's current account balance. In sum, UMB charges overdraft fees for purchases even when it suffers no harm, makes no extension of credit, and endures no loss of its own funds.

30. In all, UMB charged Plaintiff \$612 in fees for purchases totaling \$697.93, including \$540 in fees on just \$230.42 in charges. Incredibly, it also charged a \$36 overdraft fee on an \$0.85 purchase, another \$36 overdraft fee on a \$1.45 purchase, and another \$36 overdraft fee on a \$1.62 purchase.

31. Such machinations are not explained on UMB's periodic statements, online account statements, or transaction histories. UMB simply debits the overdraft fee without any explanation as to how the customer came to be charged that fee. As shown by Plaintiff's account statement, the date of the overdraft fee does not necessarily correspond to the date of the transaction, even though UMB uses the date of the transaction to determine whether an account has gone into overdraft. As such, UMB hinders its customers' efforts to prevent future overdraft fees. This charging of an overdraft fee when in fact an account has not been over-drafted is deceptive and contrary to UMB's Account Agreement.

C. UMB Re-orders Electronic Debit Transactions From the Highest Purchase Amount to Lowest Purchase Amount

32. As experienced by Plaintiff David Johnson, UMB manipulates and reorders debits from highest to lowest during given periods of time. On information and belief, the Bank reorders transactions for no reason having to do with the soundness of the banking system or operational efficiency, but only to maximize Overdraft fees it can charge.

33. UMB misleads and deceives its customers regarding its reordering practices. The Bank nowhere states in its Account Agreement that it posts transactions from highest dollar amount to lowest dollar amount.

34. In fact, on information and belief, the Bank automatically and systematically reorders all debit transactions from highest to lowest, and the Bank groups together debit card transactions that occurred on subsequent days with transactions that occurred on earlier days, and reorders them so that higher debits that occurred on subsequent days are posted to its customers' accounts before lower debits that occurred on earlier days, contrary to customers' reasonable expectations.

35. Transactions involving debit cards used by UMB customers, including the withdrawal of cash from ATM machines and point of sale transactions with vendors, are processed electronically. As a result, on information and belief, UMB is notified instantaneously when a transaction occurs. Notwithstanding the instantaneous nature of these electronic debit card transactions, UMB fails to post charges in the order in which they are authorized or received. Instead of processing such transactions in chronological order, UMB processes them starting with the largest debit and ending with the smallest debit. On information and belief, UMB follows this policy to maximize the number of overdraft fees charged to customers.

36. UMB's practices ensure that smaller charges will result in multiple overdraft fees. On information and belief, the Bank's policy is specifically designed to maximize the generation of overdraft fees by triggering overdraft fees for account charges that would not otherwise result in such fees.

37. As a result, Plaintiff and members of the putative class have been assessed overdraft fees for transactions that occurred when they actually had sufficient funds in their accounts to cover those transactions.

38. For example, the transactions on June 26 through June 29, 2009 were improperly reordered from high to low, causing *seventeen* separate overdraft fees. As explained above, Plaintiff disputes that any overdraft fees were properly charged during this time period. Even assuming, however, it was lawful for UMB to apply its Theoretical Overdraft policy—which Plaintiff disputes—UMB's improper high-to-low reordering of those transactions greatly increased the numbers and total amount of overdraft fees. As stated above, on June 26, 2009, a Friday, Plaintiff ended the day with an account balance of \$819.67, according to his account statement. Between the end of the business day on Friday, June 26 and Monday, June 29,

Plaintiff made seventeen debits, in the amounts (as re-ordered by UMB) of \$420, \$74.51, \$53.02, \$40, \$31, \$21.03, \$12.71, \$10.15, \$6.31, \$5.71, \$5.69, \$5.38, \$4.37, \$4.13, \$1.62, \$1.45, and \$0.85, for a total of \$697.93. On June 29, Plaintiff was charged seventeen overdraft fees of \$36 each. These charges were incurred because UMB manipulated the purchases and debits in the following manner in order to increase the number of overdraft fees:

- a. On June 26, Plaintiff's account balance ended the day at \$819.67.
- b. Between the end of June 26 and June 29, Plaintiff made 17 purchases and debits in the amount of \$697.93 and one deposit in the amount of \$94.
- c. Those purchases "settled" on June 29, leaving Plaintiff with an ending balance of \$215.74.
- d. Nonetheless, on June 30 the Bank charged Plaintiff seventeen overdraft fees in the total amount of \$612.
- e. The Bank reordered transactions and posted the highest dollar charges first, causing the smaller charges—for which there were sufficient funds—to incur overdraft fees.
- f. Had the Bank not reordered the transactions, Plaintiff would have been charged fewer overdraft fees.

39. Upon information and belief, had the Bank posted transactions in either a low-to-high order, or the order in which the transactions actually occurred, the Plaintiff would have been charged significantly fewer overdraft fees in both instances.

D. UMB Does Not Disclose its Practice of Charging Overdraft Fees on Overdraft Fees

40. Upon information and belief, the Bank categorizes overdraft fees in the same way as a purchase. As such, the Bank in effect charges overdraft fees on overdraft fees, an entirely unconscionable and predatory practice that is nowhere disclosed in the Account Agreement. Plaintiff was charged overdraft fees for a "negative balance" made exclusively of previously charged overdraft fees.

41. For example, on June 29, 2009, Plaintiff's account balance ended the day at \$215.74. On the next day, June 30, Plaintiff made \$750 in new deposits, leaving him with an account balance of \$965.74. Also on June 30, Plaintiff made three purchases in the amounts of \$15.95, \$29.28, and \$468.75, leaving Plaintiff with a balance of \$451.76.

42. Still, on July 1, Plaintiff was charged three overdraft fees for these purchases.

43. UMB charged Plaintiff three additional overdraft fees for those purchases because it considered him to have a "negative balance" made entirely of previously charged overdraft fees—*themselves improperly charged*. This exact pattern was repeated on July 6, 2009.

44. UMB uses such policies to exponentially increase the financial calamity it imposes on its customers. This charging of overdraft fees on overdraft fees is unfair and in breach of the Account Agreement.

E. UMB Bank Does Not Disclose its Practice of Charging Negative Balance Fees and Charges Such Fees Even When a Covering Deposit Has Been Made

45. On top of overdraft fees on overdraft fees, UMB charges customers, including Plaintiff, a daily \$8 "negative balance fee."

46. On both July 7 and July 8, 2009, Plaintiff was charged a "Negative Balance Fee" in the amount of \$8, following the series of events discussed in Section B, *supra*. The fee was purportedly assessed to Plaintiff for having a negative account balance.

47. UMB Bank does not disclose that it charges a "Negative Balance Fee" in its Account Agreement discussion of overdrafts and overdraft fees, nor does it disclose such fees anywhere in the body of its Account Agreement.

48. As shown *supra*, Plaintiff eliminated any negative balance incurred by his own purchases by making deposits on July 9, July 10, and July 24.

49. These covering deposits should, at the very least, have “restarted the clock” for the purpose of reducing the number of Negative Balance Fees. Instead, the Bank charged Plaintiff 17 Negative Balance Fees, all tied to the day of the first alleged overdraft, regardless of whether covering deposits were made.

50. Upon information and belief, the Bank categorizes overdraft fees in the same way as a purchase. As such, the Bank in effect charges Negative Balance Fees on overdraft fees, an entirely unconscionable and predatory practice that is nowhere disclosed in the Account Agreement.

51. From July 7 through August 14, Plaintiff was charged \$136 in Negative Balance Fees for “negative balances” made exclusively of previously charged overdraft fees.

52. Such a result—the continuous charging of a Negative Balance Fee for an “overdraft” made up entirely of improperly charged overdraft fees—is an unfair and unconscionable practice and violates the Account Agreement.

F. UMB Does Not Alert Customers That Overdraft Purchases Will Incur an Overdraft Fee and Otherwise Provides False and Misleading Account Balance Information to Deceive Customers into Incurring Unlimited Overdrafts

53. When Plaintiff made purchases with his debit card, UMB did not provide him access to accurate electronic balance information.

54. In some instances, UMB informs its customers, either explicitly or by omission, that they have a positive account balance when, according to UMB’s own information and policies, they have a negative account balance. On information and belief, with respect to Plaintiff’s transactions discussed in this Petition, UMB’s online account information did not warn Plaintiff that he had overdrawn, or was going to overdraw, his checking account with

further purchases and did not provide Plaintiff with sufficient information to determine if additional transactions would result in overdraft fees under UMB's policies.

55. Even when UMB has actual knowledge of outstanding transactions which it believes to have created a negative balance in a customer's account, the Bank encourages the customer to incur more overdraft fees by approving further debit card purchases and other electronic transactions without warning to the customer.

56. As the Board of the Federal Reserve stated in the "Discussion" section of its recent Final Rule limiting overdraft fees, "Even if a consumer checked his or her balance prior to a transaction, the balance may not be updated, so the consumer may inadvertently overdraw his or her account on the belief funds are available."

57. UMB's failure to disclose overdraft fees at the point of sale causes customers to repeatedly overdraft their accounts.

CLASS ACTION ALLEGATIONS

58. Plaintiff brings Counts II and III of this class action pursuant to Missouri Rule of Civil Procedure 52.08 on behalf of himself and the following class of similarly situated persons:

All Missouri residents at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action to the date of class certification maintained a checking account with UMB and incurred an overdraft fee (the "Class").

59. Plaintiff bring Count I of this class action pursuant to Missouri Rule of Civil Procedure 52.08 and Mo. Rev. Stat. § 407.025(3) on behalf of himself and the following sub-class of similarly situated persons:

All Missouri residents at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action to the date of class certification maintained a checking account with UMB for personal, family, or household use, and incurred an overdraft fee (the "Consumer Sub-Class").

60. Plaintiff reserves the right to modify or amend the definition of the proposed Class and Consumer Sub-Class.

61. Excluded from the Class and Consumer Sub-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 and Consumer Sub-Class are all persons who are not residents of the state of Missouri at the time this class action is commenced by the filing of this Class Action Petition.

62. The proposed Class and Consumer Sub-Class meet all requirements for class certification. The Class and Consumer Sub-Class satisfy the numerosity standards. The Class and Consumer Sub-Class each are believed to number in the thousands of persons in the state of Missouri. As a result, joinder of all class members in a single action is impracticable. On information and belief, class members can be identified by UMB's banking records. Class members may be informed of the pendency of this action by published and broadcast notice.

63. There are questions of fact and law common to the Class and Consumer Sub-Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class and Consumer Sub-Class arising from UMB's actions include, without limitation, whether UMB:

- a. re-orders electronic debit transactions from the highest dollar amount to lowest dollar amount so as to deplete the customer's available funds as quickly as possible while maximizing the number of overdraft fees;
- b. charges overdraft fees when in fact the customer had not overdrawn his or her checking account;
- c. charges overdraft fees when it did not have to pay out more funds than were in the customer's checking account;

- d. provides false and misleading account balance information on UMB's website and at the point of sale;
- e. does not clearly disclose and/or refuses to allow its customers to opt out of its "overdraft protection" program;
- f. does not obtain affirmative consent from its customers prior to processing transactions that will result in overdraft fees;
- g. does not alert its customers that a debit card transaction will trigger an overdraft fee, and does not provide its customers with an opportunity to cancel such transactions;
- h. breaches its contract with the Plaintiff and the other members of the putative Class and Consumer Sub-Class;
- i. breaches its covenant of good faith and fair dealing with Plaintiff and the other members of the putative Class and Consumer Sub-Class through its overdraft policies and practices;
- j. requires its customers to enter into standardized account agreements which include unconscionable provisions;
- k. is unjustly enriched through its overdraft policies and practices;
- l. violates the Missouri Merchandising Practices Act through its overdraft policies and practices; and
- m. continues to commit wrongdoing through its overdraft policies and practices.

64. 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.

65. A class action is the appropriate method for the fair and efficient adjudication of this controversy. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for

Defendant, and/or substantially impair or impede the ability of class members to protect their interests.

66. UMB has acted or refused to act on grounds generally applicable to the Class and Consumer Sub-Class.

67. Plaintiff is an adequate representative of the Class and Consumer Sub-Class because he is a member of the Class and Consumer Sub-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 and Consumer Sub-Class will be fairly and adequately protected by Plaintiff and his undersigned counsel, who have extensive experience prosecuting complex class action litigation.

68. Plaintiff's claims are typical of the claims of the Class and Consumer Sub-Class because they arise out of the same conduct, policies, and practices of UMB with respect to overdraft fees, and the same or substantially similar unconscionable provisions of UMB'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.

69. 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.

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

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT
(On behalf of the Consumer Sub-Class)

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

72. Plaintiff and Consumer Sub-Class members are persons who purchased merchandise (including but not limited to banking services) from UMB primarily for personal, family or household purposes within the meaning of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*

73. The acts and practices engaged in by UMB, and described herein, constitute unlawful, unfair, and/or fraudulent business practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*

74. UMB engaged in unlawful practices including deception, fraud, misrepresentation, unfair practice, and/or concealment, suppression, or omission of material facts in connection with its sale of merchandise in violation of Mo. Rev. Stat. § 407.020. These unlawful practices include, but are not limited to, the following policies and practices of UMB, and its deception in failing to adequately inform consumers thereof:

- a. Re-ordering electronic debit transactions from the highest dollar amount to lowest dollar amount so as to deplete the customer's available funds as quickly as possible while maximizing the number of overdraft fees.
- b. Charging overdraft fees when in fact the customer had not overdrawn his or her checking account;
- c. Charging overdraft fees when UMB did not have to pay out more funds than were in the customer's checking account;

- d. Charging overdraft fees on overdraft fees and negative balance fees on overdraft fees;
- e. Providing false and misleading transaction and account balance information on the Bank's website and at the point of sale;
- f. Failing to disclose or provide customers with an opportunity to opt out of UMB's overdraft protection scheme.

75. The above practices and policies are not adequately represented in UMB's Account Agreement. Such terms are deceptive in that consumers are not sufficiently informed of the true practices of the Defendant.

76. UMB's policies and practices as alleged herein offend the public policy of the State of Missouri, are unethical, oppressive, and unscrupulous, and cause substantial injury to Missouri consumers.

77. Through its policies and practices as alleged herein, UMB has violated its duty of good faith to its customers in violation of the Missouri Merchandising Practices Act.

78. Through its policies and practices as alleged herein, UMB has engaged in unconscionable acts and practices and used unconscionable contracts and contract terms.

79. UMB's policies and practices as alleged herein are unconscionable because UMB has taken advantage of an unequal bargaining position and obtained a contract or term which results in a gross disparity of values exchanged.

80. As a result of UMB's employment of these unlawful acts and practices, Plaintiff and putative Consumer Sub-Class members suffered an ascertainable loss of money or property in the form of unlawful overdraft fees assessed by UMB.

81. Plaintiff and putative Consumer Sub-Class members are thus entitled to all relief available under the Missouri Merchandising Practices Act.

COUNT II

**BREACH OF CONTRACT, INCLUDING BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND FAIR DEALING**
(On behalf of the Class)

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

83. A covenant of good faith and fair dealing is implied in all contracts in Missouri, including Plaintiff's and Class members' Account Agreements with UMB.

84. The covenant of good faith and fair dealing prevents one party to a contract from exercising a judgment conferred by the express terms of agreement in such a manner as to evade the spirit of the transaction or so as to deny the other party the expected benefit of the contract. When a contract provides a single party with discretion, that discretion is not unlimited; it must not be exercised to deprive the other party of the benefit of the contractual relationship or evade the spirit of the bargain. UMB exercises judgment and discretion to choose whether to impose overdraft fees by posting transactions in any order it wishes, by unilaterally deciding whether to honor requested transactions when customers have insufficient funds, or by unilaterally determining when customers have insufficient funds.

85. Because the occurrence, amount, and frequency of overdraft fees are set unilaterally by UMB, it has an obligation to impose overdraft fees on consumers' bank accounts in good faith. UMB has breached this obligation by, among other things, intentionally delaying and rearranging the posting of transactions to accounts in a manner which maximizes the amount of overdraft fees. UMB thereby evades the spirit of its agreements with customers, including Plaintiff.

86. Further, the good faith obligation requires that a contracting party not prevent or hinder performance by the other party. Through posting inaccurate and misleading information about Plaintiff's and Class members' transactions and account balances, UMB prevents or hinders its customers' performance of the banking relationship and deprives customers of the opportunity to avoid excessive overdraft fees.

87. Individual contractual clauses in UMB's Account Agreement, themselves vague and misleading, combine to exert a further breach of the covenant of good faith and fair dealing. No lay person could possibly read the Account Agreement to permit the imposition of overdraft fees in the manner employed by UMB, as alleged herein.

88. UMB has breached the covenant of good faith and fair dealing in the Account Agreement through its overdraft fee policies and practices as alleged herein.

89. Additionally, UMB breaches its contractual obligation to charge overdraft fees only when an overdraft occurs through its policy of charging Plaintiff and other customers overdraft fees when in fact the customer has not overdrawn his or her checking account.

90. UMB breaches its contractual duty to charge overdraft fees only when an overdraft occurs through its policy of charging Plaintiff and other customers overdraft fees even when UMB did not have to pay out more funds than were in the customer's checking account.

91. Plaintiff and members of the putative Class have performed all, or substantially all, of the obligations imposed on them under the Account Agreement.

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

COUNT III

UNJUST ENRICHMENT
(On behalf of the Class)

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

94. UMB 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.

95. UMB has been enriched by a benefit in the form of improper overdraft fees.

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

97. It would be unjust to allow UMB to retain the benefit.

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

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

PRAYER FOR RELIEF

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

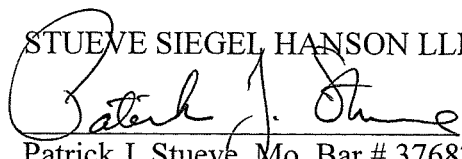
- (a) Certification of the proposed Class and Consumer Sub-Class;
- (b) Injunctive relief enjoining UMB from charging overdraft fees, or causing overdraft fees to be charged, under their current policies and from engaging in the wrongful, deceptive, unfair, and unconscionable practices alleged herein;
- (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 UMB by Plaintiff and the putative Class as a result of the wrongs alleged herein;
- (f) Pre- and post- judgment interest at the maximum rate permitted by applicable law;
- (g) Attorneys' fees, costs, and expenses as available under the law.

JURY DEMAND

Plaintiff David Johnson, on behalf of himself and the putative Class and Consumer Sub-Class, demands a trial by jury on all issues that may be tried to a jury.

Dated: April 5, 2010

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