

FILED
04-13-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV000854
Honorable Stephen E
Ehlke
Branch 15

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

TAMMY SCHMIDT,
on behalf of herself and all others
similarly situated
P.O. Box 471
St. Nazianz, WI 54232

Case No.: 21-cv-
Case Code: 30303

Plaintiff,

v.

JURY TRIAL DEMANDED

HEARTLAND FINANCIAL USA, INC.
c/o Registered Agent
Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, WI 53717

Defendant.

CLASS ACTION COMPLAINT

Plaintiff, Tammy Schmidt ("Plaintiff"), on behalf of herself and all persons similarly situated, alleges the following based on personal knowledge as to allegations regarding herself and on information and belief as to others.

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and a class of all similarly situated consumers against Defendant, Heartland Financial USA, Inc. ("Heartland" or "Defendant"), arising from Heartland's routine practice of assessing two or more non-sufficient funds fees ("NSF Fees") and overdraft fees ("OD Fees") on a single transaction.

2. Defendant's improper scheme to extract funds from accountholders has victimized Plaintiff and thousands of other similarly situated consumers. Unless enjoined, Defendant will continue to engage in this scheme and continue to cause substantial injury to its consumers.

3. Plaintiff and other Heartland customers have been injured by the Bank's practices. On behalf of herself and the putative class, Plaintiff seeks damages, restitution and injunctive relief.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff, Tammy Schmidt, is a citizen and resident of St. Nazianz, Wisconsin and a Wisconsin Bank & Trust accountholder.

5. Defendant, Heartland Financial USA, Inc. owns several banks throughout the country including, but not limited to, Arizona Bank & Trust, Bank of Blue Valley, Citywide Banks, DB&T, FirstBank & Trust, Illinois Bank & Trust, Minnesota Bank & Trust, New Mexico Bank & Trust, Premier Valley Bank, Founders Community Bank, Yosemite Bank, Rocky Mountain Bank, and Wisconsin Bank & Trust (collectively, the "Heartland Banks"). The disclosures amongst Heartland's affiliate banks are uniform and put forth by Heartland on behalf of its affiliates. Heartland has \$17 billion in assets and has its principal place of business in Iowa.

6. This Court has original, subject matter jurisdiction of this action under Wis. Stat. § 801.04.

7. Venue is proper in this county pursuant to Wis. Stat. § 801.50 because Heartland does substantial business here.

BACKGROUND FACTS

HEARTLAND BANK CHARGES MORE THAN ONE NSF FEE ON THE SAME ITEM

8. Prior to July of 2020, Heartland's Account Documents, allowed it to charge a *single* NSF Fee or a *single* overdraft fee ("OD Fee") when an "item" is returned for insufficient funds or paid despite insufficient funds.

9. After July 2020, for the first time, Heartland amended its Account Documents to inform accountholders that they may incur an NSF fee for each "presentment" of an item.

10. While Heartland's disclosures changed, its practices didn't. Heartland breached its Account Documents with its accountholders by charging more than one NSF Fee on the same item, since its contract explicitly stated—and reasonable consumers understand—that the same item can only incur a single NSF or OD Fee.

11. Heartland's abusive practices are not standard within the financial services industry. Indeed, major banks like JP Morgan Chase—the largest consumer bank in the country—charge one NSF Fee per item, even if that item is resubmitted for payment multiple times. And while some other banks engage in the same practices as Heartland, they clearly disclose those charges in the deposit agreements with their customers.

12. Heartland's Account Documents do not say that Heartland repeatedly charges customers multiple NSF fees on a single item. To the contrary, the Account Documents indicate it will only charge a single NSF Fee or OD Fee on an item.

A. Plaintiff's Experience.

13. In support of her claims, Plaintiff offers examples of fees that should not have been assessed against her checking account. As alleged below, Heartland: (a) reprocessed previously declined electronic transactions that they made; and (b) charged an additional fee upon reprocessing.

14. As examples, in December 2017, September 2018, December 2018, and on other occasions, Plaintiff was charged multiple fees on the same payment when it was reprocessed more than once.

15. Plaintiff understood each payment to be a single item as is laid out in Wisconsin Bank & Trust's contract, capable at most of receiving a single NSF Fee (if Heartland returned it) or a single OD Fee (if Heartland paid it).

16. Heartland also understood each payment attempt to be a single item, as denoted by the fact that the subsequent payments were marked as RETRY PYMTS on Plaintiff's statements.

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

17. Heartland's Account Documents state that Heartland will assess a single fee of \$35 for a "returned item" or "transaction" that is returned due to insufficient funds.

18. The Fee Schedule makes a clear promise:

Overdraft Fees	\$35.00
• Overdraft Fee - Nonsufficient Funds	
• Returned Item Fee - Nonsufficient Funds	

Fees apply to transactions created by check, in-person withdrawal, recurring debit card transactions, or other electronic means. Overdraft fees will not be imposed on ATM withdrawals or one-time debit card items unless the customer has opted in"

Please see attached **Exhibit A**.

19. The same check or ACH payment is not a new “returned item” or “transaction” each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit the item.

20. Even if Heartland reprocesses an instruction for payment, it is still the same item or transaction. Defendant’s reprocessing is simply another attempt to effectuate an accountholder’s original order or instruction.

21. Moreover, by expressly linking OD Fees and NSF Fees in the Account Documents, Heartland bolsters the reasonable assumption that only a single fee can be assessed on an item. Here’s why: For an item charged an “overdraft fee” and thus paid into overdraft, there is no chance it can be subject to reprocessing and thus no chance it could be subject to a second or third fee, since it has already been paid. No reasonable contract reading could allow the other fee mentioned in the disclosure—the NSF Fee—to be treated so differently and assessed two or three times on the same item.

22. The Account Documents described above never discuss a circumstance where Heartland may assess multiple NSF or OD Fees for an item that was returned for insufficient funds and later reprocessed one or more times and returned again.

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

24. Customers reasonably understand, based on the language of Heartland’s Account Documents, that Defendant’s reprocessing of checks or ACH payments are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger additional NSF Fees. In other words, it is always the same item.

25. For the first time ever in July 2020, Heartland amended its Fee Schedule to state that accountholders may incur multiple fees if the same item is presented multiple times:

Overdraft Fees	\$35.00
<ul style="list-style-type: none">• Overdraft Fee - Nonsufficient Funds• Returned Item Fee - Nonsufficient Funds per item per presentment	

Please see attached **Exhibit B**.

26. As Heartland discovered by July 2020, other banks like Heartland that employ this abusive multiple-fee practice know how to plainly and clearly disclose it. Indeed, other banks and credit unions that do engage in this abusive practice disclose it expressly to their accountholders—something Heartland did not do until recently.

27. For example, First Hawaiian Bank engages in the same abusive practices as Heartland, but at least discloses it in its online banking agreement, in all capital letters, as follows:

YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND RESUBMISSION.¹

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

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

¹ *Terms and Conditions of FHB Online Services*, First Hawaiian Bank 40, https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RXP1.pdf (last accessed September 25, 2019) (emphasis added).

² *Consumer and Small Business Online Access Agreement*, Klein Bank ¶ H, <https://www.kleinbankonline.com/bridge/disclosures/ib/disclose.html> (last accessed September 25, 2019) (emphasis added).

29. Central Pacific Bank, a leading bank in Hawaii, states in its Fee Schedule under the “MULTIPLE NSF FEES” subsection:

Items and transactions (such as, for example, checks and electronic transactions/payments) returned unpaid due to insufficient/non-sufficient (“NSF”) funds in your account, may be resubmitted one or more times for payment, and a \$32 fee will be imposed on you each time an item and transaction resubmitted for payment is returned due to insufficient/nonsufficient funds.³

30. BP Credit Union likewise states: “We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item and resubmission(s) of the returned item.”⁴

31. Regions Bank likewise states:

If an item is presented for payment on your account at a time when there is an insufficient balance of available funds in your account to pay the item in full, you agree to pay us our charge for items drawn against insufficient or unavailable funds, whether or not we pay the item. If any item is presented again after having previously been returned unpaid by us, you agree to pay this charge for each time the item is presented for payment and the balance of available funds in your account is insufficient to pay the item.⁵

³ *Miscellaneous Fee Schedule*, Central Pacific Bank 1 (March 4, 2021), <https://www.cpb.bank/media/2776/fee-001.pdf>.

⁴ *Membership and Account Agreement*, BP Federal Credit Union, ¶ 14(a), <https://www.bpfcu.org/images/docs/membership-agreement.pdf> (last accessed March 2, 2021).

⁵ *Deposit Agreement*, Regions Bank, ¶ 19, <https://www.regions.com/-/media/pdfs/terms/Deposit-Agreement.pdf?revision=89ba3f19-6503-434b-8c33-e6ca0cb7f717&la=en&hash=B8A7EC6CD761AF127881AD212CC231E1> (last accessed March 2, 2021).

32. First Financial Bank states, “Merchants or payees may present an item multiple times for payment if the initial or subsequent presentment is rejected due to insufficient funds or other reason (representment). Each presentment is considered an item and will be charged accordingly.”⁶

33. Andrews Federal Credit Union states:

You understand and agree that a merchant or other entity may make multiple attempts to resubmit a returned item for payment. Consequently, because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to use for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item. When we charge a fee for NSF items, the charge reduces the available balance in your account and may put your account into (or further into) overdraft.⁷

34. Consumers Credit Union states:

Consequently, because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.⁸

⁶ *Special Handling/Electronic Banking Disclosures of Charges*, First Financial Bank 2 (Aug. 2018), https://www.bankatfirst.com/content/dam/first-financial-bank/eBanking_Disclosure_of_Charges.pdf.

⁷ *Terms and Conditions*, Andrews Federal Credit Union (August 2020), ¶ 6, https://www.andrewsfcu.org/AndrewsFCU/media/Documents/Terms-and-Conditions_Aug-2020.pdf (last accessed March 2, 2021).

⁸ *Member Services Guide*, Consumers Credit Union, ¶ 11a, https://www.myconsumers.org/docs/default-source/default-document-library/ccu_membership_booklet_complete.pdf?sfvrsn=6 (last accessed March 2, 2021).

35. Wright Patt Credit Union states:

Consequently, because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and represented regardless of the number of times an item is presented or represented to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.⁹

36. Railroad & Industrial Federal Credit Union states:

Consequently, because we may charge an NSF fee for an NSF item each time it is presented, we may charge you more than one NSF fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.¹⁰

37. Partners 1st Federal Credit Union states:

Consequently, because we may charge a fee for an NSF item each time it is presented, we may charge you more than one fee for any given item. Therefore, multiple fees may be charged to you as a result of a returned item and resubmission regardless of the number of times an item is submitted or resubmitted to us for payment, and regardless of whether we pay the item or return, reverse, or decline to pay the item.¹¹

⁹ *Important Account Information*, Wright Patt Credit Union, ¶ 6.1, <https://www.wpcu.coop/en-us/PDFDocuments/Important%20Account%20Information%20Disclosure%20-%20WPCU.pdf> (last accessed March 2, 2021).

¹⁰ *Important Account Information for Our Members*, Railroad & Industrial Federal Credit Union (August 1, 2019), p. 2, <https://www.rifcu.org/Documents/Disclosures/Account-Terms-Conditions.aspx> (last accessed March 2, 2021).

¹¹ *Consumer Membership and Account Agreement*, Partners 1st Federal Credit Union (September 15, 2019), p. 11, https://s3.us-east-1.amazonaws.com/assets.partners1stcu.org/uploads/PDFs/Consumer_Account_Agreement.pdf (last accessed March 2, 2021).

38. Members First Credit Union states:

We reserve the right to charge an Non-Sufficient Funds Fee (NSF Fee) each time a transaction is presented if your account does not have sufficient funds to cover the transaction at the time of presentment and we decline the transaction for that reason. **This means that a transaction may incur more than one Non-Sufficient Funds Fee (NSF Fee) if it is presented more than once . . .** we reserve the right to charge a Non-Sufficient Funds (NSF Fee) for both the original presentment and the representment [.]¹²

39. Community Bank, N.A. states:

We cannot dictate whether or not (or how many times) a merchant will submit a 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 been rejected or returned.¹³

40. RBC Bank states:

We may also charge against the Account an NSF fee for each item returned or rejected, including for multiple returns or rejections of the same item.¹⁴

41. Diamond Lakes Credit Union states:

Your account may be subject to a fee for each item regardless of whether we pay or return the item. We may charge a fee each time an item is submitted or resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned item and resubmission(s) of the returned item.¹⁵

¹² *Membership and Account Agreement*, Members First Credit Union, ¶ 14(a), http://www.membersfirstfl.org/files/mfcuf1/1/file/Membership_and_Account_Agreement.pdf (last accessed March 2, 2021).

¹³ *Community Bank, N.A., Overdraft and Unavailable Funds Practices Disclosure*, p. 5, <https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure.pdf> (last accessed March 2, 2021).

¹⁴ *Service Agreement for Personal Accounts*, RBC Bank, p. 13, <https://www.rbcbank.com/siteassets/Uploads/pdfs/Service-Agreement-for-Personal-Accounts.pdf> (last accessed March 2, 2021).

¹⁵ *Terms and Conditions, Membership and Account Agreement*, Diamond Lakes Credit Union, ¶ 14(a), <https://www.diamondlakesfcu.org/termsconditions.html> (last accessed March 2, 2021).

42. Parkside Credit Union states:

If the Credit Union returns the item, you will be assessed an NSF Fee. Note that the Credit Union has no control over how many times an intended payee may resubmit the same check or other item to us for payment. In the event the same check or other item is presented for payment on more than one occasion, your account will be subject to an additional charge on each occasion that the item is presented for payment. There is no limit to the total fees the Credit Union may charge you for overdrawing your account.¹⁶

43. In the Account Documents in effect at the time the relevant transactions occurred, Heartland provided no such disclosure, and in so doing, breached its contracts with accountholders, engages in bad faith conduct, and deceives its accountholders

C. The Imposition of Multiple NSF Fees on a Single Item Breaches Heartland's Duty of Good Faith and Fair Dealing.

44. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are vested with a discretionary power over the other party. In such circumstances, the party with discretion is required to exercise that power and discretion in good faith. This creates an implied promise to act in accordance with the parties' reasonable expectations and

¹⁶ *Membership and Account Agreement*, Parkside Credit Union, ¶ K, https://www.parksidecu.org/_/kcms-doc/1043/44277/Membership-and-Account-Agreement.pdf?__cf_chl_captcha_tk__=add6ebea42df3685074decd4b16c1f86a8369dc9-1580434763-0-AfXmB7FcyYTqzK9oMNBMSKM6k5fnKS5Xf-z7p3Tv-Pt951tDs7wM8yaaIV06w718t2nomyWR1Q8COWgpfGE07FJWZUeFkJN6lxbXDZG1SvidTWhYm9l85AbCd5afw2imyGdtdzKhXl9bQ9TYkjOITVM4w8OFJOtE3wVIHrEITnQnSfoR5mZxM5O0bu4f_FHoHiJj0XsjNkVoGblk0-lti6-gMn-Wcu_o87SGQW6dOUF2i6rHGIM_CkdI-ULanKI2NS3KlhkYAUaUNatN9Jdwr7Plc6oJozMbZQeczuO7VlbRnuCFD0tjzkw1lsnof7uaRvLRAkfKYi3wh0tUU1c_Y6N4aH1qN8SPftOn8TYJHO7OoILvpMfamNTqv_djpbUl3GVA (last accessed March 2, 2021).

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

45. Heartland exercises its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it defines “item” in a way that directly leads to more NSF Fees. Further, Heartland abuses the power it has over customers and their bank accounts and acts contrary to their reasonable expectations under its Account Documents. This is a breach of Heartland’s implied covenant to engage in fair dealing and act in good faith.

46. By exercising its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging more than one NSF Fee on a single item, Heartland breaches the reasonable expectation of Plaintiff and other customers and in doing so violates the implied covenant to act in good faith.

47. It was bad faith and totally outside Plaintiff's reasonable expectations for Heartland to use its discretion to assess two or three NSF Fees for a single attempted payment.

CLASS ACTION ALLEGATIONS

48. Description of the Class: Plaintiff brings this class action pursuant to Wis. Stat. § 803.08 on behalf of herself and the classes of persons ("the Class") defined as follows:

- a. All consumers who, during the applicable statute of limitations up until July 2020, were charged multiple fees on the same item by any of the Heartland Banks.
- b. All consumers in the state of Wisconsin who, during the applicable statute of limitations up until July 2020, were charged multiple fees on the same item by any of the Heartland Banks (Wisconsin subclass).

49. Excluded from the Class are Heartland's officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assignees. Also excluded from the Class are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff. Plaintiff reserves the right to modify or amend the class definition upon receiving meaningful discovery.

50. Numerosity: The members of the proposed Class are so numerous that individual joinder of all members is impracticable. The exact number and identities of the members of the proposed Class are unknown at this time but can be ascertained only through appropriate discovery. Based on information and belief, Plaintiff estimates the number of class members to be in the thousands.

51. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiff and the Class, and those questions substantially predominate over any questions that may affect individual Class members. Common questions of law and fact include whether:

- a. Whether Heartland charged multiple fees on a single item;
- b. Whether Heartland breached its contract;
- c. The proper method or methods by which to measure damages; and
- d. The declaratory and injunctive relief to which the Class is entitled.

52. Typicality: Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by the actions of Heartland.

53. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex and consumer class action litigation. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

54. Superiority of Class Action: Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Heartland's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impractical. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts

in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the Class members.

55. Risk of Inconsistent or Varying Adjudication: Class action treatment is proper, and this action should be maintained as a class action because the risks of separate actions by individual members of the Class would create a risk of: (a) inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Heartland as the parties opposing the Class; and/or (b) adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members not party to the adjudication or would substantially impair or impede their ability to protect their interests.

56. Action Generally Applicable to Class as a Whole: Heartland has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

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

57. Plaintiff realleges the preceding paragraphs as if fully set forth herein.

58. Plaintiff and Heartland contracted for checking account services, as embodied in Heartland's Account Documents.

59. Heartland breached the terms of the contract as explained above.

60. Plaintiff and members of the putative Class have performed all of the obligations on them pursuant to Defendant's agreements.

61. Plaintiff and members of the putative Class have sustained monetary damages as a result of each of Defendant's breaches.

62. Wisconsin law mandates that an implied covenant of good faith and fair dealing govern every contract. The covenant of good faith and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

63. This good faith requirement extends to the manner in which a party employs discretion conferred by a contract.

64. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

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

66. Heartland breached the covenant of good faith and fair dealing as explained herein.

67. Each of Defendant's actions was done in bad faith and were arbitrary and capricious.

68. Plaintiff and members of the putative Class have performed all of the obligations imposed on them pursuant to the Account Agreements.

69. Plaintiff and members of the putative Classes have sustained monetary damages as a result of each of Defendant's breaches of the covenant of good faith and fair dealing.

**SECOND CLAIM FOR RELIEF
VIOLATION OF WIS. STAT. § 100.18
(On Behalf of Plaintiff and the Class)**

70. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing paragraphs of this Complaint as if fully set forth herein.

71. Defendant made representations to Plaintiff and members of the putative Class with the intent to induce an obligation, i.e., the opening of an account with a Heartland Bank.

72. The representations by Defendant, as stated above, were untrue, deceptive, or misleading.

73. Plaintiff and members of the putative Class did not discover Defendant's untrue, deceptive, or misleading representations until after they had opened accounts and Defendant had assessed multiple fees for single "items" or transactions.

74. Defendant's misrepresentations materially caused pecuniary losses to Plaintiff and members of the putative Class.

REQUEST FOR RELIEF

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

- a. Certify this case as a class action, designating Plaintiff as class representative and designating the undersigned as Class Counsel;
- b. Award Plaintiff and the Class actual damages in an amount to be proven at trial;
- c. Award Plaintiff punitive damages in an amount to be proven at trial;
- d. Award Plaintiff and the Class restitution in an amount to be proven at trial;
- e. Award Plaintiff and the Class pre- and post-judgment interest in the amount permitted by law;
- f. Award Plaintiff and the Class their attorneys' fees and costs as permitted by law;
- g. Enjoin Heartland from engaging in the practices outlined herein;

- h. Grant Plaintiff and the Classes a trial by jury;
- i. Grant leave to amend these pleadings to conform to evidence produced in discovery and at trial; and
- j. Grant such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, and all others similarly situated, hereby demand a trial by jury on all issues in this Class Action Complaint that are so triable.

Dated this 13th day of April, 2021.

HAWKS QUINDEL, S.C.

Attorneys for Plaintiff and the putative class

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* *Pro hac vice* application to be filed

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