



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SARAH CRAIG

Plaintiff

– and –

PRESIDENT'S CHOICE FINANCIAL

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued by: _____
Local Registrar

Court House
393 University Avenue,
10th Floor
Toronto, Ontario
M5G 1E6

TO: PRESIDENT'S CHOICE FINANCIAL

600-500 Lakeshore Blvd. West
Toronto, Ontario
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CLAIM

NATURE OF ACTION

1. This action arises from the practice of President's Choice Financial ("PCF") charging multiple Non-Sufficient Funds ("NSF") fees on a rejected payment or bounced cheque that had been presented and then subsequently re-presented one or more times. PCF had failed to fully and fairly disclose to its customers the possible imposition of the second or more NSF Fee in its agreement with its clients, including the Plaintiff, Ms. Sarah Craig ("Sarah" or the "Plaintiff") and the Plaintiff Class members. This practice is in violation of the terms of PCF's contract with the Plaintiff Class members. As a result of its unlawful practice, PCF has made substantial revenue, accruing millions of dollars per year by charging illegitimate fees to Plaintiff Class members.

2. The unlawful charges occur when a depositor makes a payment or issues a cheque without sufficient funds in his or her bank account. The first and only lawful charge is applied when the payee attempts to collect and PCF rejects the payment, charging an NSF Fee (currently \$40.00 CAD) to the depositor's account. When subsequent attempts are made by the payee to re-present the same transaction for payment that was previously rejected, PCF charges another NSF fee each re-presentment for payment ("Duplicative NSF Fees").

3. The burden of these Duplicative NSF Fees has a far more adverse impact on low-income Canadians who are unable to shoulder the additional financial burden caused by PCF's punitive scheme, as they are more likely to maintain low bank accounts balances and are more likely to use online vendors in lieu of credit cards.

4. The Plaintiff does not dispute PCF's right to reject a transaction and charge a single NSF Fee, but PCF's practice of charging Duplicative NSF Fees on each subsequent attempt to reprocess the same already rejected transaction is a breach

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of its contract with Class Members, its duty to exercise its contractual discretion in good faith, and the applicable consumer protection legislation.

5. In PCF's contract with each class member, it has failed to disclose its practice of charging Duplicative NSF fees. Under its unlawful scheme, each time PCF unilaterally reprocesses an already rejected payment or cheque, it becomes a new, unique transaction that is subject to a fresh NSF Fee. However, PCF's standard form contract does not give the Defendant any express authority to engage in this practice. The standard form contract drafted by the Defendant is identical for all Class Members.

6. PCF's practice also violates consumer protection legislation in Ontario, including the *Consumer Protection Act*, 2002, S.O. 2002, C.30, Sched. A, where the Plaintiff resides and where President's Choice Financial is headquartered, and constitutes unjust enrichment. The Defendant has been financially enriched, with a corresponding deprivation to the Class Members, for no juristic reason.

DEFINED TERMS

7. The capitalized terms used in this Statement of Claim have the meanings indicated below:

(a) "CJA" means the *Courts of Justice Act*, R.S.O., c. C. 43, as amended;

(b) "Class" and "Class Members" means:

All Canadians who have or had a personal deposit account holder with President's Choice Financial since September 14, 2020 and whose PC Money Account has been charged multiple NSF fees by President's Choice Financial arising out of one or more presentments of the same transaction for payment;

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- (c) "Consumer Protection Act" means the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A;
- (d) "Class Proceeding" means this putative class action;
- (e) "CPA" means the *Class Proceedings Act*, 1992, S.O. 1192 c. 6, as amended;
- (f) "Defendant" means President's Choice Financial;
- (g) "Equivalent Consumer Protection Statutes" means the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2, the *Fair Trading Act*, R.S.A. 2000, c. F-2, the *Consumer Protection and Business Practices Act*, S.S. 2013, c. C-30.2, the *Business Practices Act*, C.C.S.M., c. B120, the *Consumer Protection Act*, C.Q.L.R., c. P-40.1 and the *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, as amended; and
- (h) "NSF Fee" means non-sufficient funds fee.

RELIEF CLAIMED

8. The Plaintiff claims on her own behalf and on behalf of the other Class Members:

- (a) an order certifying this proceeding as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as representative plaintiff;
- (b) a declaration that the Defendant is liable to the Plaintiff and Class Members for breach of contract, breach of its duty to exercise its contractual discretion in good faith, and breach of the applicable consumer protection legislation;

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- (c) a declaration that the Defendant is liable to the Plaintiff and Class Members for unfair practices under the *Consumer Protection Act* and equivalent legislation in other provinces;
- (d) a declaration that the Defendant was unjustly enriched by the acts and omissions pleaded herein;
- (e) damages equivalent to the value of all monies paid by the Plaintiff and Class Members to the Defendant resulting from the charging of Duplicative NSF Fees;
- (f) an order for disgorgement of the value of all monies illegally paid by the Class Members to PCF;
- (g) an equitable rate of interest on all sums found due and owing to the Plaintiff and Class Members;
- (h) punitive damages in an amount that this Court finds appropriate;
- (i) pre-judgment interest pursuant to section 128 of the *CJA*;
- (j) post-judgment interest pursuant to section 129 of the *CJA*;
- (k) the costs of this action on a substantial indemnity basis plus applicable taxes and the costs of distribution of an award under section 24 or 25 of the *CPA*, including the costs of notice associated with distribution and the fees payable to a person administering any distribution pursuant to section 26 of the *CPA*; and
- (l) such further and other relief as considered just.

PARTIES

9. The Plaintiff, Sarah, is an individual who resides in the City of Kingston, in the Province of Ontario.

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10. The Defendant, PCF, is a Canadian corporation with its headquarters and principal place of business located in Toronto, Ontario. Among other things, PCF is engaged in the business of providing retail banking services to consumers, including the Plaintiff and members of the Class. PCF operates Automatic Teller Machines, and conducts business, throughout the province of Ontario.

11. The Defendant's annual report indicates PCF earned in excess of \$1,182,000,000.00 in banking services revenue, including NSF Fees, from Canadian customers in 2021.

12. The Defendant maintains customer transaction data containing the information necessary to ascertain the Class Members and calculate the value of monies paid by individual Class Members to the Defendant as a result of the Defendant's practice of charging of Duplicative NSF Fees.

13. PCF promotes itself as adopting a simplified and accessible approach to everyday banking and one that believes in the power of good: good service and **good financial well-being**. PCF's representations are untrue and misleading.

THE CLASS

14. The Plaintiff is seeking certification of the following class (collectively referred to as the "Class" or "Class Members"):

All Canadians who have or had a personal deposit account holder with President's Choice Financial since September 14, 2020 and whose PC Money Account has been charged multiple NSF fees by President's Choice Financial arising of out of one or more presentments of the same transaction for payment.

THE PLAINTIFF AND CLASS EXPERIENCE

15. PCF advertised that its clients will be subject to “Optional Service Account Fees”. Under the heading “Non-sufficient Funds (NSF)”, PCF advertised a \$40.00 fee “[i]f a transaction on your Account is rejected due to a reason of non-sufficient funds in the Account”: see https://www.pcfincancial.ca/api/v2/en-CA/assets/fees_schedule_v1.pdf (as at February 8, 2023). PCF does not indicate anywhere that the same attempted payment would also result in an additional NSF Fee for each re-presentation of the same transaction by the payee.

16. Sarah maintains a PC Money Account with PCF. At all material times, Sarah conducted her banking online from her home in Kingston, Ontario. Sarah financed her vehicle through a company called “Lendcare”, which arranged for pre-authorized withdrawals on a bi-weekly basis (every two weeks).

17. Sarah had two accounts with PCF (Account #1370 and Account #9598). On Account #9598 (the “Account”), Sarah was charged Duplicative NSF Fees. Below is a chronology of the NSF fees charged on Sarah’s two PCF accounts, including the Duplicative NSF Fees:

(a) **Account #1370 – Chronology of NSF Fees:**

Statement Date	Transaction Date	Posting Date	Description	Withdrawal	Deposit
Dec. 4/21 – Jan. 3/22	N/A	N/A	N/A	N/A	N/A
Jan. 4/22 – Feb. 3/22	N/A	N/A	N/A	N/A	N/A
Feb. 4/22 – Mar. 3/22	N/A	N/A	N/A	N/A	N/A
Mar. 4/22 – Apr. 3/22	N/A	N/A	N/A	N/A	N/A
Apr. 4/22 – May 3/22	N/A	N/A	N/A	N/A	N/A
May 4/22 – Jun. 3/22	N/A	N/A	N/A	N/A	N/A
Jun. 4/22 – Jul. 3/22	N/A	N/A	N/A	N/A	N/A

Statement	Transaction Date	Posting Date	Description	Withdrawal	Deposit
Jul. 4/22 – Aug. 3/22	Jul. 15/22	Jul. 18/22	NSF FEE	\$40.00	N/A
	Jul. 15/22	Jul. 18/22	TD INSURANCE TD ASSURANC	\$277.62	N/A
	Jul. 15/22	Jul. 18/22	REVERSAL TD INSURANCE TD	N/A	\$277.62
Aug. 4/22 – Sep. 3/22	N/A	N/A	N/A	N/A	N/A
Sep. 4/22 – Oct. 3/22	N/A	N/A	N/A	N/A	N/A
Oct. 4/22 – Nov. 3/22	Oct. 3/22	Oct. 4/22	EASYFINANCIAL	\$63.20	N/A
	Oct. 3/22	Oct. 4/22	NSF FEE	\$40.00	N/A
	Oct. 3/22	Oct. 4/22	REVERSAL EASYFINANCIAL	N/A	\$63.20
	Oct. 11/22	Oct. 11/22	EASYFINANCIAL	\$63.20	N/A
	Oct. 11/22	Oct. 12/22	EASYFINANCIAL	\$50.00	N/A
	Oct. 11/22	Oct. 12/22	NSF FEE	\$40.00	N/A
	Oct. 11/22	Oct. 12/22	NSF FEE	\$40.00	N/A
	Oct. 11/22	Oct. 12/22	REVERSAL EASYFINANCIAL	N/A	\$50.00
Nov. 4/22 – Dec. 3/22	N/A	N/A	N/A	N/A	N/A
Dec. 4/22 – Jan. 3/23	N/A	N/A	N/A	N/A	N/A

(b) **Account #9598 – Chronology of NSF Fees:**

Statement	Transaction Date	Posting Date	Description	Withdrawal	Deposit
Nov. 4/21 – Dec. 3/21	N/A	N/A	N/A	N/A	N/A
Dec. 4/21 – Jan. 3/22	N/A	N/A	N/A	N/A	N/A
Jan. 4/22 – Feb. 3/22	N/A	N/A	N/A	N/A	N/A
Feb. 4/22 – Mar. 3/22	N/A	N/A	N/A	N/A	N/A
Mar. 4/22 – Apr. 3/22	N/A	N/A	N/A	N/A	N/A
Apr. 4/22 – May 3/22	N/A	N/A	N/A	N/A	N/A

Statement	Transaction Date	Posting Date	Description	Withdrawal	Deposit
May 4/22 – Jun. 3/22	N/A	N/A	N/A	N/A	N/A
Jun. 4/22 – Jul. 3/22	N/A	N/A	N/A	N/A	N/A
Jul. 4/22 – Aug. 3/22	Jul. 6/22	Jul. 6/22	LEND CARE	\$308.18	N/A
	Jul. 6/22	Jul. 6/22	REVERSAL LEND CARE	N/A	\$308.18
	Jul. 6/22	Jul. 6/22	NSF FEE	\$40.00	N/A
	Jul. 11/22	Jul. 12/22	NSF FEE	\$40.00	N/A
	Jul. 11/22	Jul. 12/22	LEND CARE	\$154.09	N/A
	Jul. 11/22	Jul. 12/22	REVERSAL LEND CARE	N/A	\$154.09
	Jul. 25/22	Jul. 25/22	LEND CARE	\$154.09	N/A
	Jul. 25/22	Jul. 25/22	REVERSAL LEND CARE	N/A	\$154.09
	Jul. 29/22	Jul. 29/22	LEND CARE	\$154.09	N/A
	Jul. 29/22	Jul. 29/22	REVERSAL LEND CARE	N/A	\$154.09
	Jul. 29/22	Aug. 1/22	NSF FEE	\$40.00	N/A
Aug. 4/22 – Sep. 3/22	Aug. 8/22	Aug. 8/22	LEND CARE	\$154.09	N/A
	Aug. 8/22	Aug. 8/22	REVERSAL LEND CARE	N/A	\$154.09
	Aug. 8/22	Aug. 9/22	NSF FEE	\$40.00	N/A
	Aug. 10/22	Aug. 10/22	LEND CARE	\$154.09	N/A
	Aug. 10/22	Aug. 10/22	REVERSAL LEND CARE	N/A	\$154.09
First Presentment	Aug. 25/22	Aug. 25/22	LEND CARE	\$154.09	N/A
Second Presentment	Aug. 25/22	Aug. 25/22	LEND CARE	\$154.09	N/A
Reversal of First Presentment	Aug. 25/22	Aug. 25/22	REVERSAL LEND CARE	N/A	\$154.09
Reversal of Second Presentment	Aug. 25/22	Aug. 25/22	REVERSAL LEND CARE	N/A	\$154.09
First NSF Fee	Aug. 25/22	Aug. 26/22	NSF FEE	\$40.00	N/A
Second NSF Fee	Aug. 25/22	Aug. 26/22	NSF FEE	\$40.00	N/A
Third Presentment	Aug. 26/22	Aug. 26/22	LEND CARE	\$154.09	N/A

Statement	Transaction Date	Posting Date	Description	Withdrawal	Deposit
<i>Reversal of Third Presentment</i>	Aug. 26/22	Aug. 26/22	LEND CARE	N/A	\$154.09
Third NSF Fee	Aug. 26/22	Aug. 29/22	NSF FEE	\$40.00	N/A
Sep. 4/22 – Oct. 3/22	Sep. 5/22	Sep. 6/22	LEND CARE	\$154.09	N/A
	Sep. 5/22	Sep. 6/22	REVERSAL LEND CARE	N/A	\$154.09
	Sep. 6/22	Sep. 7/22	NSF FEE	\$40.00	N/A
	Sep. 19/22	Sep. 19/22	LEND CARE	\$154.09	N/A
	Sep. 19/22	Sep. 19/22	REVERSAL LEND CARE	N/A	\$154.09
	Sep. 19/22	Sep. 20/22	NSF FEE	\$40.00	N/A
	Sep. 22/22	Sep. 23/22	LEND CARE	\$390.00	N/A
Oct. 4/22 – Nov. 3/22	Oct. 4/22	Oct. 5/22	LEND CARE	\$154.09	N/A
	Oct. 4/22	Oct. 5/22	NSF FEE	\$40.00	N/A
	Oct. 4/22	Oct. 5/22	REVERSAL LEND CARE	N/A	\$154.09
	Oct. 11/22	Oct. 11/22	LEND CARE	\$390.00	N/A
	Oct. 11/22	Oct. 11/22	REVERSAL LEND CARE	N/A	\$390.00
	Oct. 11/22	Oct. 12/22	NSF FEE	\$40.00	N/A
	Oct. 12/22	Oct. 12/22	LEND CARE	\$145.35	N/A
	Oct. 12/22	Oct. 12/22	REVERSAL LEND CARE	N/A	\$145.35
	Oct. 12/22	Oct. 13/22	NSF FEE	\$40.00	N/A
	Oct. 20/22	Oct. 20/22	LEND CARE	\$535.35	N/A
	Oct. 20/22	Oct. 20/22	LEND CARE	\$250.58	N/A
	Oct. 20/22	Oct. 20/22	REVERSAL LEND CARE	N/A	\$150.58
	Oct. 20/22	Oct. 20/22	REVERSAL LEND CARE	N/A	\$535.35
	Nov. 3/22	Nov. 3/22	LEND CARE	\$150.58	N/A
	Nov. 3/22	Nov. 3/22	NSF FEE	\$40.00	N/A
	Nov. 3/22	Nov. 3/22	REVERSAL LEND CARE	N/A	\$150.58
Nov. 4/22 – Dec. 3/22	Jul. 11/22	Jul. 11/22	NSF FEE	\$40.00	N/A
	Jul. 11/22	Jul. 11/22	LEND CARE	\$685.93	N/A
	Jul. 11/22	Jul. 11/22	REVERSAL LEND CARE	N/A	\$685.93
	Jul. 17/22	Jul. 17/22	LEND CARE	\$150.58	N/A
	Jul. 17/22	Jul. 17/22	NSF FEE	\$40.00	N/A
	Jul. 17/22	Jul. 17/22	REVERSAL LEND CARE	N/A	\$154.58

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Statement	Transaction Date	Posting Date	Description	Withdrawal	Deposit
Dec. 4/22 – Jan. 3/22	N/A	N/A	N/A	N/A	N/A

18. On August 25, 2022, Lendcare attempted to withdraw a \$154.09 pre-authorized debit from Sarah's Account. PCF reversed the Lendcare withdrawal on August 25, 2022. PCF charged Sarah a \$40.00 NSF Fee for this failed transaction.

19. Subsequently, also on August 25, 2022, Lendcare attempted again to withdraw the same \$154.09 pre-authorized debit from Sarah's Account. PCF reversed the second Lendcare withdrawal attempt again on August 25, 2022. PCF charged Sarah a second \$40.00 NSF fee on the same day for this second re-presentation of the transaction.

20. On August 26, 2022, Lendcare made a third attempt to withdraw the same \$154.09 pre-authorized debit from Sarah's Account. PCF reversed the third Lendcare withdrawal attempt on August 26, 2022. PCF charged Sarah a third \$40.00 NSF fee for on August 26, 2022 for this third presentation of the same transaction.

21. In sum, PCF charged Sarah \$120.00 in NSF fees to process a single transaction that had been presented by Lendcare three times in 48 hours.

22. Sarah took no action to re-initiate the reprocessing of this transaction. Sarah received no notice from PCF of this reprocessing.

23. Sarah had understood that she had made a single "cheque or debit item", as is laid out in PCF's contract, capable of attracting at most a single NSF Fee.

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CAUSES OF ACTION

Breach of Contract

24. The Defendant's "PC Money Account Agreement" (the "Agreement") forms the standard form contract between the Defendant and Class Members.

25. The Agreement contain material representations and omissions indicating that Duplicative NSF Fees for a single transaction re-presented multiple times.

26. In a separate document entitled "PC Money Account – Optional Service Account Fees," which is not referred to in the Agreement, PCF states that the PCF Money Account has no monthly fees and unlimited everyday transactions and refers customers to the chart within the document for the **fees associated with their optional services**. In this chart, NSF is listed as \$40.00 if a transaction on the Account is rejected due to a reason of non-sufficient funds in the Account. However, in fact, PCF regularly charges multiple NSF Fees for every re-presented transaction.

27. The Class Members are everyday Canadians. They do not have particular knowledge of contract law or the system for processing payments between payees and banks. The Agreement and other advertising conveys to the Plaintiff and Class Members that a NSF Fees will be charged when they make a payment without sufficient funds in their account but does not indicate that such a transaction may be presented more than once in a single day, resulting in Duplicative NSF Fees each time.

28. The Plaintiff denies that the Agreement is ambiguous about PCF's practice of charging Duplicative NSF Fees but, if the Agreement is ambiguous, the Plaintiff pleads and relies on the doctrine of *contra proferentem*, whereby any ambiguity must be interpreted in favour of the Plaintiff and Class.

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29. The Agreement is a standard form document drafted by PCF without any input or ability to negotiate the terms by the Class Members. It is and has always been in PCF's power to draft contract language that would authorize its current practice. The Plaintiff and Class Members cannot be said to have consented to a practice that is nowhere explained, contemplated, or otherwise permitted by the Agreement or the law.

30. In fact, PCF was required by law to disclose all charges, and provide advance notice of new charges or increases of existing charges, to all personal deposit account holders under ss. 3-4 of the *Disclosure of Charges (Banks) Regulations*, SOR/92-324 (last amended on June 29, 2022) and under Division 2, *Fair and Equitable Dealings* of the *Bank Act*, S.C. 1991, c. 46. Contravention of the *Disclosure of Charges (Banks) Regulations* without reasonable cause is an offence under s. 980 of the *Bank Act*, S.C. 1991, c. 46. PCF is therefore in violation of its regulatory requirements by applying undisclosed charges to the Plaintiff and Class Members' accounts.

31. PCF breached, and continues to breach, its contract with Class Members when it charges customers multiple NSF Fees on the same already rejected transaction.

Consumer Protection Act

32. The Plaintiff and Class Members entered into their contracts with PCF for personal, family and/or household purposes and are consumers for the purposes of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

33. PCF's Agreement contained false, misleading and/or deceptive representations because, among other things: (1) the Agreement failed to state the material fact that PCF would charge Duplicative NSF Fees, and such failure deceived or tended to deceive customers; and (2) the Agreement misled as to the material fact that PCF would charge Duplicative NSF Fees, and such Agreement

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deceived or tended to deceive customers. This constitutes an "unfair practice" pursuant to s. 14 of the *Consumer Protection Act*, or the similar concepts as they are defined in the equivalent Consumer Protection Statutes.

34. While the Plaintiff and Class deny that the Agreement are ambiguous regarding the Defendant's practice of charging multiple NSF Fees, any ambiguity that allows for more than one reasonable interpretation of a consumer agreement must be interpreted to the benefit of the consumer pursuant to s. 11 of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

35. The Plaintiff and Class Members entered into their contracts with the Defendant after or while the Defendant engaged in the unfair and deceptive practices described above. Accordingly, the Plaintiff and Class Members are entitled to rescind their contracts and seek any further remedy that is available in law, including damages equivalent to the value of all monies paid by the Plaintiff and Class Members to the Defendant resulting from the charging of Duplicative NSF Fees on a single already rejected transaction, pursuant to s. 18(1) of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

36. The notice requirement should be waived pursuant to s. 18(5) of the *Consumer Protection Act* in order to facilitate access to justice for Class Members.

37. The Defendant's headquarters are located in Toronto, and PCF carries on business throughout Ontario. As a result, all Class Members obtain the benefit of the *Consumer Protection Act*. In the alternative, Class Members outside of Ontario obtain the benefit of the Equivalent Consumer Protection Statutes.

PCF's Discretion and Contractual Duty of Good Faith

38. The Agreement and PCF's representations regarding NSF charges contained false, misleading, and/or deceptive representations as to the material fact that PCF would charge multiple NSF Fees on the same transaction and/or

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multiple re-presentments of the same transaction. To the extent that PCF had any discretion under the Agreement to charge NSF fees, it did so unreasonably and not in good faith.

Unjust Enrichment

39. PCF received and continues to receive vast revenues by charging Duplicative NSF Fees.

40. The Plaintiff and Class Members suffered and continue to suffer a deprivation that corresponds to the Defendant's benefit.

41. There is no juristic reason for PCF's benefit and Class Members' corresponding deprivation. PCF has breached its contract with Class Members and has engaged in "unfair practices" prohibited under consumer protection legislation by virtue of its false, misleading and deceptive representations. The Class Members are entitled to restitution in order to remedy the Defendant's unjust enrichment.

PUNITIVE DAMAGES

42. The high-handed and callous conduct of the Defendant warrants the condemnation of this Honourable Court. PCF enjoys a prominent position in a market structure that consists of a small number of Banks who have a substantial influence over the Banking industry. Millions of Canadians are dependent on PCF for their day-to-day banking needs. Even without charging Duplicative NSF Fees, PCF gains enormous revenues and profits.

43. By choosing to charge Duplicative NSF Fees, in violation of its contract with Class Members, PCF chose to inflate its already enormous profits. It made this choice knowing that the burden imposed by these illegitimate charges would disproportionately fall on low-income, racialized and otherwise marginalized Canadians. This decision to maximize illegitimate profits at the expense of

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Canadians least able to afford it was also made knowing that this vulnerable Class was unlikely to enforce their contractual rights. PCF's illegitimate Duplicative NSF fees increased significantly during the COVID-19 crisis.

44. In these circumstances, the Plaintiff and Class Members request punitive damages to condemn and deter this pandemic-profiteering and victimization of vulnerable Canadians.

TRIAL

45. The Plaintiff proposes that this action be tried in the City of Toronto.

(Date of Issue)

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-and- **PRESIDENT'S CHOICE FINANCIAL**
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

Proceeding under the
Class Proceedings Act, 1992

STATEMENT OF CLAIM

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