



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JONATHAN GIBSON

Plaintiff

– and –

SIMPLII FINANCIAL

Defendant

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: SIMPLII FINANCIAL

PO Box 603, Stn Agincourt

Scarborough, ON

M1S 5K9

CLAIM

DEFINED TERMS

1. 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 Duplicate NSF Fee Class Members and Sufficient Funds NSF Fee Class Members, collectively;
- (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” or “Simplii” means Simplii Financial;
- (g) “Duplicate NSF Fees” means NSF Fees charged for each re-presentment for payment when subsequent attempts are made by the payee to re-present the same transaction for payment that was previously rejected;
- (h) “Duplicate NSF Fee Class” and “Duplicate NSF Fee Class Members” means:

All Canadians who have or had a personal deposit account holder with Simplii Financial since November 1, 2017 and whose bank

account has been charged multiple NSF Fees by Simplii Financial arising out of one or more presentments of the same transaction for payment;

- (i) "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;
- (j) "NSF Fee" means non-sufficient funds fee; and
- (k) "Sufficient Funds NSF Fee Class" and "Sufficient Funds NSF Fee Class Members" means:

All Canadians who have or had a personal deposit account holder with Simplii Financial since November 1, 2017 and whose bank account has been charged NSF Fees by Simplii Financial arising out of one or more presentments of a transaction where payments were rejected, or cheques were bounced, despite sufficient funds existing.

NATURE OF ACTION

2. This action arises from the practice of Simplii (1) charging multiple NSF Fees on a rejected payment or bounced cheque that had been presented and then subsequently re-presented one or more times and (2) rejecting payment or bouncing cheques despite sufficient funds being present and charging NSF Fees on these rejected payments and bounced cheques.

3. Simplii 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, Mr. Jonathan Gibson (“Jonathan” or the “Plaintiff”) and the Plaintiff Duplicative NSF Fee Class Members. This practice is in violation of the terms of Simplii’s contract with the Plaintiff Class members. As a result of its unlawful practice, Simplii has made substantial revenue, accruing millions of dollars per year by charging illegitimate fees to Plaintiff Duplicative NSF Fee Class Members.

4. 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 Simplii rejects the payment, charging an NSF Fee (currently \$45.00 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, Simplii charges another NSF fee each re-presentation for payment.

5. 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 Simplii’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.

6. The Plaintiff does not dispute Simplii’s right to reject a transaction and charge a single NSF Fee, but Simplii’s practice of charging Duplicative NSF Fees on each subsequent attempt to reprocess the same already rejected transaction is a breach of its contract with Class Members, its duty to exercise its contractual discretion in good faith, and the applicable consumer protection legislation.

7. In Simplii’s contract with each Class Member, it has failed to disclose its practice of charging Duplicative NSF Fees. Under its unlawful scheme, each time Simplii unilaterally reprocesses an already rejected payment or cheque, it becomes a new, unique transaction that is subject to a fresh NSF Fee. However, Simplii’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.

8. Where Simplii had rejected payment or bounced cheques where there were sufficient funds and then charged NSF fees, this practice is also in violation of the terms of Simplii's contract with the Plaintiff Sufficient Funds NSF Fee Class Members. As a result of its unlawful practice, Simplii has made substantial revenue, accruing millions of dollars per year by charging illegitimate fees to Plaintiff Sufficient Funds NSF Fee Class Members.

9. Simplii's practices also violate consumer protection legislation in Ontario, including the *Consumer Protection Act*, 2002, S.O. 2002, C.30, Sched. A, where the Plaintiff resides and where Simplii 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.

RELIEF CLAIMED

10. 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;
- (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;

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- (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 Duplicative NSF Fee Class Members to the Defendant resulting from the charging of Duplicative NSF Fees;
- (f) damages equivalent to the value of all monies paid by the Plaintiff and Sufficient Funds NSF Fee Class Members to the Defendant resulting from the charging of NSF Fees where payments were rejected, or cheques were bounced, despite sufficient funds existing;
- (g) an order for disgorgement of the value of all monies illegally paid by the Class Members to Simplii;
- (h) an equitable rate of interest on all sums found due and owing to the Plaintiff and Class Members;
- (i) punitive damages in an amount that this Court finds appropriate;
- (j) pre-judgment interest pursuant to section 128 of the *CJA*;
- (k) post-judgment interest pursuant to section 129 of the *CJA*;
- (l) 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
- (m) such further and other relief as considered just.

PARTIES

11. The Plaintiff, Jonathan, is an individual who resides in the City of Hamilton, in the Province of Ontario.

12. The Defendant, Simplii, is a Canadian corporation with its headquarters and principal place of business located in Scarborough, Ontario, and is a division of Canadian Imperial Bank of Commerce (“CIBC”). Among other things, Simplii is engaged in the business of providing retail banking services to consumers, including the Plaintiff and members of the Class. The Plaintiff and members of the Class access their Simplii bank accounts online and through CIBC’s Automatic Teller Machines, and Simplii conducts business throughout the province of Ontario.

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

14. The Defendant maintains customer transaction data containing the information necessary to ascertain the Sufficient Funds NSF Fee Class Members and calculate the value of monies paid by individual Sufficient Funds NSF Fee Class Members to the Defendant as a result of the Defendant's practice of charging of NSF Fees where payments were rejected, or cheques were bounced, despite sufficient funds existing.

15. Simplii promotes itself as adopting a simplified approach to everyday banking and one that believes managing your money doesn't have to be complicated. Simplii's representations are untrue and misleading.

THE CLASS

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

- (a) All Canadians who have or had a personal deposit account holder with Simplii Financial since November 1, 2017 and whose bank account has been charged multiple NSF Fees by Simplii Financial arising out of one or more presentments of the same transaction for payment ("Duplicate NSF Fee Class"); and
- (b) All Canadians who have or had a personal deposit account holder with Simplii Financial since November 1, 2017 and whose bank accounts have been charged NSF Fees by Simplii Financial arising out of one or more presentments of a transaction where payments were rejected, or cheques were bounced, despite sufficient funds existing ("Sufficient Funds NSF Fee Class").

THE PLAINTIFF AND CLASS EXPERIENCE

17. Until June 14, 2023, Simplii did not indicate anywhere in their advertisements that the same attempted payment would also result in an additional NSF Fee for each re-presentment of the same transaction by the payee. For example, in their Products Services Agreement effective March 9, 2021, Simplii advertised that "When there is not enough money in your account and you have not arranged the appropriate credit then the cheque or other item will be returned unpaid and a NSF charge will be applied to your account."

18. Jonathan maintains a bank account with Simplii. At all material times, Jonathan conducted his banking online from his home in Hamilton, Ontario.

19. Jonathan was charged Duplicative NSF Fees and was charged NSF Fees where payments were rejected despite sufficient funds existing. Below is a

chronology of the Duplicative NSF Fees and NSF Fees where payments were rejected, or cheques bounced, despite sufficient funds existing, charged on Jonathan's Simplii Account:

Statement	Transaction Date	Description	Withdrawal	Deposit	Balance
November 30, 2017 – December 2017	December 4, 2017	EFT TD ON-LINE LOANS SYSTEM	\$125.43	N/A	\$102.78
	December 4, 2017	EFT REVERSAL TD ON-LINE LOANS	N/A	\$125.43	\$228.21
	December 4, 2017	NSF S/C	\$45.00	N/A	\$188.21
July 31, 2018 – August 31, 2018	August 8, 2018	EFT PAYPAL	\$2.79	N/A	-\$0.99
	August 8, 2018	EFT PAYPAL	\$2.79	N/A	-\$3.78
	August 8, 2018	EFT REVERSAL PAYPAL	N/A	\$2.79	-\$0.99
	August 8, 2018	EFT REVERSAL PAYPAL	N/A	\$2.79	\$1.80
	August 8, 2018	NSF S/C	\$45.00	N/A	\$356.80
	August 8, 2018	NSF S/C	\$45.00	N/A	\$311.80
November 30, 2018 – December 31, 2018	December 4, 2018	EFT CASH MONEY CHEQ	\$93.82	N/A	\$301.18
	December 4, 2018	EFT REVERSAL CASH MONEY CHEQ	N/A	\$93.82	\$395.00
	December 4, 2018	NSF S/C	\$45.00	N/A	\$326.50
March 29, 2019 – April 30, 2019	April 2, 2019	EFT PRIMERICA LIFE	\$39.19	N/A	\$23.58
	April 2, 2019	EFT REVERSAL PRIMERICA LIFE	N/A	\$39.19	\$20.29
	April 2, 2019	NSF S/C	\$45.00	N/A	\$17.77
August 30, 2019 – September 30, 2019	September 3, 2019	EFT TD ON-LINE LOANS SYSTEM	\$125.59	N/A	-\$45.57
	September 3, 2019	EFT REVERSAL TD ON-LINE LOANS	N/A	\$125.59	\$80.02
	September 3, 2019	NSF S/C	\$45.00	N/A	\$35.02
	September 5, 2019	EFT TD ON-LINE LOANS SYSTEM	\$125.59	N/A	-\$118.02
	September 5, 2019	EFT REVERSAL TD ON-LINE LOANS	N/A	\$125.59	\$7.57

Statement	Transaction Date	Description	Withdrawal	Deposit	Balance
	September 5, 2019	NSF S/C	\$45.00	N/A	-\$37.43
October 31, 2019 – November 29, 2019	November 1, 2019	EFT CASH 4 YOU CORP	\$53.23	N/A	-\$51.33
	November 1, 2019	EFT REVERSAL CASH 4 YOU	N/A	\$53.23	-\$1.10
	November 1, 2019	NSF S/C	\$45.00	N/A	-\$46.10
	November 4, 2019	EFT CASH 4 YOU	\$53.23	N/A	-\$39.33
	November 4, 2019	EFT REVERSAL CASH 4 YOU	N/A	\$53.23	\$13.90
	November 4, 2019	NSF S/C	\$45.00	N/A	-\$31.10
April 30, 2021 – May 31, 2021	May 12, 2021	EFT TD ON-LINE LOANS SYSTEM	\$294.70	N/A	\$28.36
	May 12, 2021	EFT REVERSAL TD ON-LINE LOANS	N/A	\$294.70	\$323.06
	May 12, 2021	NSF S/C	\$45.00	N/A	\$278.06
December 30, 2021 – January 30, 2022	January 10, 2022	EFT PAYPAL	\$19.04	N/A	\$125.65
	January 10, 2022	EFT PAYPAL	\$19.20	N/A	\$106.45
	January 10, 2022	EFT REVERSAL PAYPAL	N/A	\$19.04	\$125.49
	January 10, 2022	EFT REVERSAL PAYPAL	N/A	\$19.20	\$144.69
	January 10, 2022	NSF S/C	\$45.00	N/A	\$99.69
	January 10, 2022	NSF S/C	\$45.00	N/A	\$54.69
January 30, 2022 – February 28, 2022	February 4, 2022	EFT PAYPAL	\$2.00	N/A	\$55.37
	February 4, 2022	EFT PAYPAL	\$18.07	N/A	\$37.30
	February 4, 2022	EFT PAYPAL	\$25.44	N/A	\$11.86
	February 4, 2022	EFT REVERSAL PAYPAL	N/A	\$2.00	\$13.86
	February 4, 2022	EFT REVERSAL PAYPAL	N/A	\$18.07	\$31.93
	February 4, 2022	EFT REVERSAL PAYPAL	N/A	\$25.44	\$57.37
	February 4, 2022	NSF S/C	\$45.00	N/A	\$12.37

Statement	Transaction Date	Description	Withdrawal	Deposit	Balance
	February 4, 2022	NSF S/C	\$45.00	N/A	-\$32.63
	February 4, 2022	NSF S/C	\$45.00	N/A	-\$77.63
February 28, 2022 – March 31, 2022	March 15, 2022	EFT PAYPAL	\$14.13	N/A	\$190.30
	March 15, 2022	EFT PAYPAL	\$27.45	N/A	\$162.85
	March 15, 2022	EFT PAYPAL	\$45.19	N/A	\$117.66
	March 15, 2022	EFT REVERSAL PAYPAL	N/A	\$14.13	\$131.79
	March 15, 2022	EFT REVERSAL PAYPAL	N/A	\$27.45	\$159.24
	March 15, 2022	EFT REVERSAL PAYPAL	N/A	\$45.19	\$204.43
	March 15, 2022	NSF S/C	\$45.00	N/A	\$155.59
	March 15, 2022	NSF S/C	\$45.00	N/A	\$110.59
	March 15, 2022	NSF S/C	\$45.00	N/A	\$65.59
March 31, 2022 – April 29, 2022	April 20, 2022	EFT PAYPAL	\$44.44	N/A	\$261.29
	April 20, 2022	EFT REVERSAL PAYPAL	N/A	\$44.44	\$46.48
	April 20, 2022	NSF S/C	\$45.00	N/A	\$260.73
	April 25, 2022	EFT PAYPAL	\$44.44	N/A	-\$26.19
	April 25, 2022	EFT REVERSAL PAYPAL	N/A	\$44.44	-\$18.25
	April 25, 2022	NSF S/C	\$45.00	N/A	-\$26.75
May 31, 2022 – June 30, 2022	June 3, 2022	EFT TD ON-LINE LOANS SYSTEM	\$294.70	N/A	-\$7.62
	June 3, 2022	EFT REVERSAL TD ON-LINE LOANS	N/A	\$294.70	\$287.08
	June 3, 2022	NSF S/C	\$45.00	N/A	\$257.08
	June 7, 2022	EFT TD ON-LINE LOANS SYSTEM	\$294.70	N/A	-\$128.67
	June 7, 2022	EFT REVERSAL TD ON-LINE LOANS	N/A	\$294.70	\$166.03
	June 7, 2022	NSF S/C	\$45.00	N/A	\$121.03
	June 17, 2022	EFT PAY2DAY	\$382.23	N/A	\$387.07
	June 17, 2022	EFT REVERSAL PAY2DAY	N/A	\$382.23	\$769.30
	June 17, 2022	NSF S/C	\$45.00	N/A	\$724.30
July 31, 2022 – August 31, 2022	August 1, 2022	EFT NSLSC	\$126.45	N/A	\$42.38
	August 1, 2022	EFT REVERSAL NSLSC	N/A	\$126.45	\$168.83
	August 1, 2022	NSF S/C	\$45.00	N/A	\$123.83
	August 9, 2022	EFT NSLSC	\$126.45	N/A	-\$152.12
	August 9, 2022		N/A	\$126.45	-\$25.67

Statement	Transaction Date	Description	Withdrawal	Deposit	Balance
		EFT REVERSAL NSLSC			
	August 9, 2022	NSF S/C	\$45.00	N/A	-\$70.67
	August 19, 2022	EFT SIMPLY GROUP FINANCIAL COR	\$122.84	N/A	\$518.02
	August 19, 2022	EFT REVERSAL SIMPLY GROUP FINA	N/A	\$122.84	\$640.86
	August 19, 2022	NSF S/C	\$45.00	N/A	\$521.80
September 29, 2022 – October 31, 2022	October 3, 2022	EFT SIMPLY GROUP FINANCIAL COR	\$122.84	N/A	-\$51.40
	October 3, 2022	EFT REVERSAL SIMPLY GROUP FINA	N/A	\$122.84	-\$55.01
	October 3, 2022	NSF S/C	\$45.00	N/A	\$26.44
	October 7, 2022	EFT SIMPLY GROUP FINANCIAL COR	\$122.84	N/A	-\$118.35
	October 7, 2022	EFT REVERSAL SIMPLY GROUP FINA	N/A	\$122.84	\$4.49
	October 7, 2022	NSF S/C	\$45.00	N/A	-\$40.51
October 31, 2022 – November 30, 2022	November 3, 2022	EFT ICASH4Z4V	\$345.00	N/A	\$144.06
	November 3, 2022	EFT REVERSAL ICASH4Z4V	N/A	\$345.00	\$489.06
	November 3, 2022	NSF S/C	\$45.00	N/A	\$444.06
	November 29, 2022	EFT PAYPAL	\$12.43	N/A	\$186.73
	November 29, 2022	EFT PAYPAL	\$21.31	N/A	\$165.42
	November 29, 2022	EFT REVERSAL PAYPAL	N/A	\$12.43	\$177.85
	November 29, 2022	EFT REVERSAL PAYPAL	N/A	\$21.31	\$199.16
	November 29, 2022	NSF S/C	\$45.00	N/A	\$154.16
	November 29, 2022	NSF S/C	\$45.00	N/A	\$109.16
November 30, 2022 –	December 1, 2022	EFT PAYPAL	\$44.06	N/A	-\$32.53
			N/A	\$44.06	\$11.53

Statement	Transaction Date	Description	Withdrawal	Deposit	Balance
December 30, 2022	December 1, 2022	EFT REVERSAL PAYPAL			
	December 1, 2022	NSF S/C	\$45.00	N/A	-\$33.47
	December 6, 2022	EFT PAYPAL	\$20.49	N/A	\$181.26
	December 6, 2022	EFT REVERSAL PAYPAL	N/A	\$20.49	\$201.75
	December 6, 2022	NSF S/C	\$45.00	N/A	\$156.75
	December 7, 2022	EFT PAYPAL	\$44.06	N/A	-\$33.32
	December 7, 2022	EFT REVERSAL PAYPAL	N/A	\$44.06	\$10.74
	December 7, 2022	NSF S/C	\$45.00	N/A	-\$34.26
January 31, 2023 – February 28, 2023	February 22, 2023	EFT TD ON-LINE LOANS SYSTEM	\$293.80	N/A	-\$163.23
	February 22, 2023	EFT REVERSAL TD ON-LINE LOANS	N/A	\$293.80	\$130.57
	February 22, 2023	NSF S/C	\$45.00	N/A	\$79.09
	February 24, 2023	EFT TD ON-LINE LOANS SYSTEM	\$293.80	N/A	-\$287.41
	February 24, 2023	EFT REVERSAL TD ON-LINE LOANS	N/A	\$293.80	\$6.39
	February 24, 2023	NSF S/C	\$45.00	N/A	-\$38.61

20. Since November 1, 2017, there have been numerous Duplicative NSF Fees. For example, on September 3, 2019, TD On-Line Loans System attempted to withdraw a \$125.59 pre-authorized debit from Jonathan's Account. Simplii reversed the TD On-Line Loans System withdrawal on September 3, 2019. Simplii charged Jonathan a \$45.00 NSF Fee for this failed transaction.

21. Subsequently, on September 5, 2019, TD On-Line Loans System attempted again to withdraw the same \$125.59 pre-authorized debit from Jonathan's Account. Simplii reversed the second TD On-Line Loans System

withdrawal attempt again on September 5, 2019. Simplii charged Jonathan a second \$45.00 NSF Fee on the same day for this second re-presentation of the transaction.

22. In sum, Simplii charged Jonathan \$90.00 in NSF Fees to process a single transaction that been presented by TD On-Line Loans System twice in 3 days.

23. Another example of a Duplicate NSF Fee charge occurred in February 2023. On February 22, 2023, TD On-Line Loans System attempted to withdraw a \$293.80 pre-authorized debit from Jonathan's Account. Simplii reversed the TD On-Line Loans System withdrawal on February 22, 2023. Simplii charged Jonathan a \$45.00 NSF Fee for this failed transaction.

24. Subsequently, on February 24, 2023, TD On-Line Loans System attempted again to withdraw the same \$293.80 pre-authorized debit from Jonathan's Account. Simplii reversed the second TD On-Line Loans System withdrawal attempt again on February 24, 2023. Simplii charged Jonathan a second \$45.00 NSF Fee on the same day for this second re-presentation of the transaction.

25. In sum, Simplii charged Jonathan \$90.00 in NSF Fees to process a single transaction that been presented by TD On-Line Loans System twice in 2 days.

26. Jonathan took no action to re-initiate the reprocessing of these transactions. Jonathan received no notice from Simplii of this reprocessing.

27. Jonathan had understood that he had made a single "cheque or debit item", as is laid out in Simplii's contract, capable of attracting at most a single NSF Fee.

28. Since November 1, 2017, there have also been numerous NSF Fees charged where payments were rejected, or cheques bounced, despite sufficient funds existing.

29. For example, on April 2, 2019, Primerica Life attempted to withdraw a \$39.19 pre-authorized debit from Jonathan's Account. Simplii reversed the Primerica Life withdrawal on April 2, 2019, despite Jonathan having a positive balance before and after the attempted withdrawal. Simplii charged Jonathan a \$45.00 NSF Fee for this failed transaction.

30. In sum, Simplii charged Jonathan \$45.00 in NSF Fees to process a single transaction that been presented by Primerica Life, for which Jonathan had sufficient funds for in his account.

31. Another example of an NSF Fee being charged by Simplii where payments were rejected despite sufficient funds existing happened on May 12, 2021. On May 12, 2021, the TD On-Line Loans System attempted to withdraw a \$294.70 pre-authorized debit from Jonathan's Account. Simplii reversed the TD On-Line Loans System withdrawal on May 12, 2021, despite Jonathan having a positive balance before and after the attempted withdrawal. Simplii charged Jonathan a \$45.00 NSF Fee for this failed transaction.

32. In sum, Simplii charged Jonathan \$45.00 in NSF Fees to process a single transaction that been presented by TD On-Line Loans System, for which Jonathan had sufficient funds for in his account.

CAUSES OF ACTION

Breach of Contract

33. The Defendant's Simplii Financial services agreement (the "Agreement") forms the standard form contract between the Defendant and Class Members.

34. The Agreement contains material representations and omissions indicating that Duplicative NSF Fees for a single transaction re-presented multiple times would not be charged.

35. 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 advertisings convey to the Plaintiff and Class Members that 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.

36. The Plaintiff denies that the Agreement is ambiguous about Simplii'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.

37. The Agreement is a standard form document drafted by Simplii without any input or ability to negotiate the terms by the Class Members. It is and has always been in Simplii'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.

38. In fact, Simplii 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. Simplii is therefore in violation of its regulatory requirements by applying undisclosed charges to the Plaintiff and Class Members' accounts.

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

40. Simplii breached, and continues to breach, its contract with Sufficient Funds NSF Fee Class Members when it charges customers NSF Fees on transactions despite sufficient funds being available.

Consumer Protection Act

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

42. Simplii's Agreement contained false, misleading and/or deceptive representations because, among other things: (1) the Agreement failed to state the material fact that Simplii would charge Duplicative NSF Fees, and such failure deceived or tended to deceive customers; (2) the Agreement misled as to the material fact that Simplii would charge Duplicative NSF Fees; and (3) the Agreement failed to state the material fact that Simplii would charge NSF Fees on transactions that were rejected despite sufficient funds being available, and such Agreement 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.

43. 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.

44. 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.

45. 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.

46. The Defendant's headquarters are located in Scarborough and Simplii 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.

Simplii's Discretion and Contractual Duty of Good Faith

47. The Agreement and Simplii's representations regarding NSF charges contained false, misleading, and/or deceptive representations as to the material fact that Simplii would charge multiple NSF Fees on the same transaction and/or multiple re-presentments of the same transaction. To the extent that Simplii had any discretion under the Agreement to charge NSF Fees, it did so unreasonably and not in good faith.

Unjust Enrichment

48. Simplii received and continues to receive vast revenues by charging Duplicative NSF Fees and by charging NSF Fees on transactions rejected despite sufficient funds being available.

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

50. There is no juristic reason for Simplii's benefit and Class Members' corresponding deprivation. Simplii 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

51. The high-handed and callous conduct of the Defendant warrants the condemnation of this Honourable Court. Simplii 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 Simplii for their day-to-day banking needs. Even without charging Duplicative NSF Fees or NSF Fees on transactions that are rejected despite sufficient funds being available, Simplii gains enormous revenues and profits.

52. By choosing to charge Duplicative NSF Fees, in violation of its contract with Class Members, Simplii 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 Canadians least able to afford it was also made knowing that this vulnerable Class was unlikely to enforce their contractual rights.

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

TRIAL

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

(Date of Issue)

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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