

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MADISON CLEMENTS, individually and on behalf of a class of persons similarly situated,)	
)	
Plaintiffs,)	
)	Case No.
v.)	
)	PLAINTIFFS DEMAND
)	TRIAL BY JURY
JP MORGAN CHASE BANK, N.A.,)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiff, Madison Clements (“Plaintiff”), by and through her attorneys, and for her Complaint against Defendant JP Morgan Chase Bank, N.A., alleges and states as follows:

NATURE OF THE ACTION

1. This is a proposed class action against Defendant JP Morgan Chase Bank, N.A. (“Defendant” or “Chase”) for improperly failing to reverse fraudulently-incurred charges and debits against its customers’ accounts; and for related claims arising from improper NSF charges.
2. Plaintiff’s action alleges violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2; breach of contract; violations of the Electronic Funds Act; and unjust enrichment.
3. Plaintiff seeks damages, equitable relief and/or disgorgement.

THE PARTIES

4. Plaintiff Madison Clements (“Plaintiff”) is a citizen of the State of Illinois and resides in Chicago, Illinois.

5. Defendant JP Morgan Chase Bank, N.A. (“Defendant” or “Chase”) is a Federal Deposit Insurance Corporation (“FDIC”)- insured institution organized under the laws of the State of Delaware, with its principal place of business in New York, New York.

6. Plaintiff originally opened a checking account with a predecessor bank that was eventually acquired by Chase. Plaintiff still has this account with Chase.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), because at least one class member is a citizen of a different state than Defendant; there are more than 100 putative class members; and the aggregate amount in controversy exceeds \$5,000,000.

8. This Court has personal jurisdiction over Defendant in this case, as it is authorized to do business and in fact does business in this State, it has sufficient minimum contacts with this State and otherwise intentionally avails itself of the markets in this State through the distribution, promotion, marketing and sale of its products and services in this State, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice. To this end, according to the FDIC, as of October 21, 2009, Chase had 171 FDIC insured branches in Illinois.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because

Defendant conducts business in this district and a substantial part of the events giving rise to the claims occurred in this judicial district.

FACTUAL ALLEGATIONS

10. Chase operates over 5,000 branch offices in the United States, and is the largest bank (based on deposits) in the United States.

11. With its network of ATMs and branches, Chase provides a number of financial products and services to its customers, including checking and savings accounts.

12. After opening a Chase checking account, customers can debit their account through a number of means such as Chase “debit” card¹ or paper checks. Unlike a credit card, Chase’s debit card deducts the purchase amount from the customer’s checking account.

13. Plaintiff’s account with Chase has a daily maximum withdrawal limit on the amount of either purchases made with Plaintiff’s debit card or the amount of funds that can be withdrawn from an automatic teller machine; once that dollar limit is reached, Chase will not permit an additional debit amount from the account that business day.

14. Plaintiff has previously attempted to either withdraw cash from an ATM or purchase an item with her debit card in an amount in excess of the daily limit, and Chase has declined the charge, or failed to allow a withdrawal of the amount sought

¹ Debit cards include ATM cards as well as “hybrid” check cards. Hybrid check cards operate as ATM cards but bear the Visa or MasterCard logo and are accepted by merchants who accept credit cards but would not otherwise accept ATM cards. Plaintiff’s card is a Chase-branded hybrid card with a Visa logo. Plaintiff had, until this suit was filed, the ability to use her card for Point of Sale purchases like a debit or credit card and as an ATM debit card.

at an ATM.

15. On or about Friday, January 5, 2018, and without her knowledge, Plaintiff misplaced or lost her Chase debit card; or, alternatively, it was stolen from her.

16. On or about Saturday, January 6, 2018, when Plaintiff noticed her card was missing, she contacted Chase by telephone to advise it of that fact.

17. By Monday, January 8, 2018, Plaintiff received notice from Chase that certain transactions had occurred on her account that Plaintiff knew were not authorized. In response, on January 8, 2018, Plaintiff contacted Chase and informed Chase that certain transactions were not authorized to her account.

18. Those transactions and others included a check deposited to the account in the amount of \$4,987.98, which was fraudulently endorsed with Plaintiff's name, and which purported to be a payroll check written to Plaintiff for a company that Plaintiff had never heard of and had never worked for.

19. Chase responded on January 8, 2018 by informing Plaintiff that her debit card would be electronically locked and no longer valid; that Chase would provide Plaintiff with a new debit card; and that it would reverse the unauthorized charges.

20. Plaintiff's online bank statement in fact showed that Chase then reversed most of the charges on the unauthorized charges on Plaintiffs' account, on January 10 and 11, 2018.

21. On or about January 11, 2018, Chase reversed two additional unauthorized charges, in the amount of \$1,400.00 and \$1,590.00, respectively.

22. Chase informed Plaintiff that the two additional unauthorized charges were incurred at a currency exchange, on the south side of Chicago; and that the transactions were conducted by a middle-aged African American male, dressed in

heavy clothing that appeared to disguise his identity.

23. Chase asked Plaintiff if she had authorized the use of her debit card by this person; Plaintiff again informed Chase that she had not authorized the charges or transactions or use of her card.

24. Then, on or about January 18, 2018, and with no notice or warning to Plaintiff, Chase reinstated the two additional charges that had been allegedly incurred at the currency exchange, totaling \$2,990.00, thus leaving Plaintiff's bank account with a negative balance.

25. The negative balance caused other pending charges to be rejected, and Chase levied further NSF charges as a result.

26. Plaintiff objected orally and in writing to the reversal of the charges, and asked that Chase provide the basis for its reversal of the charges.

27. On or about January 25, 2018, and with no notice or warning to Plaintiff, Chase reinstated all of the fraudulent charges on Plaintiff's account that had been incurred over the prior several weeks, leaving the account with a balance of nearly \$10,000 in the negative.

28. Plaintiff has sought, orally and in writing, that Chase reverse all of the fraudulent and unauthorized charges incurred on Plaintiff's bank account with Chase; and provide an explanation for Chase's failure to do so.

29. No explanation has ever been provided by Chase as to:

a. why Chase reinstated the charges to Plaintiff's account that Plaintiff indicated were fraudulent;

b. why Chase would permit three separate ATM withdrawals, each one of which exceeded Plaintiff's daily withdrawal limit;

c. why Chase would conclude that Plaintiff had somehow authorized a middle-aged African American male to make withdrawals from her account at a currency exchange where Plaintiff had never previously conducted business, far from her home or workplace, and when Plaintiff had specifically denied such authorization; nor

d. why Chase had apparently not examined any photographic evidence from ATM machine or Currency Exchange usage during any of the fraudulent transactions to determine the identify of the person(s) making the transactions, and to confirm that person was not Plaintiff.

30. As a result of the reinstatement of these fraudulent charges, Chase has improperly deprived Plaintiff of significant funds.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this suit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and all other similarly situated persons.

32. Plaintiff seeks certification of an Illinois Class for the Illinois Consumer Fraud Act claim (Count I), which initially is defined as follows:

All Illinois JP Morgan Chase & Co. (“Chase”) customers who maintained savings or checking accounts with Chase, who incurred fraudulent transactions on their savings or checking accounts, and to whom Chase reinstated such charges.

Excluded from the Illinois Class are Chase’s current and former directors, officers, employees, agents and representatives, and members of their immediate families.

33. Plaintiff seeks certification of a national class pursuant to all other claims (Counts II-V), which is initially defined as follows:

All JP Morgan Chase & Co. (“Chase”) customers in the United States who maintained savings or checking accounts with Chase, who incurred fraudulent transactions on their savings or checking accounts, and to whom Chase reinstated such charges.

Excluded from the National Class are Chase’s current and former directors, officers, employees, agents and representatives, and members of their immediate families.

34. Numerosity. The proposed Classes are each sufficiently numerous such that joinder is impractical. Upon information and belief, each Class consists of at least thousands of members which can be ascertained through Chase’s records.

35. Common Questions of Fact and Law. Common questions of fact and law exist as to all members of the Classes and predominate over any questions affecting solely individual members of the Classes, pursuant to Rule 23(b)(3). Questions of fact and law, which, among others not listed, predominate over any individual issues for each of the Classes include:

- a. Whether Defendant Chase reinstated charges to customer accounts that its customers had previously indicated were fraudulent or unauthorized;
- b. Whether Defendant Chase would permit ATM withdrawals in cases of alleged fraudulent or unauthorized transactions that exceed the maximum daily withdrawal limit of its customer;
- c. Whether Defendant Chase has conducted any investigation into claims that a charge is unauthorized or fraudulent prior to reinstating such charges;

d. Whether Chase as a matter of policy examines all available evidence, including photographic evidence from ATM machine or other locations during any of the allegedly fraudulent or unauthorized transactions, to determine the identify of the person(s) making the transactions, to confirm that person was not its customer.

e. Whether Defendant Chase conducts any investigation prior to reinstating charges that its customers have told it are fraudulent or unauthorized;

f. Whether Defendant Chase gives notice to its customer that it intends to reinstate charges that its customers have told it are fraudulent or unauthorized, prior to actually reinstating such charges; and

g. Whether Defendant Chase has been unjustly enriched by improper overdraft charges resulting from the reinstatement of fraudulent charges to its customers' savings or checking accounts.

36. Defendant Chase violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/2, through its unfair conduct in reinstating fraudulent charges as set forth above.

44. Typicality. Plaintiff's claims are typical of the claims of members of each of the Classes because the claims are uniform and encountered in the same manner by Plaintiff and members of each of the Classes, and because Plaintiff and members of the Classes sustained damages arising out of Defendant's wrongful conduct as detailed herein.

45. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel competent and experienced in class action lawsuits. Plaintiff has no interests antagonistic to or in conflict with those

of the putative Class members and therefore is an adequate representative for the Class members.

46. Superiority. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the joinder of all members of each of the Classes is impracticable. Furthermore, the adjudication of this controversy through a class action will avoid the possibility of an inconsistent and potentially conflicting adjudication of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

COUNT I

Illinois Consumer Fraud and Deceptive Business Practices Act

47. Plaintiff repeats and re-alleges the allegations contained in each of the paragraphs of the Complaint as if fully set forth herein.

48. Defendant's acts and practices, as described herein, constitute unfair acts or practices in that they offend public policy, are immoral, unethical, oppressive, unjust, unconscionable, and/or unscrupulous, and caused and continue to cause substantial economic injury to Plaintiff and the putative Illinois Class. As such, Defendant's acts violate the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* ("ICFA").

49. Defendant's unfair acts or practices described herein include, but are not limited to:

- a. reinstating charges to customer accounts that its customers had previously indicated were fraudulent or unauthorized;
- b. permitting in the first place, and reinstating ATM withdrawals in cases of alleged fraudulent or unauthorized transactions that exceed the

maximum daily withdrawal limit of its customer; and

c. reinstating charges to customer accounts that Defendant's customers had previously indicated were fraudulent or unauthorized.

50. As a result of Defendant's unfair acts or practices, Plaintiff and the Illinois Class have suffered injury in fact and have lost substantial money or property. In addition, fraudulent transactions that are reinstated by Defendant frequently result in the imposition of overdraft charges.

51. Pursuant to ICFA, Plaintiff, on behalf of himself and for the Illinois Class, is entitled to equitable relief, including all monies paid to Defendant as a result of its alleged misconduct, a permanent injunction enjoining Defendant from its unlawful and unfair business activities as alleged herein and requiring it to implement processes and procedures to protect Defendant's customers from transaction re-sequencing, and other appropriate relief as described herein.

COUNT II

Unjust Enrichment

52. Plaintiff repeats and re-alleges the allegations contained in each of the paragraphs of this Complaint as if fully set forth herein.

53. Defendant has been enriched by its unfair acts and/or practices alleged herein.

54. The unfair acts and/or practices allowed Defendant to unlawfully receive monies in the form of NSF fees that it would not have otherwise obtained.

55. Plaintiff and members of the National Class have paid Defendant for overdraft charges which were improperly assessed as a result of Defendant's reinstatement of fraudulent charges.

56. Defendant lacks any legal or business justification for having engaged in an unfair course of conduct as alleged herein, at the expense of Plaintiff and members of the National Class.

COUNT III

Electronic Funds Transfer Act

57. Plaintiff repeats and re-alleges the allegations contained in each of the paragraphs of this Complaint as if fully set forth herein.

58. The Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.* (“EFTA”) is a federal consumer rights statute that establishes the rights, liabilities, and responsibilities of participants (including consumers, financial institutions, and intermediaries) in electronic fund transfer systems.

59. Plaintiff is a “consumer” under EFTA; and Defendant Chase is a “financial institution” under EFTA.

60. The regulations adopted under EFTA state that EFTA applies “to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account.” 12 C.F.R. § 205.3(a).

61. The fraudulent transactions set forth above in paragraphs 17-18 & 20-29 were each an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer received no benefit.

62. Defendant engaged in “unauthorized” transfers by debiting Plaintiff’s bank account for fraudulent transfers which had occurred in Plaintiff’s and the putative class’s account, as set forth above in paragraphs 17-18 & 20-29.

63. These transfers were made without Plaintiff’s permission, without

obtaining prior written authorization, without providing copies of any purported authorization, and without providing reasonable notice of the amount to be transferred or the scheduled date of the transfer from Plaintiff's bank account.

64. EFTA provides that the consumer faces a maximum liability of \$50.00 arising from an unauthorized charge within two business days after the consumer learns of the loss or theft; and zero if the loss or theft of the card is reported immediately and the card has not been used. *See*, 15 U.S.C. 1693g(a).

65. Plaintiff and the members of this proposed class allege that Defendant engaged in "unauthorized" transfers by debiting their bank accounts for unauthorized transactions for amounts in excess of \$50.00.

66. EFTA provides that the burden of proof is upon the financial institution to show that an electronic fund transfer was authorized.

67. Defendant has made no effort to demonstrate to Plaintiff that the electronic funds transfers to and from her account were authorized.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her behalf and on behalf of the Classes set forth herein, prays for relief as follows:

A. For an order certifying the Classes as set forth herein, and appointing Plaintiff and her counsel to represent the Classes;

B. For an order awarding Plaintiff and the Class members actual and compensatory damages in an amount which may be proven at trial;

C. For an order awarding Plaintiff and the Class members restitution and/or disgorgement from Defendant and other equitable relief as the Court deems proper;

D. For an order awarding Plaintiff and the Class members punitive damages as to the appropriate causes of action;

E. For an order enjoining Defendant under the Illinois Consumer Fraud Act, 815 § 505/1, *et seq.*, from continuing to engage in the acts and practices as alleged herein;

F. For an order awarding Plaintiff and the Classes pre-judgment and post-judgment interest, as well as their reasonable attorneys' and expert-witness fees and other costs pursuant to 735 ILCS §5/2-1303, and other statutes as may be applicable; and

G. For an order awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues plead herein.

DATED: January 29, 2017

**Respectfully Submitted,
MADISON CLEMENTS,
Individually and on Behalf of
All Others Similarly Situated.**

By: /s/ Jeffrey Grant Brown
Jeffrey Grant Brown
One of Plaintiffs' attorneys

Jeffrey Grant Brown
Jeffrey Grant Brown, P.C.
221 North LaSalle Street, Suite 1414
Chicago, IL 60601
312.789.9700

Glen J. Dunn, Jr.
Glen J. Dunn & Associates, Ltd.
221 North LaSalle Street, Suite 1414
Chicago, IL 60601
312.546.5056