



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

ARASH SEYEDAMERI and AMERI YORKVILLE INC.

Plaintiffs

and

ALTERNA SAVINGS AND CREDIT UNION LIMITED
and CS ALTERNA BANK

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 or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

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

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Alterna Savings and Credit Union Limited
2 Bloor Street East, 26th Floor,
Toronto, Ontario,
Canada M4W 1A8

AND TO: CS Alterna Bank
400 Albert Street, 3rd Floor,
Ottawa, Ontario,
Canada, K1R 5B2

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CLAIM

DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Agreements**” collectively refers to Alterna Bank’s Client Agreement and/or Alterna Savings’ Personal Account Deposit Agreement, Personal Service Fee disclosure document and Business Service Fee disclosure document;
- (b) “**Alterna**” collectively refers to Alterna Bank and Alterna Savings;
- (c) “**Alterna Bank**” means CS Alterna Bank, a wholly owned subsidiary of Alterna Savings;
- (d) “**Alterna Savings**” means Alterna Savings and Credit Union Limited;
- (e) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
- (f) “**Class**” or “**Class Members**” means every person resident in Canada who is or was an account holder with Alterna Bank and/or Alterna Savings, and whose account has been charged multiple NSF fees by Alterna Bank and/or Alterna Savings on a single payment made or cheque issued;
- (g) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A;
- (h) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;

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- (i) “**Defendants**” means Alterna;
- (j) “**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
- (k) “**NSF Fee**” means non-sufficient funds fee.

RELIEF SOUGHT

2. The Plaintiffs claim on their own behalf and on behalf of other Class Members:

- (a) An order certifying this action as a class proceeding pursuant to the CPA and appointing the Plaintiff as the representative plaintiff for the Class;
- (b) A declaration that the Defendants are liable to the Plaintiffs and Class Members for breach of contract;
- (c) In addition and/or in the alternative, a declaration that the Defendants are liable to the Plaintiffs and Class Members for failure to disclose material facts;
- (d) A declaration that the Defendants are liable to the Class Members for unfair practices under the *Consumer Protection Act*;

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- (e) A declaration that the Defendants were unjustly enriched by the acts and omissions pleaded herein;
- (f) Damages for breach of contract equivalent to all the monies paid by the Plaintiffs and Class Members to the Defendants resulting from the charging of multiple NSF Fees on a single cheque issued or payment made;
- (g) An order for disgorgement of the value of all monies illegally paid by the Class Members;
- (h) Punitive damages in an amount that this Court finds appropriate;
- (i) An equitable rate of interest on all sums found due and owing to the Plaintiffs and Class Members;
- (j) Pre-judgment and post-judgment interest pursuant to the CJA;
- (k) Costs of this action;
- (l) Pursuant to section 26(9) of the CPA, the costs of notice and of administration; and
- (m) such further and other relief as this Honourable Court may deem just.

OVERVIEW

3. Alterna has a practice of charging multiple NSF Fees on a single rejected payment made or bounced cheque issued by the account holder. This practice is a breach of Alterna's Agreements with its customers which stipulate that one singular charge of NSF Fee will be placed on the

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account when an account holder makes a transaction with insufficient funds. As a result of this unlawful practice, Alterna has unduly profited off the vulnerable Class Members, accruing millions of dollars per year by charging illegitimate fees.

4. The unlawful charge is placed when a Class Member attempts to make a payment or issues a cheque without having sufficient funds in their account and with no overdraft protection. The first and only lawful charge for NSF Fees is applied when the payee issues a cheque or makes a payment without sufficient funds in their account and Alterna rejects the transaction. However, if the third party autonomously re-presents the same already rejected payment, Alterna rejects the payment again and applies a duplicative NSF Fee to the account each time the payment is rejected. The Plaintiffs have been charged NSF Fees for the same transaction up to 4 times on the same day.

5. The burden of these illegitimate NSF Fees falls disproportionately on low-income Canadian residents, who are more likely to maintain low bank account balances and are more likely to use online vendors in lieu of credit cards.

6. The Plaintiffs do not dispute Alterna's contractual right to reject a transaction for insufficient funds and charge one instance of NSF Fees, but the Defendants' practice of charging multiple NSF Fees on every re-presentation of the same already rejected transaction is a breach of its contract with Class Members.

7. In the Defendants' sole and undisclosed view, each time Alterna unilaterally reprocesses the same already rejected transaction it becomes a new unique transaction that is subject to a separate NSF Fee. However, Alterna's Agreements only provide for a single instance of NSF Fees. Alterna's practice of charging multiple NSF Fees is in breach of its contracts with its customers.

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8. In addition and/or in the alternative, Alterna's Agreements do not disclose this practice of charging duplicative fees, or give the Defendants any authority to engage in this practice. The Agreements never even disclose the various situations in which an NSF Fee might apply, relying solely on the mention of the quantum of NSF Fee that would be charged. The Agreements drafted by Alterna are identical for all Class Members. The Personal Deposit Account Agreement also applies to Business Accounts.

9. Alterna's practice also violates consumer protection legislation in Ontario, where the Plaintiff resides and where Alterna is headquartered. This practice also constitutes unjust enrichment. The Defendants have been financially enriched, with a corresponding deprivation to the Class Members for no juristic reason.

THE PLAINTIFF AND THE CLASS

10. The Plaintiff, Ameri Yorkville Inc. ("**Ameri**"), is an Ontario corporation registered under the *Business Corporations Act*, R.S.O. 1990, c. B.16. Ameri holds a business account with Alterna Savings. Ameri's registered office is 401 Bay Street, Suite 2410, Toronto, Ontario, Canada M5H 2Y4.

11. The Plaintiff, Arash Seyedameri ("**Arash**"), is a Director of Ameri. Arash is a personal deposit account holder with Alterna Bank.

12. In the past few years, the Plaintiffs' accounts have been placed with duplicative charges of NSF Fees for the same rejected transaction on multiple occasions.

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13. For example, Ameri's insurance provider attempted to make a withdrawal of \$354.97 on January 30, 2023 on its business account. This transaction was rejected due to insufficient funds, and a service charge of \$45 (the NSF fee at the time) was placed on the account. Shortly after, and on the same day, the insurance provider autonomously and with no initiation by the Plaintiffs, attempted to make the same withdrawal three more times. The payment was rejected every time, and three additional and separate service charges were placed on Ameri's account for the same transaction. The following day, the insurance provider attempted to withdraw the payment a fifth time, leading to a total of five NSF Fee charges being placed on the account for the same rejected transaction.

14. This situation also arose in December 2022, and February 2023 amongst other times.

15. The Plaintiffs took no affirmative action to re-initiate the processing of the duplicative transactions. The Plaintiffs also received no notice from Alterna of the reprocessing of duplicative transactions. The duplicative charges were only discovered on perusing the bank statement.

16. The Plaintiffs understood that Alterna charges one instance of NSF Fees for rejected bill payments and cheques issued, as has been disclosed in their Personal Service Fee disclosure document and Business Service Fee disclosure document. The Plaintiffs were not informed by the Defendants, in the Agreements or otherwise, that multiple NSF Fees would be placed on the account if a third party re-presents the same payment multiple times and with no involvement of the account holders. Had this information been disclosed, the Plaintiffs would never have agreed to bank with the Defendants.

17. The Plaintiff is seeking certification of the Class, as defined herein above.

THE DEFENDANTS

18. The Defendant, Alterna Savings, is an Ontario Corporation. Its registered office is located in Toronto, Ontario. Among other things, Alterna Savings is involved in the business of providing banking services to consumers, including Ameri and Class Members. Alterna operates branches and conducts business throughout the province of Ontario.

19. The Defendant, Alterna Bank, is a federal corporation. Alterna Bank is a wholly owned subsidiary of Alterna Savings. Alterna Bank is also involved in the business of providing banking services to consumers, including Arash and Class Members. For all intents and purposes, the business, operations and practices of both the Defendants are interchangeable and inextricably linked.

20. The Defendants maintain 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 Defendants as a result of the Defendants' practice of charging multiple NSF Fees on a single payment made or cheque issued.

CAUSE OF ACTION

Breach of Contract

21. The Agreements form the contract between the Class Members and the Defendants.

22. The Agreements provide for one instance of NSF Fees being charges to account holders when they attempt to make a transaction with insufficient funds in their account.

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23. The Defendants' Agreements state the following with respect to NSF Fees:

NSF Cheque (includes current and future-dated cheques
& bill payments, electronic funds transfers and credit payments) \$45.00

24. In addition to being buried in a long list of fees and charges, and not being mentioned anywhere in the rest of the Agreements, the mention of NSF Fees refers to one single charge of \$45. The NSF Fee provision does not provide for this fee being charged multiple times for the same transaction if the third-party payee makes independent re-presentations of the cheque or payment to the bank.

25. The Agreements contain material representations and omissions whereby Alterna misrepresents its intention to charge one NSF Fee for a rejected transaction. The Personal Service Fees disclosure document and the Business Service Fee disclosure document have been drafted to indicate that one NSF Charge would be placed for cheques and payments that are not supported by sufficient funds.

26. In addition and/or in the alternative, Alterna's Agreements wilfully fail to disclose the Defendants' intentions to charge multiple NSF Fees for a single rejected transaction.

27. Returning the payment and charging multiple NSF Fees on the same transaction generates significantly more revenue for the Defendants than allowing the payment and charging a single Overdraft Fee.

28. The Agreements stipulate a singular charge of NSF Fees. As such, Class Members agreed to pay one instance of NSF Fees for a transaction rejected due to insufficient funds. By charging

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multiple NSF Fees for the same transaction, the defendants have breached their contracts with the Class Members.

29. In addition and/or in the alternative, the Agreements fail to disclose or even indicate that multiple NSF Fees could be charged on a single rejected payment or cheque solely due to the actions of an independent third-party.

30. The Class consists of consumers and others who do not possess specialised knowledge of contract law or the system for processing payments between payees and banks. The Agreements convey to Class Members that a single NSF Fee will be charged to their account when there is not enough money to cover the cheque or bill payment.

31. The Plaintiffs and Class deny that the Agreements are ambiguous about the Defendants' practice of charging multiple NSF Fees, but in the alternative, they rely on the doctrine of *contra proferentem*, whereby any ambiguity must be interpreted in favour of the Plaintiff and the Class.

32. The Agreements are a standard form contract of consumer adhesion. The Defendants have had ample opportunity to redraft the contract to disclose their intentions of charging duplicative fee when the payment is re-represented by a payee. The Defendants could have easily satisfied their service-fee-disclosure obligation while charging a second NSF Fee. But the Defendants chose not to do this. In fact, the Defendants have recently revised their NSF Fee to \$50, and omitted to include any clarification on how they charge this fee, how its calculated and whether it is per payment or per rejected transaction. Class Members cannot be said to have consented to a practice that is nowhere stipulated, explained, contemplated or permitted by the Agreement.

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33. The Defendants are required by law to disclose all charges and provide advance notice of new charges or increases in existing charges, to all personal deposit account holders under ss. 3-4 of the *Disclosure of Charges (Banks) Regulations, SOR/92-324*. 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*. The Defendants are therefore in violation of their regulatory requirements by applying undisclosed charges to Class Members' accounts.

34. In essence, the Defendants represented that they would charge one NSF Fee when a payment is made or cheque is issued that is returned for insufficient funds in the depositor's account. The Defendants have breached their contracts with the Class Members by charging multiple duplicative NSF Fee with respect to the same already rejected transaction.

35. In addition and/or in the alternative, the Defendants have breached their contracts with Class Members by wilfully omitting to disclose their intention to charge multiple instances of NSF Fees for the same already rejected transaction.

Consumer Protection Act

36. Arash and other Class Members entered into their contracts with the Defendants for personal, family and/or household purposes and are consumers for the purpose of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

37. The Defendants' Agreements contained and continue to contain false, misleading and/or deceptive representations because, among other things, (1) the Agreements stipulated a single instance of NSF Fees being charged when a transaction is rejected for insufficient funds, contrary to the Defendants' practice of charging separate NSF Fees every time a third party entity re-

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presents the payment, and as such deceived or tended to deceive consumers; (2) the Agreements failed to disclose the material fact that the Defendants would charge multiple NSF Fees for a single transaction, and such failure deceived or tended to deceive consumers; and (3) the Agreements misled the consumers as to the material fact that the consumer would be charged multiple NSF Fees for the same transaction, and as such deceived or tended to deceive the consumers. This constitutes “unfair practice” pursuant to s. 14 of the *Consumer Protection Act*, or the similar concepts as defined in the Equivalent Consumer Protection Statutes.

38. While Arash and the Class denies that there is any ambiguity present in the Agreements regarding the Defendants’ practice of charging multiple NSF Fees with respect to the same transaction, any ambiguity, if found, 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.

39. The Class Members entered into their contracts with the Defendants after or while the Defendants engaged in the unfair and deceptive practice described above. Accordingly, Arash and the Class Members who hold personal banking accounts with the Defendants 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 Arash and Class Members to the Defendants resulting from the charging of multiple NSF Fees on a single rejected transaction, pursuant to s. 18(1) of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

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

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41. The Defendants' registered places of business are located in Ontario, and the Defendants conduct business and offer their services throughout Ontario. As a result, all the Class Members who hold personal accounts with the Defendants obtain the benefit of the *Consumer Protection Act*. In the alternative, Class Members who hold personal accounts outside of Ontario benefit from the Equivalent Consumer Protection Statutes.

Unjust Enrichment

42. The Defendants received enormous revenues in the form of duplicative NSF Fees in the manner described above.

43. The Plaintiffs and Class Members suffered a corresponding deprivation to the Defendants' benefit.

44. There is no juristic reason for the Defendants' benefit and Class Members' corresponding deprivation. The Class Members are entitled to restitution in order to remedy the Defendants' unjust enrichment.

Punitive Damages

45. This surreptitious and callous conduct of the Defendants warrant the condemnation of this Honourable Court. The Defendants enjoy a reputed position in an oligopolistic industry. Many Canadian residents are dependent on the Defendants for their day-to-day banking needs. Even without charging duplicative NSF Fees, the Defendants earn millions of dollars in revenue and profits every year.

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46. By choosing to duplicate its NSF Fees charges, the Defendants chose to inflate its already enormous profits. The Defendants action purposefully targeted low-income Canadian residents, newcomers, small businesses and otherwise vulnerable people. This decision to illegally duplicate NSF Fees was also made in appreciation of the fact that this section of society was least likely to understand and/or enforce their contractual and other rights.

47. In these circumstances, the Plaintiffs request punitive damages to condemn and deter this clandestine profiteering off of vulnerable groups in Canada.

PLACE OF TRIAL

48. The Plaintiff proposed that this action be tried in Toronto.

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(Date of issue)

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Plaintiff

-and- **ALTERNA SAVINGS AND CREDIT UNION LIMITED et al**
Defendants

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PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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