

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

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KANAWHA COUNTY CIRCUIT COURT

**JEREMY A. POWELL and
TINA M. POWELL, individually
and on behalf of a class of similarly-
situated persons,**

Plaintiffs,

v.

Civil Action No. 13-C-1929
Judge Bloom

**THE HUNTINGTON NATIONAL
BANK,**

Defendant.

COMPLAINT

Preliminary Statement

1. This case arises out of the systematic abusive loan-servicing practices of the Defendant, The Huntington National Bank (Huntington). In particular, this case concerns the assessment by Huntington of illegal and multiple late fees to its West Virginia consumers who have their home loans serviced by Huntington. In direct violation of West Virginia law prohibiting the "pyramiding" of late fees, Huntington regularly and systematically charges late fees to consumers who have made a timely payment of the current month's installment. To enforce West Virginia law and to stop these abusive practices, Plaintiffs bring this action on his own behalf and on behalf of a class of West Virginia consumers who have had unlawful late fees charged to their home loan accounts.

PARTIES

2. The named Plaintiffs Jeremy A. Powell and Tina M. Powell are West Virginia residents who reside at 1288 Blake Street, Barboursville, WV 25504. The named Plaintiffs are unsophisticated in financial matters.

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3. Defendant Huntington is a nationally chartered bank, with its principal place of business in Columbus, Ohio, that services home loans in West Virginia.

FACTS

4. The named Plaintiffs have a home-secured loan with Huntington.

5. Pursuant to Paragraph 4(a) of Plaintiffs' Note, their payments to Huntington were due on the first day of each month.

6. Pursuant to Paragraph 6(A) of Plaintiffs' Note, however, Huntington agreed not to impose a late fee if it received a payment "by the end of fifteen calendar days after the payment is due," *i.e.*, by the end of the sixteenth day of the month.

7. Pursuant to Paragraph 6(A) of Plaintiffs' Note, Huntington also agreed to only charge Plaintiffs one late fee for each missed payment in an amount not to exceed \$15.00.

8. Nevertheless, Huntington regularly assessed late fees for months in which a payment was timely made within the period stated in Plaintiffs' Note.

9. For example, although Plaintiffs made a full payment on October 8, 2012, within the contractual period set forth in his Note, Huntington assessed Plaintiffs a late fee on October 17, 2012.

10. Then, on November 5, 2012, Plaintiffs made another full payment, which included a \$15.00 late fee, within the contractual period described in his Note. Nevertheless, on November 19, 2012, Huntington assessed Plaintiffs another late fee.

11. Huntington regularly and systematically assesses late fees in this matter.

THE PROPOSED CLASS

12. The named Plaintiffs bring this action on their own behalf and on behalf of all other similarly situated individuals pursuant to Rule 23 of the West Virginia Rules of Civil

Procedure. The class is presently defined as:

All West Virginia citizens at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action through the date of class certification, had or have consumer home loans serviced by Defendant Huntington and who were charged late fees in months that they made full principal and interest payments.

13. The requirements of Rule 23 are satisfied as follows:

- (a) The class is so numerous that joinder of all members is impracticable;
- (b) There are questions of law and fact common to all members of the class;
and
- (c) The named Plaintiffs' claims are typical of those of the class as a whole.

14. The Plaintiffs have displayed an interest in vindicating the rights of the class members, will fairly and adequately protect and represent the interests of the class, and are represented by skillful and knowledgeable counsel. The relief sought by the named Plaintiffs will inure to the benefit of the class generally.

15. The common questions of law and fact predominate over individual questions, and the class action device is superior to other available methods for the fair and efficient adjudication of the controversy.

16. Additionally, the Defendant has acted or refused to act on grounds generally applicable to the entire class.

CLAIMS FOR RELIEF

COUNT I — Illegal Assessment of Late Fees (Class and individual claim)

17. Plaintiffs incorporate the preceding paragraphs by reference.

18. Plaintiffs' Note prohibits the assessment of late fees for payments made within the

contractual period and prohibits the assessment of more than one late fee for each late payment.

19. Pursuant to West Virginia Code, § 46A-3-112, Huntington must first credit payments, for purposes of assessing late fees, to current installments. Moreover, Huntington may only charge a late fee once, no matter how long an installment remains in default.

20. Nevertheless, Huntington regularly and systematically assessed Plaintiffs late fees for months in which they made timely monthly payments.

21. As a result, Defendant assessed Plaintiffs and the putative class members late fees in violation of the terms of their contracts and West Virginia Code § 46A-3-112.

22. By assessing Plaintiffs and the putative class members these unlawful late fees, Huntington caused Plaintiffs and the putative class members to suffer damages.

**COUNT II — False Representation of Amount of Claim
(Class and individual claim)**

23. Plaintiffs incorporate the preceding paragraphs by reference.

24. By assessing or collecting late fees that it had no right to assess, Huntington misrepresented the amount of a claim in violation of West Virginia Code § 46A-2-127.

STIPULATION

25. Plaintiffs stipulate that, with respect to his individual claims, they seek a recovery of not more than \$75,000, exclusive of costs and interest.

RELIEF SOUGHT


WHEREFORE, Plaintiffs seek the following relief for themselves and for all class members:

- (a) A declaration that the conduct above is unlawful;
- (b) Actual and compensatory damages;

- (c) A civil penalty for each violation of Chapter 46 A, under West Virginia Code §§ 46A-101(1) and - 106;
- (d) Reasonable attorneys' fees and the costs of this action, under West Virginia Code §§ 46A-5-104 and - 106(a);
- (e) Pre- and post-judgment interest; and
- (f) All other relief the Court deems appropriate.

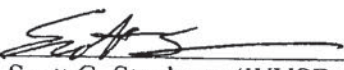
PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES.

JEREMY A. POWELL and
TINA M. POWELL,
Individually and on behalf of
a class of similarly-situated
persons,
By Counsel.



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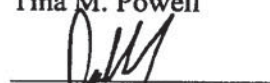
Co-counsel for Plaintiffs

Binding Stipulation

Plaintiffs and their counsel stipulate by their signatures below, with respect to Plaintiffs' individual claims, that they are not seeking and will not in any event seek a recovery in excess of \$75,000, exclusive of costs and interest.

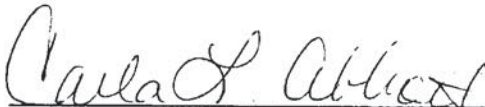

Jeremy A. Powell


Tina M. Powell


Jonathan R. Marshall

State of West Virginia
County of Kanawha

The foregoing instrument was acknowledged before the undersigned authority by
Jeremey A. Powell, Tina M. Powell, and Jonathan R. Marshall on this the 16 day of
July, 2013.


Notary Public

My commission expires: July 11, 2020.



Addendum to Binding Stipulation

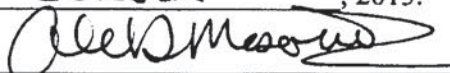
Counsel stipulates by his signature below, with respect to Plaintiffs' individual claims, that they are not seeking and will not in any event seek a recovery in excess of \$75,000, exclusive of costs and interest.



Jonathan R. Marshall

State of West Virginia
County of Kanawha

The foregoing instrument was acknowledged before the undersigned authority by
Jonathan R. Marshall on this the 15TH day of OCTOBER, 2013.



Notary Public

My commission expires: JANUARY 2, 2018.

