



## **THE PARTIES**

1. Davidian is a 62-year-old citizen of Wisconsin. Davidian is an “elderly” Wisconsin resident as defined by Wis. Stats. § 100.264(1)(c) and a consumer for the purposes of Chapter 421 of Wisconsin Statutes. Additionally, Davidian may not waive or agree to forego rights and benefits under Chapters 421 to 427. (Wis. Stats. 421.106)

2. On information and belief, Defendant JPMorgan Chase Bank, National Association (FDIC Cert: 628) is a National Bank. The Bank has corporate headquarters at 1111 Polaris Parkway, Columbus, Ohio 43240. Chase Bank operates a branch at 111 E. Wisconsin Ave., Milwaukee, WI 53202. Chase Bank is successor by merger to Bank One, N.A. Chase Bank is a brand marketed by JPMorgan Chase & Co. The corporate headquarters of JPMorgan Chase & Co. are located at 270 Park Avenue, New York, NY 10017.

3. On information and belief, CHILDS is the manager of the JPMorgan Chase Bank branch at 111 E. Wisconsin Ave., Milwaukee, WI. 53202.

4. On information and belief, DIMON is Chief Executive Officer and President of JPMORGAN CHASE & CO., with offices at 270 Park Avenue, New York, NY 10017. On information and belief, DIMON has been a Director since 2000 of JPMorgan Chase or a predecessor institution. On information and belief, DIMON was Chairman and Chief Executive Officer at Bank One Corp., where Davidian maintained a checking account prior to its merger with JPMorgan Chase in July 2004.

5. On information and belief, HARRISON is Chairman of the Board of JPMORGAN CHASE & CO., with offices at 270 Park Avenue, New York, NY 10017. On information and belief, Harrison became Chairman of JPMorgan Chase on December 31, 2005. On

information and belief, JPMorgan Chase & Co. operates Defendant Chase Bank as a retail brand, and operates a branch of The Bank at 111 E. Wisconsin Ave., Milwaukee, WI. 53202

### **FACTS**

6. Plaintiff brings this verified amended and supplemental complaint, pursuant to Wis. Stats § 802.09(4).

7. Davidian asserts direct injuries or losses totaling \$189.80 resulting from a series of intentional, unauthorized and unjustified conversions of Plaintiff's funds, over Plaintiff's objections, through fraudulent representations and false advertising, and in breach of a contract between The Bank and Davidian. This pattern of fraudulent representations, conversions of funds and breaches of contract occurred between July 11, 2006 and November 16, 2006.

8. During a marketing presentation to induce Davidian to open a second account with The Bank, on June 1, 2006, Defendant Childs and bank officer Bradley F. Diamond fraudulently asserted that if there was ever a problem with a new account they would resolve it.

9. Diamond solicited Davidian's business through false advertising and fraudulent marketing material produced by The Bank.

10. During the marketing session, Diamond asserted that The Bank offered personal service.

11. Diamond presented Davidian with a blue and white marketing folder containing fraudulent representations in the form of marketing material by which Diamond solicited Davidian's business, inducing him to sign up for more Chase products that would allow customers to "Manage your money anywhere at anytime."

12. Diamond solicited Davidian's business and induced him through The Bank's fraudulent representations within Defendants' marketing material (such as the pamphlet identified as RM-001UPL), and oral statements meant to convince Davidian to sign up for a Chase Bank services that would allow Davidian to "Bank from your home or office" with "Free Chase Online<sup>SM</sup> Banking." **See Attachment G.**

13. The folder contained the words "Member FDIC" on the outside cover.

14. The marketing folder also contained a 36-page publication called "Account Rules and Regulations"<sup>1</sup> ("The Contract") which fraudulently represented that it is "A complete guide to the rules and regulations governing checking, savings, CD accounts and overdraft protection services." **See Attachment A1.**

15. Page 1 of The Agreement states:

*This booklet is, in part, informative, but it also contains your agreement with us, sets forth your duties to us and defines certain elections that you made when you opened your account with us.*

*Your deposit account is subject to some basic rules that protect both you and us. This booklet explains these rules and should be read carefully by depositors."*

16. Diamond also gave Davidian his personal business card bearing his direct telephone number. Diamond told Davidian to use the number to resolve any issues or to obtain financial "products" marketed by The Bank.

17. On June 1, 2006, during the marketing presentation, Childs appeared and handed Davidian his personal business card, identifying him as "Vice President" and "Branch Manager." Childs falsely represented to Davidian that Davidian could call him for personal attention to any problem with The Bank, and that he would resolve it.

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<sup>1</sup> The document is identified as "Catalog#40473 (Wisconsin Market) ©JPMorgan Chase Bank, N.A. Member FDIC Effective Date 02/13/2006"

18. Federal law requires “all financial institutions to obtain, verify, and record information that identifies each person or business that opens an account,” according to Page 1 of The Contract. **See Attachment A2.**

19. Diamond took Davidian’s Wisconsin Driver’s license and recorded information from the card, which includes Davidian’s date of birth as February 1944.

20. Defendants induced Davidian to obtain The Bank’s services through the lengthy and misleading marketing presentation, the fraudulent representations and misleading and false marketing material produced by The Bank and the fraudulent representation and marketing presentation by Diamond and Childs.

21. On June 1, 2006, induced by the misleading and false representations in marketing materials and assertions of The Bank, and fraudulently informed by The Bank and its agents that The Bank would be bound by the terms of The Contract and that The Contract represented the complete guide to the rules and regulations and duties of The Bank and Davidian, Davidian deposited between \$1,500 and \$6,500 in a new account at Chase Bank ending in 1251.

22. Davidian at all times fully satisfied all his obligations under The Contract.

23. On July 11, 2006, Chase Bank, without permission, authority or Plaintiff’s knowledge and in violation of The Contract, assessed a fee of \$150 for “insufficient funds” and withdrew said amount from funds on deposit in Davidian’s Chase Bank account ending in 1251.

24. Page 12 of The Contract (C. MISCELLANEOUS FEES For Consumer and Business Accounts) lists “Insufficient Funds Fee” as “\$30/ item or withdrawal request.” **See Attachment A3.**

25. Page 15 of The Contract (Insufficient Funds:) specifies when and why a fee can be assessed for “Insufficient Funds.” **See Attachment A4.**
26. On July 12, Davidian went to the JPMorgan Chase branch 210 West Capitol Drive, Milwaukee, Wisconsin 53212 to demand the money be returned.
27. Davidian understood this act to be a violation of The Contract, which states when, why and how The Bank is authorized to charge Davidian a fee.
28. The agent at the Capitol Drive branch refused to refund the money despite the provisions of The Contract.
29. Davidian then telephoned Diamond at the number he provided on his business card in case Davidian needed help with any problem. Davidian demanded an explanation and asked for a justification of the fee when there were funds sufficient to cover all items presented. Davidian demanded a return of the converted funds.
30. Diamond did not reverse the charge.
31. Diamond stated he asked Childs to reverse the charge, and Childs told him the fee was consistent with the contract.
32. Instead of refunding the fee, Diamond fraudulently represented that the fee was correctly assessed, and solicited Davidian to obtain additional products from The Bank to protect Davidian from future overdraft charges.
33. Davidian sent a fax to memorialize the conversation. **See Attachment B.**
34. Diamond stated that Childs refused to refund the money and that Childs said The Contract allowed The Bank to assess the fee for “Insufficient Funds.”
35. Defendant Childs fraudulently represented that The Bank was abiding by the rules governing “Insufficient Funds” fees set forth in The Contract.

36. On July 18, Davidian went again to The Bank and demanded that Childs provide evidence that there was an overdraft. Childs stated that he did not have to show Davidian which specific item presented for payment caused an overdraft and fraudulently represented that fee was permitted under The Contract. Following this fraudulent representation, Childs solicited Davidian to obtain the overdraft protection service.

37. On July 18, 2006, The Bank and Childs fraudulently represented that there was an overdraft and used the fraud to retain Davidian's funds and to deprive Davidian of the use of his property. The Bank and Childs then used the fraudulent representation that the fee was correctly assessed to market additional financial services to Davidian, such as "overdraft protection."

38. For two weeks, Childs fraudulently represented that the removal of \$150 from Davidian's account was not an error and refused Davidian's demands that the funds be returned. Defendant Childs and other agents of Chase Bank fraudulently represented that The Bank had made no error and fraudulently represented that The Contract permitted Chase Bank to continue to assess the fees and take possession of Davidian's money unless Davidian obtained additional "overdraft protection."

39. Childs fraudulently represented that the bank only refunds money when the bank makes an error, but fraudulently denied the bank made an error as a pretext to continue the conversion of Davidian's funds and to induce Davidian to stop demanding that The Bank abide by The Contract.

40. Childs and other agents of Chase Bank solicited Davidian to purchase other of Chase Bank's products including "over-draft protection" in order to prevent any additional assessments of this kind, knowing that the overdraft was fraudulently taken in breach of The

Contract.

41. Davidian wrote to bank regulators and the Better Business Bureau. Childs told Davidian he was free to take his business elsewhere but would not return the fee.

42. Davidian made a final visit to The Bank on July 21 and demanded that Childs return the fee. Childs told Davidian he did not have to refund the fees, that this is how The Bank does business and informed Davidian of Davidian's right to take what remained of his funds to another bank. Davidian told Childs on July 21 that he would file a lawsuit if the funds were not returned.

43. On July 24, 2006 Davidian concluded that The Bank never intended to operate according to The Contract and that the conversion of funds was an intentional, fraudulent marketing device. Davidian then filed this lawsuit to force a refund.

44. The Contract was a fraudulent representation used as a marketing prop in the blue and white folder while The Bank charged fees that were not listed. Nowhere in The Contract is there an agreement that The Bank can take a \$150 "Insufficient Funds" fee when money is on deposit to cover all outstanding items.

45. It was not until after the lawsuit was filed that The Bank replaced the \$150. By the time the \$150 was replaced, Davidian had out-of-pocket expenses for court filing fees and service of process.

46. The Bank fraudulently represented that the replacement of the fee was a "courtesy" gesture that Davidian was not entitled to.

47. The replacement of the fee as a "courtesy" is proof that Childs fraudulently represented The Bank only returns funds when there is a Bank error. If not, the claim that the return was a "courtesy" was a fraudulent representation.



48. The day after the claim was filed in Milwaukee County Circuit Court, Chase Bank reversed “as a courtesy” the \$150 “insufficient funds” after having had full use of the funds for two weeks and depriving Plaintiff the use of Plaintiff’s own money.

49. Less than one week after Davidian first demanded that The Bank return the converted funds, Chase Bank resumed its pattern of converting funds in breach of The Contract.

50. On July 17, 2006, without permission, authority or Plaintiff’s knowledge, The Bank assessed a \$9.95 “Monthly Service Fee” for “Financial Management Software” and removed said fee from Davidian’s funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

51. On August 15, 2006, The Bank, without permission, authority or Plaintiff’s knowledge assessed a \$9.95 “Monthly Service Fee” for “Financial Management Software” and removed said fee from Davidian’s funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

52. On September 15, 2006 The Bank, without permission, authority or Plaintiff’s knowledge assessed a \$9.95 “Monthly Service Fee” for “Financial Management Software” and removed said fee from Davidian’s funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

53. On October 16, 2006 The Bank, without permission, authority or Plaintiff’s knowledge assessed a \$9.95 “Monthly Service Fee” for “Financial Management Software”

and removed said fee from Davidian's funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

54. Following the October 16 removal of funds from Plaintiff's account, Plaintiff traveled to Defendant JPMorgan Chase's branch at North Water Street and East Wisconsin Avenue and demanded that Childs and Personal Banker Jessica Rogan Strini (Strini) explain why money was taken without Plaintiffs permission or knowledge in breach of The Contract.

55. Childs acknowledged that Davidian did not owe the fees. Childs went to a computer in the customer service area of The Bank and fraudulently represented that he then and there refunded the fees, pretending to enter information into the computer and intending through the false representation to make Davidian forbear further action in seeking a refund of the funds.

56. Davidian monitored the balance in his account on the Internet, and after about two weeks elapsed it was evident to Davidian that The Bank and Childs fraudulently represented that he had returned the converted funds and used the fraudulent representation to retain possession of the funds.

57. Davidian contacted The Bank's lawyer and alerted him that further conversion had occurred since the filing of the lawsuit, but counsel stated The Bank did not authorize him to handle any issues not included in the pending complaint.

58. On Nov. 9, 2006 Davidian delivered to The Court PLAINTIFF'S MOTION FOR PERMISSION TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT and PLAINTIFF'S FIRST AMENDED AND SUPPLEMENTAL COMPLAINT, incorporating

the four fraudulent fees converted between July 17 and October 16.

59. On Nov. 10, 2006 The Bank reversed the charges.

60. On Nov. 16, The Bank, without permission, authority or Plaintiff's knowledge assessed a \$9.95 "Monthly Service Fee" for "Financial Management Software" and removed said fee from Davidian's funds on deposit in violation of The Contract. At the time of assessing and removing the fee from the funds on deposit, Defendants knew or should have known Davidian was not subject to the fee.

61. Despite Childs' fraudulent representation that he was refunding the fees to Davidian's account, Chase Bank retained possession of Davidian's money. As a result, Plaintiff was deprived of the use of the money he had entrusted to Chase Bank. Childs fraudulently represented to Davidian that The Bank's policy is to return unauthorized fees only if the depositor discovers the bank's action within two months. Childs asserted that a depositor who does not discover the error until more than two months after the action must forfeit the fees because "the bank thinks that is fair." The policy falsely articulated by Childs deviates from The Contract used by defendants to market their products to potential Wisconsin customers, including the elderly.

62. This retention of converted funds shows that although Defendant JPMorgan Chase's CODE OF CONDUCT (The Code) "sets forth certain minimum expectations that JPMorgan Chase has for" . . . "employees and directors of JPMorgan Chase & Co. and its direct and indirect subsidiaries," Defendants use this CODE OF CONDUCT and statements on corporate governance as a fraudulent and misleading advertising scheme to misrepresent The Bank's governance. **See Attachment C.**

63. Defendant Harrison says of Chase governance: "[Defendant James] Jamie Dimon

and I are proud of the 200-year tradition of integrity on which this firm is built . . . .”

64. The Code applies to all employees “of JPMorgan & Co., and its direct and indirect subsidiaries.”

65. In Section 5 (OTHER BUSINESS CONDUCT) on Page 8, The Code falsely represents the standard to which employee conduct is held. Section 5 states: “We are all expected to conduct the firm’s business in accordance with the highest ethical standards, respecting the firm’s customers, suppliers, and other business counterparties, dealing responsibly with the firm’s assets, and complying with applicable legal and regulatory requirements.”

66. Section 5.1 of The Code continues: “You are expected to protect the firm’s assets as well as the assets of others that come into your custody. The firm’s assets include . . . customer relationships and intellectual property such as information about products, services, customers, systems and people.”

67. These provisions of The Code are false misrepresentations of the way Chase Bank does business, and they are intended to induce the public, including elderly Wisconsin residents, that the company will enforce violations of the code.

68. On August 1, 2006, during discussions regarding a settlement in this case, The Bank, through its attorney agreed to pay \$1,750 to settle the original “insufficient funds” fee, but refused to give Childs additional training that would allow him to fulfill the standards set forth in The Code.

69. During most of the period of conversion of Davidian’s funds, Davidian’s wife was unemployed; they had no health insurance, medical insurance or prescription insurance. Davidian was concerned about retaliation by The Bank that might cause defendants to

further convert funds in violation of The Contract. Davidian suffered emotional damage including intense anger and frustration, feelings of inadequacy for being a journalist without the legal skills or ability to defend his family against fraudulent bankers.

70. In The Bank's November 21, 2006 RESPONSES TO REQUEST FOR ADMISSIONS, JPMorgan Chase Bank, N.A. First Vice President Brian Thurman admits that there was sufficient money on deposit in Davidian's account to cover each and every item presented for payment. **See Attachment D**

71. Thurman also admits that The Bank took an insufficient funds fee of \$150.

72. The following day, Defendant Childs retaliated. Childs announced by certified letter dated November 22, that The Bank was closing Davidian's accounts and that Davidian's "ATM card will be blocked." Further, the letter states that Defendants will return any checks received as of November 22, 2006 and marked "Account Closed." Although Davidian had not violated The Contract and had funds on deposit, Defendants ordered Plaintiff to not write checks on the accounts, not access the funds through an ATM and to destroy ATM cards.

73. On November 24, Defendants' security office in Chicago ordered Plaintiff by telephone to not enter the bank because Defendant Childs was afraid when Plaintiff asked for return of converted funds. This final action amounts to a final and complete total conversion of all of Davidian's funds by Defendants in furtherance of their ongoing and organized "way of doing business."

74. This is The Bank's "way of doing business" and it was anticipated by Harrison and Dimon in a document sent in April 2004 to stockholders of JPMorganChase and Bank One as they proposed merger of the companies. **See attachment F.**

On Page 23 of the letter, Defendants Harrison and Dimon write:

“The success of the merger will depend, in part, on our ability to realize the anticipated cost savings from combining the businesses of JPMorgan Chase and Bank One. Our managements have estimated that approximately \$2.2 billion of annual pre-tax cost savings, to be phased in between 2004 and 2007, would be realized from the merger. However, to realize the anticipated benefits from the merger, we must successfully combine the businesses of JPMorgan Chase and Bank One in a manner that permits those cost savings to be realized. If we are not able to successfully achieve these objectives, the anticipated benefits of the merger may not be realized fully or at all or may take longer to realize than expected. Such a failure could result in dilution to JPMorgan Chase’s earnings per share.

In addition, JPMorgan Chase and Bank One have operated and, until the completion of the merger, will continue to operate, independently. It is possible that the integration process could result in the loss of key employees, the disruption of each company’s ongoing businesses or inconsistencies in standards, controls, procedures and policies, any of which could adversely affect our ability to maintain relationships with clients and employees or our ability to achieve the anticipated benefits of the merger or could reduce our earnings.”

71. Davidian used automatic debit payments for phone service, Web hosting, life insurance and other services that were linked to the accounts. Davidian worries that services will be cut off if The Bank closes his account and the automatic payments are rejected.

72. The elderly are more likely to suffer the losses specified in Wis. Stats. 100.264(b).

## **CLAIM ONE**

### **CONVERSION**

73. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 72 preceding.

74. By assessing an “Insufficient Funds” fee and withdrawing said fee from Davidian’s account on July 11, 2006 as alleged herein, Defendants JPMorgan Chase Bank N.A. and Childs and each of them intentionally controlled and took property belonging to Davidian without Davidian’s consent and without cause, justification or authority.

75. Defendants’ conduct as alleged herein resulted in serious interference with rights of

Davidian to possess his property.

## CLAIM TWO

### **CONVERSION**

76. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 75 preceding.

77. By assessing the fees and withdrawing said fees from Davidian's accounts on July 17, 2006, 11, as alleged herein, Defendants JPMorgan Chase Bank N.A. and Childs and each of them intentionally controlled and took property belonging to Davidian without Davidian's consent and without cause, justification or authority.

78. Defendants' conduct as alleged herein resulted in serious interference with rights of Davidian to possess his property.

79. By assessing an "Insufficient Funds" fee on July 11, 2006, withdrawing said fee from Davidian's accounts while sufficient funds were on deposit and by refusing to return the fees, The Defendants JPMorgan Chase Bank N.A. and Childs and each of them did intentionally and with malice Breach The Contract as set forth in Defendant JPMorgan Chase's Account Rules and Regulations for the Wisconsin Market and Defendant JPMorgan Chase's Consumer Account Bill Payment & Transfer Services Agreement (Legal Agreement).

## CLAIM THREE

### **BREACH OF CONTRACT**

80. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 76 preceding.

81. That Defendant JPMorgan Chase Bank N.A. on July 17, 2006, by assessing a \$9.95

“Monthly Service Fee” for “Financial Management Software,” breached the terms of The Contract and converted funds not subject to fee guidelines.

#### **CLAIM FOUR**

##### **BREACH OF CONTRACT**

82. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 81 preceding.

83. That Defendant JPMorgan Chase Bank N.A. on August 15, 2006, by assessing a \$9.95 “Monthly Service Fee” for “Financial Management Software,” breached the terms of The Contract and converted funds not subject to fee guidelines.

#### **CLAIM FIVE**

##### **BREACH OF CONTRACT**

84. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 83 preceding.

85. That Defendant JPMorgan Chase Bank N.A. on September 15, 2006, by assessing a \$9.95 “Monthly Service Fee” for “Financial Management Software,” breached the terms of The Contract and converted funds not subject to fee guidelines.

#### **CLAIM SIX**

##### **BREACH OF CONTRACT**

86. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 85 preceding.

87. That Defendant JPMorgan Chase Bank N.A. on October 16, 2006, by assessing a \$9.95 “Monthly Service Fee” for “Financial Management Software,” breached the terms of The Contract and converted funds not subject to fee guidelines.



**CLAIM SEVEN**

**BREACH OF CONTRACT**

88. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 78 preceding.

89. That Defendant JPMorgan Chase Bank N.A. on November 16, 2006, by assessing a \$9.95 “Monthly Service Fee” for “Financial Management Software,” breached the terms of The Contract and converted funds not subject to fee guidelines.

**CLAIM EIGHT**

**FRAUDULANT REPRESENTATION IN VIOLATION OF §100.18 Wis. Stat.**

90. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 89 preceding.

91. That Defendants JPMorgan Chase and Childs and each of them on June 1, 2006 fraudulently represented that the “Account Rules and Regulations” (“The Contract”) were the rules The Bank adhered to.

92. This fraudulent inducement was made to induce Davidian, an elderly Wisconsin resident, to obtain products and services from The Bank

**CLAIM NINE**

**FRAUDULANT REPRESENTATION IN VIOLATION OF §100.18 Wis. Stat.**

93. Plaintiff repeats and re-alleges as though more fully set forth herein paragraphs 1 through 92 preceding.

**CLAIM TEN**

**STRICT RESPONSIBILITY AND INTENTIONAL MISREPRESENTATION**

94. That Defendants JPMorgan Chase, Harrison and Dimon caused damage to Davidian

by intentionally misrepresenting the role of The Code in Corporate governance prior to Thurman's admissions dated November 21, 2006, and had strict responsibility for correcting the problems herein alleged.

**WHEREFORE, the Plaintiff asks this Court to grant the following relief:**

1. This Court assume jurisdiction and grant the Plaintiff a trial by jury of six persons;
2. This Court award the Plaintiff compensatory damages in the amount of \$189.80;
3. This Court award the Plaintiff supplemental damages of \$60,000 according to the guidelines set forth in Wis. Stats. §100.264 VIOLATIONS AGAINST THE ELDERLY;
5. This Court award the Plaintiff punitive damages in the amount determined by the court against each defendant individually so that the defendants will learn to respect the property rights of others and be deterred from further misconduct;
6. This Court award costs and fees of this suit and reasonable attorney fees, if any;
8. This Court award or grant all such further and additional relief as is available under law or at equity and that the Court deems appropriate.

**VERIFIED COMPLAINT**

I, Geoffrey K. Davidian, represent that I have read the complaint, have direct and indirect knowledge of the allegations contained therein, and that the allegations are true and correct to the best of my knowledge.

Dated this 27<sup>th</sup> day of November, 2006.

BY: \_\_\_\_\_

Geoff Davidian  
4101 N. Prospect Ave.  
Milwaukee, WI 53211  
(414) 964-2123

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My commission expires \_\_\_\_\_