

IN THE CIRCUIT COURT OF LOGAN COUNTY, ILLINOIS

EARL MILLER, JR., individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

STATE BANK OF LINCOLN,

Defendant.

Case No.: 2020L19

CLASS ACTION COMPLAINT  
AND JURY DEMAND

**CLASS ACTION COMPLAINT**

EARL MILLER, JR. (“Plaintiff”), on behalf of himself and the Classes of persons preliminarily defined below, states as follows:

**INTRODUCTION**

1. Plaintiff brings this action on behalf of himself and Classes of similarly situated consumers against Defendant STATE BANK OF LINCOLN (“Defendant”) arising from Defendant’s routine policy and practice of charging its customers multiple Overdraft or Returned Item Fees for a single transaction.

2. Overdraft and insufficient fund fees represent one of the biggest profit centers for banks, stemming from practices susceptible to high levels of abuse which pose the largest burden on consumers. For example, investigations undertaken by the Consumer Financial Protection Bureau (“CFPB”) revealed that some banks intentionally create confusion for their accountholders regarding the terms of their overdraft policies, intentionally obscure how fees are charged for overdraft and insufficient funds transactions, and design their accountholder application and onboarding process to allow the banks to capitalize on this confusion. This confusion allows banks to maximize the number of overdraft fees they can charge leading directly to increased revenue

for the bank. See Ashlee Kieler, *CFPB Says TCF Bank Made Millions From Misleading Overdraft Practices*, Consumerist.com (Jan. 19, 2017), <https://consumerist.com/2017/01/19/cfpb-says-tcf-bank-made-millions-from-misleading-overdraft-practices/>; *Consumer Financial Protection Bureau Orders Santander Bank to Pay \$10 Million Fine for Illegal Overdraft Practices* (July 14, 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-orders-santander-bank-pay-10-million-fine-illegal-overdraft-practices/>.

3. This increased revenue source, however, creates a disproportionate impact on consumers living in the lower socio-economic levels of the Country. For example, the Center for Responsible Lending reported that, “[o]verdraft fees often impose a great burden on those already living paycheck to paycheck, struggling to make ends meet.” *Center for Responsible Lending, Unfair Market: The State of High-Cost Overdraft Practices in 2017* (August 2018), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-unfair-market-overdraft-1-aug2018.pdf>.

4. Historically, overdraft fees represent a substantial revenue generator for financial institutions. In 2013 alone, a survey by Moebs Services, Inc. found that certain financial institutions generated \$31.9 billion in overdraft revenue.<sup>1</sup> As banks continued their abusive practices of pushing overdraft products, “the Federal Reserve Board enacted certain regulatory changes in 2009, including requiring that bank customers must “opt in” to bank overdraft products that may be triggered by ATM withdrawals or debit card purchases.”<sup>2</sup> These regulations were specifically designed to protect consumers from abusive and confusing banking practices.

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<sup>1</sup> See *How Banks Sell Overdraft* 1 (July 2014) available at [http://calreinvent.org/wp-content/uploads/2018/09/Report\\_How\\_Banks\\_Sell\\_Overdraft\\_Results\\_of\\_Overdraft\\_Mystery\\_Shopping\\_in\\_Four\\_Key\\_States.pdf](http://calreinvent.org/wp-content/uploads/2018/09/Report_How_Banks_Sell_Overdraft_Results_of_Overdraft_Mystery_Shopping_in_Four_Key_States.pdf).

<sup>2</sup> *Id.* at 1.

5. Undeterred by these new regulations, Banks found new ways to keep the overdraft machine churning: charge multiple overdraft fees for a single transaction without a customer's consent—all while promising in their account agreements that a single item (or transaction) would only be subject to a single overdraft fee.

6. In this case, Defendant contracted with Plaintiff to charge one Overdraft or Returned Item Fee for a single “item” or “transaction” that caused their account to become negative. *See* Defendant's “Terms and Conditions of Your Account” (attached hereto as Exhibit A), “Customer Overdraft Policy” (attached hereto as Exhibit B), and “What You Need to Know About Overdrafts and Overdraft Fees” (attached hereto as Exhibit C) (collectively, the “Account Documents”).

7. Additionally, the Account Documents provide that Defendant may charge a \$5 “Continuous Overdraft Fee” “[a]fter the 4th consecutive business day of being overdrawn,” *see* Ex. B at 1, however, Defendant charges its customers the “Continuous Overdraft Fee” after the *third*—not fourth—consecutive business day of an account being overdrawn.

8. Notwithstanding these contractual provisions, which limit the number of Overdraft or Returned Item Fees Defendant may charge, Defendant routinely charged Plaintiff and Class members multiple Overdraft or Returned Item Fees for a single item or transaction. In doing so, Defendant breached its contractual promises and violated the covenant of good faith and fair dealing.

9. Defendant further breaches its contract with Plaintiff by beginning to charge the \$5 “Continuous Overdraft Fee” one day earlier than that provided for in its Account Documents.

10. Defendant breaches its duty of good faith and fair dealing by charging multiple Return Item Fees or Paid Item Fees for reprocessing the same item, and for charging a Continuous Overdraft Fee earlier and more often than its Continuous Overdraft Fees than its contract allows.

11. As a direct and proximate cause of Defendant's policies and practices, Plaintiff and Class members were injured by Defendant in an amount to be determined at trial. On behalf of himself and the Classes, Plaintiff seeks damages for Defendant's violations as set forth more fully below.

### **PARTIES**

12. Plaintiff Earl Miller, Jr. is a citizen of the state of Illinois. Plaintiff has held a checking account with Defendant State Bank of Lincoln since July of 2019.

13. Plaintiff Earl Miller, Jr. is a resident of the City of Clinton, County of DeWitt, Illinois, and holds a checking account with Defendant. At the time Plaintiff opened his checking and savings accounts, Plaintiff entered into an agreement which set forth the terms of his banking relationship with Defendant. *See* Exhibits A-C.

14. Defendant State Bank of Lincoln is headquartered in Lincoln, Illinois and has over \$338,000,000.00 in assets. It has five branch locations throughout Lincoln, Illinois and Clinton, Illinois.

### **JURISDICTION & VENUE**

15. This Court has jurisdiction over the subject matter of this action because Defendant and Plaintiff reside in the state of Illinois.

16. This Court has personal jurisdiction over the Defendant because Defendant's actions and omissions committed as pled in the Complaint occurred within the state of Illinois and

Defendant regularly conducts or solicits business in, or derives substantial revenue from, products or services provided to persons in the state of Illinois.

17. Venue is proper in this County pursuant to 735 Ill. Comp. Stat. Ann. 5/2-101 because Defendant has locations in Logan County and a substantial part of the events or omissions giving rise to the claims herein occurred in Logan County.

**FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

**I. DEFENDANT CHARGES ITS CUSTOMERS OVERDRAFT OR RETURNED ITEM AND CONTINUOUS OVERDRAFT FEES IN EXCESS OF THOSE PROVIDED FOR IN ITS ACCOUNT DOCUMENTS.**

***A. Defendant’s Account Documents.***

18. Defendant requires its customers, including Plaintiff and Class members, to agree to its banking account documents at or around the time an account is opened. *See* Exhibits A-C.

19. Like other banks, Defendant’s Account Documents allow it to assess an Overdraft or Returned Item Fee when a withdrawal is attempted against a negative balance.

20. Defendant’s Customer Overdraft Policy provides:

At our discretion, we may pay and permit transactions for items, including checks, preauthorized automatic debits, telephone-initiated or other electronic transfers, paid & return item fees, continual overdraft fees & service charges when you don’t have sufficient funds, up to a maximum of \$500 total per account[.] . . . A paid item or return item fee of **\$28 per item** will be assessed for **each item** submitted for which you don’t have sufficient available funds in the account to cover the item amount when it is processed each evening, up to a maximum of \$112 in such fees. A \$5 continual overdraft fee may be assessed each business day the account remains overdrawn after four (4) business days.

See Exhibit B at 1 (emphasis supplied). Defendant’s contract specifically and ubiquitously sets forth the term “transaction” and “item” in the singular.

21. Defendant’s Customer Overdraft Policy also indicates that Continual Overdraft Fee is not charged “until after the 4th consecutive business day of being overdrawn . . . .” *See id.*

**B. Multiple Overdraft or Returned Item Fees.**

22. Nothing in the Account Documents implies, let alone states, that “transaction” and “item” is meant to denote the plural. In short, nothing in the contract entitles Defendant to charge multiple Overdraft or Returned Item Fees stemming from a single item or transaction.

23. By its plain terms, Defendant’s Account Documents means it may only charge its customers *one* Overdraft or Returned Item Fee for a single item or transaction. In fact, nothing in the contract explicitly entitles Defendant to charge multiple Overdraft or Returned Item Fees for the same item or transaction.

24. Notwithstanding the contract’s plain language, Defendant routinely charged multiple Overdraft or Returned Item Fees *for the same item or transaction*.

25. The Account Documents clearly state Defendant may only charge its customers *one* Overdraft or Returned Item Fee for each item or transaction. In fact, nothing in the contract alerted Plaintiff or the Class that Defendant intended to charge multiple Overdraft or Returned Item Fees *for the same item or transaction*.

26. Despite Defendant’s contract with Plaintiff evidenced by the Account Documents, Defendant adopted a uniform policy and practice of charging its customers, including Plaintiff and Class members, more than one Overdraft or Returned Item Fee for the same item or transaction.

27. Specifically, Defendant charges an Overdraft or Returned Item Fee when its accountholders first authorize a transaction against a negative balance, and then an additional Overdraft or Returned Item Fee when *the same item or transaction* is reprocessed or “retried” without the accountholder’s authorization or knowledge against a negative balance.

28. Despite the express terms and conditions of the contract, Defendant adopted a uniform policy and practice of charging its customers, including Plaintiff and Class members, an

additional (or more) Overdraft or Returned Item Fee for the same item or transaction when reprocessed against a negative balance.

29. Specifically, rejected payments are “retried” and, in the event the accountholder’s available balance does not cover the “retried” payment, Defendant charges Plaintiff and Class members an additional (or more) Overdraft or Returned Item Fees. Because these “retry” payments were not initiated by the accountholder, they should not have been retried a second (or third) time. Further, because these “retry” payment stem from the same item or transaction already attempted, they should not have been subject to an additional Overdraft or Returned Item Fee.

30. Defendant breached its contract when it charged Overdraft or Returned Item Fees for “retried” payments stemming from a single item or transaction which were not initiated by the accountholder—thus charging more than one Overdraft or Returned Item Fee for a single item or transaction.

31. Defendant’s Account Documents never disclose Defendant’s policy and practice of charging more than one Overdraft or Returned Item Fee for the same item or transaction.

***C. Continuous Overdraft Fees.***

32. Additionally, nothing in Defendant’s Account Documents implies, let alone states, that Defendant may charge a \$5 Continuous Overdraft Fee on the fourth day an account is overdrawn.

33. By its plain terms, Defendant’s Account Documents means it may only charge a \$5 Continuous Overdraft Fee starting after the fourth continuous business day an account is overdrawn. In other words, Defendant’s Account Documents direct that it can begin charging a \$5 Continuous Overdraft Fee on the fifth continuous business day a customer’s account remains overdrawn.

34. Notwithstanding the contract's plain language, Defendant charged Plaintiff a \$5 Continuous Overdraft Fee starting on—not after—the fourth consecutive business day Plaintiff's account remained overdrawn.

35. Despite Defendant's contract with Plaintiff evidenced by the Account Documents, Defendant adopted a uniform policy and practice of charging its customers, including Plaintiff and Class members, Continuous Overdraft Fees one day early.

36. Defendant's Account Documents never disclose Defendant's policy and practice of charging Continuous Overdraft Fees on—not after—the fourth consecutive business day an account has a negative balance.

37. Defendant breached its contract when it charged Plaintiff and Class members Continuous Overdraft Fees on any day prior to the fifth consecutive business day an account holder's account remained negative.

***D. Plaintiff's Agreement with Defendant.***

38. On approximately July 3, 2019, Plaintiff and Defendant entered into an agreement for Plaintiff to bank with Defendant, and Plaintiff opened a checking account with Defendant under the terms set forth in Defendant's Account Documents. *See* Exhibits A-C.

39. Defendant's Account Documents provided that Defendant could only collect one \$28.00 Overdraft or Returned Item Fee for "each" item or transaction. *See* Exhibit B at 1.

40. Defendant's Account Documents also provided that Defendant could charge Plaintiff a \$5 continuous overdraft fee after the fourth consecutive business day of his account being overdrawn. *See id.*

41. Upon information and belief, Defendant entered into the same or substantially similar contract with hundreds, if not thousands, of its other banking customers.



***E. Plaintiff's Purchase Attempt, Subsequent Unauthorized Retried Payments, and Defendant's Unauthorized Overdraft and Returned Item Fees.***

a. Plaintiff was charged multiple Return Item Fees for a Single Transaction.

42. On November 6, 2019, Plaintiff authorized a payment to Farmers Insurance Co. in the amount of \$12.08.

43. Upon information and belief, on some time on or after November 6, 2018, Defendant rejected Plaintiff's authorized payment to Farmers Insurance Co. for lack of funds.

44. On November 7, 2018, one day after Plaintiff authorized payment to Farmers Insurance Co., Defendant charged Plaintiff a "Return Item Fee" in the amount of \$28.00.

45. Unbeknownst to Plaintiff, on November 18, 2019, Defendant reprocessed the same \$12.08 charge that Plaintiff authorized on November 6, 2019.

46. Upon information and belief, at some time on or after November 18, 2018, Defendant rejected the payment to Farmers Insurance Co. for lack of funds that was reprocessed without Plaintiff's knowledge.

47. On November 19, 2019, one day after the \$12.08 payment initially authorized by Plaintiff to Farmers Insurance Co. on November 6, 2018 was reprocessed, Defendant charged Plaintiff a "Return Item Fee" in the amount of \$28.00.

48. In other words, Defendant charged \$56.00 in fees to process a single item or transaction.

49. The November 6, 2019 payment to Farmers Insurance Co. represents a single transaction according to the Account Documents, and nothing in the Account Document allows Defendant to charge multiple Overdraft or Returned Item Fees for the same item or transaction.

b. Plaintiff was Charged a Continuous Overdraft Fee Earlier than Defendant's Account Agreements Allow.

50. Defendant's Account Agreements provide that it could charge a Continuous Overdraft Fee "[a]fter the 4th consecutive business day of being overdrawn . . . ." *See id.* (emphasis supplied).

51. The Account Agreements plain language means that Plaintiff could not be charged the Continuous Overdraft Fee until, at the earliest, the fifth consecutive business day of his account being overdrawn, because the fifth consecutive business day was the first day *after* the fourth consecutive business day.

52. On October 4, 2019—a Friday—Plaintiff's account became negative. Specifically, Plaintiff had a balance of negative \$109.57, as compared to a positive balance of \$275.97 held in his account one day prior.

53. Plaintiff's account remained overdrawn after October 4, 2019.

54. The fourth consecutive business day after Plaintiff overdrew his account was October 9, 2019. Pursuant to the terms of Defendant's Account Documents, Defendant could charge the Continuous Overdraft Fee starting the day after the fourth consecutive business day; here, October 10, 2019.

55. Despite the language set forth in Defendant's Account Agreements, Defendant charged Plaintiff a Continuous Overdraft Fee on October 9, 2019, one day earlier than Defendant's Account Agreements indicate Defendant could charge the fee.

***F. The Practices Complained of Herein Violate Defendant's Account Documents.***

- a. The Imposition of Multiple Overdraft or Returned Item Fees for a Single Item or Transaction Violates the Terms of the Agreement Between Plaintiff and Defendant.

56. Defendant's Account Documents do not indicate that it intends to charge multiple Overdraft or Returned Item Fees for a single item or transaction.

57. As alleged herein, Plaintiff took only a single action to make a single payment; Plaintiff may therefore only be charged a single fee, yet was charged multiple Returned Item Fees for a single item or transaction.

58. The plain language of Defendant's Account Documents state that a single item or transaction is capable—at most—of incurring a *single* Overdraft or Returned Item Fee since it is still the same item or transaction Defendant is attempting to debit from the account.

59. The contract's plain language is supported by the Oxford English Dictionary, which defines "transaction" as "an instance of buying or selling something." *Transaction*, Lexico.com, <https://www.lexico.com/definition/transaction> (last visited April 28, 2020).

60. Banks like Defendant that employ this abusive "multiple fee" practice know how to plainly and clearly disclose it. Indeed, other banks and credit unions that do engage in this abusive practice disclose it expressly to their accountholders—something Defendant here never did.

61. The following are some examples from other banks and credit unions that make clear what Defendant was contractually required to do, if it was going to engage in charging multiple \$30 Overdraft or Returned Item Fees for the same item or transaction:

62. First Hawaiian Bank engages in the same abusive practices as Defendant, but discloses it in its online banking agreement, in all capital letters, as follows:

**YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND RESUBMISSION.**

Terms and Conditions of FHB Online Services, First Hawaiian Bank 40, available at [https://www.fhb.com/en/assets/File/Home\\_Banking/FHB\\_Online/Terms\\_and\\_Conditions\\_of\\_FH\\_B\\_Online\\_Services\\_RXP1.pdf](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FH_B_Online_Services_RXP1.pdf) (last accessed April 28, 2020) (emphasis supplied).

63. Central Pacific Bank contracts unambiguously:

Items and transactions (such as, for example, checks and electronic transactions/payments) returned unpaid due to insufficient/non-sufficient ('NSF') funds in your account, **may be resubmitted one or more times for payment, and a \$32 fee will be imposed on you each time an item and transaction resubmitted for payment is returned due to insufficient/nonsufficient funds.**

Central Pacific Bank, Miscellaneous Fee Schedule, available at <https://www.cpb.bank/media/1618/fee-001-rev-10-24-2019-misc-fee-schedule.pdf> (last visited April 28, 2020) (emphasis supplied).

64. Community Bank, N.A. unambiguously contracts:

You may be charged more than one Overdraft or NSF Fee if a merchant submits a single transaction multiple times after it has been rejected or returned.

Overdraft and Unavailable Funds Practices Disclosure, Community Bank, N.A., available at <https://cbna.com/u/header/2019-Overdraft-and-Unavailable-Funds-Practices-Disclosure-FINAL-1.14.2020.pdf> (last visited April 28, 2020) (emphasis supplied).

65. Delta Community Credit Union contracts as follows:

The Credit Union reserves the right to charge you an overdraft/insufficient funds fee if you write a check or initiate an electronic transaction that, if posted, would overdraw your Checking Account. **Note that you may be charged an NSF fee each time a check or ACH is presented to us, even if it was previously submitted and rejected.**

Membership/Savings Services Disclosures and Agreements, Delta Community Credit Union, available at <https://www.deltacommunitycu.com/home/forms/member-savings-services-disclosures-and-agreements.aspx> (last visited April 28, 2020) (emphasis supplied).

66. Regions Bank contracts unambiguously states:

If an item is presented for payment on your account at a time when there is an insufficient balance of available funds in your account to pay the item in full, you agree to pay us our charge for items drawn against insufficient or unavailable funds, whether or not we pay the item. **If any item is presented again after having previously been returned unpaid by us, you agree to pay this charge for each time the item is presented for payment and the balance of available funds in your account is insufficient to pay the item.**

Deposit Agreement, Regions, [https://www.regions.com/virtualdocuments/Deposit\\_Agreement\\_6\\_1\\_2018.pdf](https://www.regions.com/virtualdocuments/Deposit_Agreement_6_1_2018.pdf) (last visited April 28, 2020) (emphasis supplied).

67. In fact, Courts throughout the Country routinely conclude that banks using contracts with nearly identical to that utilized by Defendant here *breach their contracts* when they charge multiple Overdraft or Returned Item Fees stemming from *one* item or transaction. *See, e.g., Roberts v. Capital One, N.A.*, 719 Fed. Appx. 33 (2d Cir. 2017); *Morris v. Bank of America, N.A.*, No. 3:18-cv-00157, 2009 WL 1421166 (W.D.N.C. Mar. 29, 2019); *Tisdale v. Wilson Bank and Trust*, No. 19-400-BC (Davidson Co. Tenn. Chancery Court Oct. 17, 2019); *Tannehill v. Simmons Bank*, No. 3:19-cv-140-DPM (E.D. Ark. Oct. 21, 2019); *Perks, et al. v. TD Bank, N.A.*, No. 18-CV-11176 (S.D.N.Y. Mar. 17, 2020); *Ingram v. Teachers Credit Union*, No. 49D01-1908-PL-035431 (Ind. Comm. Ct. Feb. 18, 2020); *Noe v. City Nat'l Bank of W. Va.*, No. 3:19-cv-0690 (S.D. W. Va. Feb. 19, 2020); *Almon, et al. v. Independence Bank*, No. 19-CI-00817 (McCracken Co. Ky. Cir. Ct. Mar. 18, 2020).

68. At no time did Defendant provide any disclosure to Plaintiff and Class members or amend the contract to reflect that it intended to charge multiple Overdraft or Returned Item Fees stemming from the same item or transaction. In agreeing to charge Plaintiff and Class members one set of fees, and instead charging Plaintiff and Class members multiple fees for a single item or transaction, Defendant breached its contract with Plaintiff and Class members.

b. Defendant's Practices Result in Defendants Collecting More Continuous Overdraft Fees than they are Allowed Under the Account Documents.

69. Defendant's Account Documents state that Defendant may charge a "\$5 continual overdraft fee . . . each business day the account remains overdrawn after four (4) business days." *See id.* The Account Documents restate this again, stating that "[a]fter the 4th consecutive business day of being overdrawn, a \$5 continuous overdraft fee may be assessed to the account." *See id.*

70. As alleged herein, Defendant began charging Plaintiff a continuous overdraft fee on, not after, the fourth consecutive day his account was overdrawn.

71. Upon information and belief, Defendant's policies and practices of charging Continuous Overdraft Fees one day early apply equally to putative Class members.

***G. The Abusive Practices Alleged Herein Beaches Defendant's Duty of Good Faith and Fair Dealing.***

72. A party to a contract, who possesses unilateral discretion over the implementation of a term in a contract is required to act in good faith when it acts to implement that term. In such circumstances, the party with the discretionary power is required to exercise that power and discretion in good faith and may not do anything that will have the effect of destroying or injuring the rights of the other party to receive the fruits of the contract. As a result, Defendant was prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, Defendant had, and has, a duty to honor transaction requests in a way that is fair to its accountholders and is prohibited from exercising its discretion to gouge them with fees never disclosed or contemplated by its Account Documents.

73. Here, Defendant provided itself numerous discretionary powers directly affecting its accountholders; namely, the power to impose Overdraft or Returned Item Fees stemming from a single item or transaction attempted against a negative balance. Contrary to the contract, however, Defendant—in its *sole discretion*, and in violation of its contract with Plaintiff and Class members—decided it would charge Plaintiff and Class members a second (or third) Overdraft or Returned Item Fee stemming from the same item or transaction. At all times relevant hereto, Defendant did not exercise its discretion in good faith, opting instead to use the multiple retry attempts in its own favor thereby prejudicing Plaintiff and Class members. Specifically, Defendant charged more than one Overdraft or Returned Item Fee for the same item or transaction *solely for*

*Defendant's benefit.* In short, Defendant abused the power it has over its customers and their bank accounts by charging multiple Overdraft or Returned Item Fees for the same item or transaction. In doing so, Defendant breached the implied covenant of good faith and fair dealing inherent in each and every contract that required it to act with good faith towards Plaintiff and Class members.

74. Defendant exercises its discretion in its own favor—and to the prejudice of Plaintiff and its other accountholders—when it defines “item” in a way that directly leads to multiple Return Item Fees or Paid Item Fees on a single item or transaction. Further, Defendant abuses the power it has over its accountholders and acts contrary to their reasonable expectations under the Account Documents. This is a breach of Defendant’s implied covenant to engage in fair dealing and act in good faith.

75. Defendant further exercises its discretion in its own favor by charging accountholders Continuous Overdraft Fees one day earlier than it is allowed by its Account Documents.

76. The decision to charge Plaintiff and Class members Overdraft or Returned Item Fees and Continuous Overdraft Fees is *solely* reserved for Defendant. Specifically, it was Defendant, and not Plaintiff or the Class, that held the power to charge Plaintiff Fees.

77. Utilizing this power, Defendant exercised its discretion in its own favor—and to the prejudice of Plaintiff and Class members—by charging Plaintiff and Class members multiple Overdraft or Returned Item Fees every time the same “item” or “transaction” was resubmitted to the bank for payment against a negative balance and by charging Plaintiff and Class members Continuous Overdraft Fees a day earlier than Defendant’s Account Documents provide. Defendant’s decision to unilaterally enforce this policy and practice directly lead to Plaintiff and Class members being charged multiple Overdraft or Returned Item Fees stemming from the same

item or transaction and more Continuous Overdraft Fees than they should have been charged. As a direct and proximate result, Defendant breached the implied covenant of good faith and fair dealing.

### **CLASS ACTION ALLEGATIONS**

78. Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of the following classes.

79. The “Classes” are defined as follows:

**Multiple Fee Class**

All State Bank of Lincoln Accountholders in the State of Illinois who, during the applicable statute of limitations period, were charged multiple Return Item Fees or Paid Item Fees for a single item or transaction.

**Continuous Overdraft Fee Class**

All State Bank of Lincoln Accountholders in the State of Illinois who, during the applicable statute of limitations period, were charged Continuous Overdraft Fees on the fourth consecutive business day their accounts were negative.

Plaintiff reserves the right to modify or amend the class definitions as necessary.

80. Excluded from the Classes are: (1) any entity in which Defendant has a controlling interest; (2) officers or directors of Defendant; (3) this Court and any of its employees assigned to work on the case; and (4) all employees of the law firms representing Plaintiff and Class members.

***A. The Rule 23 Class.***

81. This action is brought and may be properly maintained on behalf of each member of the Class pursuant to 735 ILCS 5/2-801.

82. *Numerosity of the Classes:* The members of the Classes are so numerous that a joinder of all members would be impracticable. While the exact number of Class members is presently unknown to Plaintiff, and can only be determined through appropriate discovery, Plaintiff believes that the Class is likely to include thousands of members based on the fact that Defendant has over \$338,000,000.00 in assets.



83. Defendant has a database, or other documentation, of its customers' transactions and account enrollment documents. These databases or documents can be analyzed by an expert to ascertain which of Defendant's customers have been harmed by its practices and thus qualify as Class members. Further, the Class definitions identify unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover damages from Defendant. Other than by direct notice by mail or email, alternatively proper and sufficient notice of this action may be provided to the Classes through notice published in newspapers or other publications.

84. *Commonality*: This action involves common questions of law and fact. The questions of law and fact common to both Plaintiff and Class members include, but are not limited to, the following:

- a. Whether Defendant violated its contractual relationship with Plaintiff and the Multiple Fee Class by charging multiple Return Item Fees or Paid Item Fees for a single item or transaction;
- b. Whether Defendant violated its contractual relationship with Plaintiff and the Continuous Overdraft Fee Class by charging Continuous Overdraft Fees earlier than its contract with Plaintiff and Class members allows;
- c. Whether Defendant breached its covenant of good faith and fair dealing with Plaintiff and Class members by charging multiple Return Item Fees or Paid Item Fees for a single item or transaction or charging Continuous Overdraft Fees earlier than its contract allows;
- d. Whether the Account Contract's plain language limited the number of times Defendant could charge Plaintiff and Class members Overdraft or Returned Item Fees stemming from the same item or transaction.
- e. If the Account Contract's terms and conditions were not plain, whether they were so ambiguous that Plaintiff's and the Class' reasonable interpretation of the Account Contract should be interpreted to limit the number of times it could charge Plaintiff and Class members Overdraft or Returned Item Fees
- f. The proper method or methods to determine and measure Plaintiff's and the Classes' damages;

- g. The declaratory or injunction relief to which Plaintiff and Class members are entitled to.

85. *Typicality*: Plaintiff's claims are typical of all members of the Classes. The evidence and the legal theories regarding Defendant's alleged wrongful conduct committed against Plaintiff and Class members are substantially the same because all of the relevant agreements between Defendant and its accountholders were identical as to all relevant terms, and also because the challenged practices of charging customers multiple Overdraft or Returned Item Fees for a single item or transaction are uniform for Plaintiff and Class members. Accordingly, in pursuing his own self-interest in litigating his claims, Plaintiff will also serve the interests of the Classes.

86. *Adequacy*: Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff retained competent counsel experienced in class action litigation to ensure such protection. There are no material conflicts between the claims of the representative Plaintiff and Class members that would make class certification inappropriate. Additionally, Plaintiff's Counsel are competent to advance the interest of the Class having been designated as Lead Counsel in dozens, if not hundreds, of Class cases. Plaintiff and his Counsel intend to prosecute this action vigorously.

87. *Predominance and Superiority*: The matter is properly maintained as a class action under 735 ILCS 5/2-801 because the common questions of law and fact identified herein, and to be identified through discovery, predominate over questions that may affect only individual Class members. Further, a class action is superior to all other available methods for the fair and efficient adjudication of this matter because the injuries suffered by the individual Class members are relatively small. As such, the expense and burden of individual litigation would make it virtually impossible for Plaintiff and Class members to individually seek redress for Defendant's wrongful

conduct. Even if any individual person or group(s) of Class members could afford individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. The class action device is preferable to individual litigation because it provides the benefits of unitary adjudication, economies of scale, and comprehensive adjudication by a single court. In contrast, the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the party (or parties) opposing the Classes and would lead to repetitious trials of the numerous common questions of law and fact. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. As a result, a class action is superior to other available methods for the fair and efficient adjudication of this action. Absent a class action, Plaintiff and Class members will continue to suffer losses, thereby allowing Defendant's violations of law to proceed without remedy and allowing Defendant to retain the proceeds of their ill-gotten gains.

88. Plaintiff anticipates the issuance of notice setting forth the subject and nature of the instant action to the proposed Class. Upon information and belief, Defendant's own business records or electronic media can be utilized for the notice process. To the extent any further notices may be required, Plaintiff anticipates the use of additional media or mailings.

**COUNT I**  
**BREACH OF CONTRACT**  
**(On Behalf of Plaintiff and Members of the Classes)**

89. Plaintiff re-alleges and incorporates all previous paragraphs herein.

90. Plaintiff and Defendant contracted for checking account services, as embodied in Account Documents.

91. Defendant contracted that it would charge its customers, including Plaintiff and Class members, one Return Item Fee or Paid Item Fee for a single item or transaction, but in

actuality, charged Plaintiff and the Multiple Fee Class multiple Return Item Fees or Paid Item Fees for a single item or transaction.

92. Contrary to the Account Documents, Defendant withdrew funds from Plaintiff's accounts, and the accounts of Class members, in a manner not contemplated by the Account Documents or disclosed by Defendants.

93. Defendant also contracted that it would charge its customers, including Plaintiff and Class members, Continuous Overdraft Fees starting on the day after the fourth consecutive business day Plaintiff's or Class members' accounts were overdrawn.

94. Contrary to the Account Documents and Defendant's representations, Defendant charged Continuous Overdraft Fees starting one day earlier than it represented in its Account Documents in a manner not contemplated by the Account Documents or disclosed by Defendants.

95. Good faith is an element of every contract pertaining to the assessment of Return Item Fees or Paid Item Fees. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain with neither party doing anything that will have the effect of destroying or injuring the rights of the other party to receive the fruits of the contract. Thus, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms, constitute examples of bad faith in the performance of contracts.

96. The material terms of the Account Documents include the implied covenant of good faith and fair dealing, whereby Defendant covenanted that it would, in good faith and in the exercise of fair dealing, deal with Plaintiff and each Class member fairly and honestly and do nothing to impair, interfere with, hinder, or potentially injure Plaintiff's and the Class

members' rights and benefits under the contract.

97. Defendant breached the implied covenant of good faith and fair dealing based on its practices of assessing multiple Return Item Fees or Paid Item Fees on a single item or transaction, in failing to provide an accurate description and disclosure of how it would actually enforce its Return Item Fees or Paid Item Fee policy, in charging Continuous Overdraft Fees one day earlier than that allowed by the Account Documents, and by failing to disclose how Defendant intended to charge Continuous Overdraft Fees. In so doing, and in implementing its abusive policy for Return Item Fees or Paid Item Fees to increase and maximize overdraft fees it would receive, Defendant executed a contractual obligation in bad faith, depriving Plaintiff and Class members of the full benefit of the contract.

98. Defendant breached its contracts with Plaintiff and Class members through its overdraft policies and practices as alleged herein.

99. Plaintiff and members of the Classes sustained monetary damages as a result of each of Defendant's breaches in an amount to be proven at trial.

**COUNT II**  
**ILLINOIS UNIFORM DECEPTIVE TRADE**  
**PRACTICES ACT, 815 ILCS 510, et seq.**  
**(On Behalf of Plaintiff and Members of the Classes)**

100. Plaintiff realleges and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

101. Plaintiff and Defendant are "person[s]" pursuant to the Illinois Uniform Deceptive Trade Practices Act ("ILDTP"), 815 ILCS 510, *et seq.*

102. Defendant's policy and practice of breaching its contract with Plaintiff by charging multiple Return Item and/or Overdraft Fees for the same item or transaction, and Defendant's policy and practice of charging Continuous Overdraft Fees a day earlier than its contract provides, are violations of the ILDTP, including, but not limited to:

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;

(7) represents that goods or services are of a particular standard, quality, or grade or that goods are a particular style or model, if they are of another;

(9) advertises goods or services with intent not to sell them as advertised; and

(12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding

*See generally* 815 ILCS § 510/2(a).

103. To prevail under the ILDTP, “a plaintiff need not prove competition between the parties or actual confusion or misunderstanding.” *See* 815 ILCS § 510/2(b).

104. As a direct and proximate result of Defendant’s unfair or deceptive acts or practices, Plaintiff and Class members were damaged in an amount to be determined at trial.

105. Defendant’s policy and practice of breaching its contract with Plaintiff by charging multiple Return Item and/or Overdraft Fees for the same item or transaction, and Defendant’s policy and practice of charging Continuous Overdraft Fees a day earlier than its contract provides, are violations of the ILDTP.

106. Defendant’s conduct continues to this day.

107. Should Plaintiff prevail in this Action, reasonable attorneys’ fees and costs are to be awarded pursuant to the ILDTP.

### **PRAYER FOR RELIEF**

108. WHEREFORE, Plaintiff, individually and on behalf of the Classes, respectfully requests the Court enter an Order:

- a. Certifying the proposed Classes;
- b. Declaring Defendant’s Return Item Fees or Paid Item Fee policies and practices alleged in this Complaint are wrongful, unfair, and unconscionable;

- c. Declaring Defendant's practice of charging Consecutive Overdraft Fees one day earlier than that represented in the Account Documents is wrongful, unfair, and unconscionable;
- d. Declaring Defendant's Return Item Fees or Paid Item Fee policies and practices alleged in this Complaint violate the ILDTP;
- e. Declaring Defendant's practice of charging Consecutive Overdraft Fees one day earlier than that represented in the Account Documents violate the ILDTP;
- f. Granting restitution of all Return Item Fees or Paid Item Fees paid to Defendant by Plaintiff and Class members, as a result of the wrongs alleged herein in an amount to be determined at trial;
- g. Granting restitution of all Continuous Overdraft Fees paid on the fourth consecutive business day of an account being overdrawn by Plaintiff and Class members, in an amount to be determined at trial;
- h. Compelling disgorgement of the ill-gotten gains derived by Defendant from its misconduct;
- i. Awarding actual or compensatory damages in an amount according to proof;
- j. Awarding pre-judgment interest at the maximum rate permitted by applicable law;
- k. Reimbursing all costs, expenses, and disbursements accrued by Plaintiffs in connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to applicable law and any other basis; and
- l. Awarding such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable as a matter of right.

Dated: May 20, 2020

Respectfully submitted,

/s/ Mark D. Prince

Mark D. Prince  
**PRINCE LAW FIRM**  
404 N. Monroe Street

Marion, IL 62959  
Tel: 618-997-2111  
Fax: 618-997-2555  
mdprince@princelawfirm.net

Timothy J. Becker (MN Bar No. 0256663)\*  
Jacob R. Rusch (MN Bar No. 0391892)\*  
Jennell K. Shannon (MN Bar No. 0398672)\*  
**JOHNSON BECKER PLLC**  
444 Cedar Street, Suite 1800  
St. Paul, MN 55101  
(612) 436-1800 (phone)  
(612) 436-4801 (fax)  
tbecker@johnsonbecker.com  
jrusch@johnsonbecker.com  
jshannon@johnsonbecker.com

*Class Counsel for Plaintiff*

*\*Pro hac vice to be promptly filed*



## TERMS AND CONDITIONS OF YOUR ACCOUNT

**AGREEMENT** - This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us.

This agreement is subject to applicable federal laws and the laws of the state of Illinois (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

**LIABILITY** - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. This includes liability for our costs to collect the deficit including, to the extent permitted by law, our reasonable attorneys' fees.

**DEPOSITS** - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next following business day that we are open.

**WITHDRAWALS** - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person signing the signature card to endorse any item payable to you or your order for deposit to this account or any other transaction with us. We may charge your account for a check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us, by any method we do not specifically permit, which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts for which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal.

We may require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit. Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

**ACH AND WIRE TRANSFERS** - This agreement is subject to Article 4A of the Uniform Commercial Code in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a credit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

**OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION** - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Individual Account** - is an account in the name of one person. **Joint Account - With Survivorship (And Not As Tenants in Common)** - is an account in the name of two or more persons. Each of you intend that when

you die the balance in the account (subject to any previous pledge to which we have agreed) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. **Joint Account - No Survivorship (As Tenants in Common)** - is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, affect the "number of signatures" necessary for withdrawal. **Revocable Trust or Pay-On-Death Account** - If two or more of you create this type of account, you own the account jointly with survivorship. Beneficiaries of either of these account types cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of the owner(s) of the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either a Pay-On-Death or Revocable Trust account reserves the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

**BUSINESS ACCOUNTS** - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the legal entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the legal entity.

**STOP PAYMENTS** - You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. To be effective, your stop-payment order must precisely identify the number, date and amount of the item, and the payee.

You may stop payment on any item drawn on your account whether you sign the item or not, if you have an equal or greater right to withdraw from this account than the person who signed the item. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (a.g., we paid the item in cash or we certified the item).

**AMENDMENTS AND TERMINATION** - We may change any term of this agreement. Rules governing changes in interest rates are provided separately. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

**STATEMENTS** - You must examine your statement of account with "reasonable promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to either share the loss with us, or bear the loss entirely yourself (depending on whether we used ordinary care and, if not, whether we substantially contributed to the loss). The loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 30 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

**ACCOUNT TRANSFER** - This account may not be transferred or assigned without our prior written consent.

**DIRECT DEPOSITS** - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

**TEMPORARY ACCOUNT AGREEMENT** - If this option is selected, we may restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

**SETOFF** - We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note.

This right of setoff does not apply to this account if: (a) it is an IRA or other tax-deferred retirement account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

**AUTHORIZED SIGNER (Individual Accounts only)** - A single individual is the owner. The authorized signer is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

**FACSIMILE SIGNATURES** - You authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us, and contain the required number of signatures for this purpose.

**RESTRICTIVE LEGENDS** - We are not required to honor any restrictive legend on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00."



**CUSTOMER OVERDRAFT POLICY**

This policy is not a line of credit. It is a discretionary policy, and not a right or obligation guaranteed to you, where we may approve your reasonable overdrafts including any applicable fees, up to \$500, when your account is in good standing. Good standing may include, but is not limited to, any or all of the following criteria and is subject to change without notice. 1) You are making sufficient deposits to bring your account to a positive end-of-day balance at least once every 30 calendar days, including the payment of all bank fees and charges; 2) You avoid excessive overdrafts suggesting the use of Overdraft Honor as a continuing line of credit and 3) Your account is not subject to any legal order levy or lien.

We have adopted this discretionary overdraft policy to provide for the highest efficiency in managing customer overdrafts consistently and fairly. At our discretion, we may pay and permit transactions for items, including checks, preauthorized automatic debits, telephone-initiated or other electronic transfers, paid & return item fees, continual overdraft fees & service charges when you don't have sufficient funds, up to a maximum of \$500 total per account. Any fees and charges, including the paid and return item fees (as set forth in our fee schedules and our Depositor's Account Agreement) will be included as part of this limit. A paid item or return item fee of \$28 per item will be assessed for each item submitted for which you don't have sufficient available funds in the account to cover the item amount when it is processed each evening, up to a maximum of \$112 in such fees. A \$5 continual overdraft fee may be assessed each business day the account remains overdrawn after four (4) business days.

Overdraft Honor balance is not available to be withdrawn from any ATM or everyday point of sale transaction unless at least one account holder exercises the opt-in option to allow these types of transactions. Account holders will be presented information regarding the opt-in process at the time of account opening and when their account qualifies for inclusion in the program. Under no circumstances will these transactions be assessed a fee unless the account holder exercises the option and until we have notified the account holder that we have received their request to opt-in to allowing these transactions. ATM balance inquires will not include the unused Overdraft Honor balance.

Although subject to change without notice, it is our current practice to process account activity each evening for items received prior to the daily cut off time. All credits to your account will be posted prior to debits. All automatic debits, such as EFT, Point of Sale, ATM, etc. will be the first debits posted, and then any checks written that are presented over the counter will be posted from smallest to largest serial number. Finally, checks presented via the Federal Reserve cash letter will be posted from smallest to largest serial number. Your account balance is adjusted downward by the amount of the item posted, then by the \$28 paid item fee or return item fee that is charged. A paid item fee or return item fee will be charged for each item if the amount of the item is greater than the adjusted account balance at the time it is processed. The maximum total of paid item fee plus return item fee per business day is \$112 per account. After the 4th consecutive business day of being overdrawn, a \$5 continuous overdraft fee may be assessed to the account.

We are not obligated to pay any item presented for payment if your account does not contain sufficient collected (available) funds, and any discretionary payment of any non-sufficient fund item does not obligate us to pay any additional non-sufficient fund item or to provide prior written notice of our decision to refuse to pay any additional non-sufficient fund item. If an item is processed for payment and an overdraft results, pursuant to the Depositor's Account Agreement, you agree to pay us the amount of any overdraft

**PLAINTIFF  
EXHIBIT****B**

... immediately, without notice or demand from us, unless you otherwise specify that you wish all NSF's returned, upon which you agree to pay us the amount of any applicable fee. Each account holder is jointly and severally responsible under the Depositor's Account Agreement for paying any overdraft amounts.

It is our policy to operate in accordance with all applicable safety and soundness standards. The Depositor's Account Agreement controls the duties, obligations and rights of the Depositor, the Authorized Signatories and the Financial Institution with regard to your checking account. The Depositor's Account Agreement terms shall control any possible conflict, if any, between any provision of this overdraft policy and the Depositor's Account Agreement.

The chart below shows the different ways you can access your Overdraft Honor limit and indicates whether or not this limit will be reflected in the balance provided.

Access Point	Is my Overdraft Honor limit available?	Does the balance provided reflect my Overdraft Honor limit?
Teller	Yes	No
Writing a check	Yes	N/A
State Bank Visa Check Card	Yes **	N/A
ATM withdrawal	Yes **	No
ACH auto debit	Yes	N/A
Telebank	Yes	No
Online Banking	Yes	Yes

\*\*Overdraft Honor is only available if you opt-in to allow these transactions.

**How do I know when I have used the overdraft limit?**

You will receive an overdraft notice in the mail each time you access the funds. The notice will show the check number, amount and the paid item fee. You will need to immediately subtract the fees from your check register.

**What is my Overdraft Honor limit and what if I have more than one account?**

All personal checking accounts in good standing with Overdraft Honor have a limit of \$500. If you have more than one account, you may have the limit on all eligible accounts.

**What if I go beyond my Overdraft Honor limit?**

Overdrafts above your established limit may result in items being returned to the payee. The standard overdraft fee of \$28 will be charged per item, up to our daily \$112 limit, whether an item is returned or paid. You will receive a non-sufficient funds (NSF) notice by mail notifying you of our actions. Beginning with the 5th consecutive calendar day of being overdrawn, a \$5 continuous overdraft fee may be assessed to the account.

**How quickly must I repay my Overdraft Honor?**

We will send periodic reminder letters beginning the 20th day your account is overdrawn. You should make every effort to bring your account to a positive balance as soon as possible, and must do so within 30 days. If you are not able to do so within 30 days, you will receive a letter from us informing you of the situation and your options.

# What You Need to Know About Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

- We have standard overdraft practices that come with your account.
- We also offer overdraft protection plans, such as a link to another account, and Security Check (an unsecured line of credit) which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

➤ What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments
- Recurring Debit Card Transactions

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

➤ What fees will I be charged if State Bank of Lincoln pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of \$28 each time we pay an overdraft,
- If your account is overdrawn longer than 4 consecutive business days, we will charge a continual overdraft fee of \$5 per business day as long as the account remains overdrawn,
- There is a limit on the total fees we will charge you for overdrawing your account of \$112 per account, per business day.

➤ What if I want State Bank of Lincoln to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call 1-800-847-1008 or complete the form below and present it at one of our branches, or visit [www.sblincoln.com](http://www.sblincoln.com) or mail it to: State Bank of Lincoln, PO Box 529, Lincoln, IL 62656.

- I do not want State Bank of Lincoln to authorize and pay overdrafts on my ATM and everyday debit card transactions.
- I want State Bank of Lincoln to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Account Number: \_\_\_\_\_

