

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

TAMI BERNIER, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

CHICKASAW COMMUNITY
BANK,

Defendant.

Case No.

SEP - 4 2024

RICK WARREN
COURT CLERK

109

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CJ-2024-5672

CLASS ACTION COMPLAINT

Plaintiff Tami Bernier ("Plaintiff"), brings this Class Action Complaint against Defendant Chickasaw Community Bank ("Defendant") and alleges as follows:

INTRODUCTION

1. This case concerns Defendant's unlawful business practice of assessing (1) overdraft fees ("OD Fees") on transactions that did not actually overdraw the account, and (2) multiple fees on an item.

2. These practices breach promises made in Defendant's "Terms and Conditions Disclosure" attached hereto as **Exhibit A**, and upon information and belief, the Overdraft Opt-In Form.¹ attached hereto as **Exhibit B** (collectively, the "Contract").

3. Pursuant to 12 Okla. Stat. § 2023, Plaintiff and other customers of Defendant have been injured by Defendant's improper fee maximization practices. Plaintiff, individually and on

¹ Federal regulators require banks and credit unions to use an overdraft opt-in form substantially similar to the model Form A-9 overdraft opt-in for ATM and one-time debit card transactions attached hereto as Ex. B. 12 C.F.R. § 1005.17(b)(1)

behalf of the class of individuals preliminarily defined below, brings claims for Defendant's breach of contract, including the duty of good faith and fair dealing, and unjust enrichment.

PARTIES

4. Plaintiff is a citizen and resident of Davis, Murray County, Oklahoma.

5. Defendant Chickasaw Community Bank has its principal place of business located in Oklahoma City, Oklahoma County, Oklahoma. Defendant has over \$454 million in assets and maintains branches two branches in Oklahoma.

JURISDICTION AND VENUE

6. This Court is a court of general jurisdiction that has jurisdiction of the subject matter of this action pursuant to Okla. Const. Art. 7, § 7.

7. This Court has jurisdiction over Defendant because its principal office or principal place of business is in Oklahoma County, Oklahoma.

8. Venue is proper in Oklahoma County by virtue of 12 Okla. Stat. § 134.

BACKGROUND FACTS

9. In 2021, the largest financial institutions in America charged customers almost \$11 billion in overdraft fees. Customers who carried an average balance of less than \$350 paid 84 percent of these fees. *Why Poverty Persists in America*, N.Y. TIMES (Mar. 9, 2023), <https://tinyurl.com/26jcrfcm>.

10. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo, Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See* Hugh Son, Capital One to Drop Overdraft Fees for All Retail Banking Customers, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, Wells Fargo Ends Bounced Check Fees,

CNN (Jan. 12, 2022), <https://www.cnn.com/2022/01/12/investing/bank-of-america-wells-fargo-overdraft-fees/index.html>.

11. Regulators have also stated that the practice of assessing multiple fees on an item is deceptive regardless of account opening disclosures. *See* CFPB Supervisory Highlights, Junk Fees Special Edition, Issue 29 (Winter 2023) at 5, available at <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-junk-fees-special-edition-issue-29-winter-2023/>; *see also* Overdraft Protection Programs: Risk Management Practices, Consent Order, OCC Bulletin 2023-12 (Apr. 26, 2023), available at <https://occ.gov/news-issuances/bulletins/2023/bulletin-2023-12.html> (“even when disclosures explain that a single check or ACH transaction may result in more than one fee, a bank’s practice of assessing fees on each representment may also be unfair ... if consumers cannot reasonably avoid the harm”); *see* CFPB Supervisory Highlights Junk Fees Update Special Edition, Issue 31 (Fall 2023) at 5, available at <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-junk-fees-update-special-edition-issue-31-fall-2023/>.

12. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

I. DEFENDANT ASSESSES OD FEES ON TRANSACTIONS THAT DO NOT OVERDRAW THE ACCOUNT

13. Upon information and belief, the Contract states:

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway.

Ex. B.

14. The Contract further states, “[c]ach 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... The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. You agree that we may charge fees for overdrafts and use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees.” Ex. A at 2

15. In breach of these promises, Defendant assesses \$3.00 ODP Transfer Fees and \$29.00 OD Fees when there is an “account shortage resulting from charges or overdrafts,” or on “withdrawal requests” that do not “overdraw the available account balance”

A. Plaintiff’s Transactions

16. On May 3, 2021, October 25, 2022, November 14, 2022, November 21, 2022, November 22, 2022, December 14, 2022, December 20, 2022, December 21, 2022, December 27, 2022, January 10, 2023, January 11, 2023, January 13, 2023, January 19, 2023, January 23, 2023, January 24, 2023 and February 22, 2023, Defendant charged Plaintiff \$3 ODP Transfer Fees on transactions, even though the balance shown on her bank statements demonstrated that the transactions did not create “an account shortage resulting from charges or overdrafts.”

17. On February 22, 2023, Defendant charged Plaintiff a \$29.00 OD Fee even though the balance as shown on her bank statements demonstrated that the transactions did not create “an account shortage resulting from charges or overdrafts.”

II. DEFENDANT IMPROPERLY CHARGES MULTIPLE FEES ON AN ITEM

18. Defendant unlawfully maximizes its already profitable fees through its deceptive and contractually-prohibited practice of charging multiple NSF fees, or an NSF fee followed by an overdraft fee, on an item.

19. Unbeknownst to consumers, when Defendant reprocesses a check, in-person withdrawal, ATM withdrawal, or transaction items by other electronic means for payment after it was initially rejected for insufficient funds, Defendant chooses to treat it as a new and unique item that is subject to yet another fee. But Defendant's contract never states that this counterintuitive and deceptive result could be possible and, in fact, says nothing at all about how overdraft fees or NSF fees are assessed.

20. The Federal Deposit Insurance Corporation (the "FDIC") has expressed concern with the practice of assessing multiple fees on an item. In 2012, the FDIC determined that one bank's assessment of more than one NSF Fee on the same item was a "deceptive and unfair act." *In the Matter of Higher One, Inc., Consent Order*, Consent Order, FDIC-1 1-700b, FDIC-1 1-704k, 2012 WL 7186313.

21. The FDIC also recently recommended that the multiple fee practice be halted entirely. See Barbarino, Al. "FDIC Warns Banks About Risks of Bounced Check Fees." Law360, Aug. 19, 2022, available at <https://www.law360.com/articles/1522501/fdic-warns-banks-about-risks-tied-to-bounced-check-fees>.

22. And, in its latest issue of Consumer Compliance Supervisory Highlights, the FDIC again addressed the charging of multiple non-sufficient funds fees for transactions presented multiple times against insufficient funds in the customer's account. See *FDIC Consumer Compliance Supervisory Highlights, Mar. 2022*, available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22014.html>. FDIC examiners have scrutinized this issue in recent exams, with some exams remaining open pending resolution of the issue.

23. In the Supervisory Highlights, the FDIC discussed potential consumer harm from this practice in terms of both deception and unfairness under the Federal Trade Commission Act Section 5's prohibition on unfair or deceptive acts or practices. The FDIC stated that the "failure to disclose material information to customers about re-presentment practices and fees" may be deceptive. *Id.* at 8.

24. During 2021, the FDIC identified consumer harm when financial institutions charged multiple NSF fees for the re-presentment of unpaid transactions. Terms were not clearly defined and disclosure forms did not explain that the same transaction might result in multiple NSF fees if re-presented. While case-specific facts would determine whether a practice is in violation of a law or regulation, the failure to disclose material information to customers about re-presentment practices and fees may be deceptive. This practice may also be unfair if there is the likelihood of substantial injury for customers, if the injury is not reasonably avoidable, and if there is no countervailing benefit to customers or competition. For example, there is risk of unfairness if multiple fees are assessed for the same transaction in a short period of time without sufficient notice or opportunity for consumers to bring their account to a positive balance. *Id.*

25. In its staff analysis of the issue, the American Bankers Association recommended that banks review their deposit account agreement to ensure it states clearly that a separate NSF fee will be assessed whenever the same item is resubmitted against insufficient funds. ABA also encouraged banks, if scrutinized by a regulator, to explain the significant logistical challenges with identifying items that have been resubmitted by the merchant for payment against insufficient funds. ABA is updating its staff analysis of this issue to reflect the Supervisory Highlights. *See ABA Banking Journal, FDIC provides guidance on multiple NSF fees for re-presented items, April*

1, 2022, available at <https://bankingjournal.aba.com/2022/04/fdic-provides-guidance-on-multiple-nsf-fees-for-re-presented-items/>.

26. The CFPB similarly criticized banks' Multiple Fee practices in its Winter 2023 Supervisory Highlights. Specifically, the CFPB "found that institutions engaged in unfair acts or practices by charging consumers multiple NSF fees when the same transaction was presented multiple times." *Supervisory Highlights Junk Fees Special Edition* at 6. The CFPB elaborated: "[t]he assessment of multiple NSF fees for the same transaction caused substantial monetary harm to consumers, totaling millions of dollars. These injuries were not reasonably avoidable by consumers, regardless of account opening disclosures. And the injuries were not outweighed by countervailing benefits to consumer or competition." *Id.* The CFPB encouraged financial institutions "to self-asses [their] compliance with Federal consumer financial law, self-report to the Bureau when [they identify] likely violations, remediate the harm resulting from these likely violations, and cooperate above and beyond what is required by law with these efforts." *Id.* at 7. (alternation in original, internal citation and quotation marks omitted).

27. In April 2023, the Office of the Comptroller of the Currency ("OCC") joined in this condemnation in what it referred to as Representment Fee Practices:

This practice of charging an additional fee each time a single transaction (e.g., ACH transaction or check) is presented for payment by a third party without further action by the customer contributes to customer costs in circumstances in which those customers cannot reasonably avoid the additional charges. Through ongoing supervision, the OCC has identified concerns with a bank's assessment of an additional fee on a representment transaction, resulting in findings in some instances that the practice was unfair and deceptive. Disclosures may be deceptive, for purposes of Section 5, if they do not clearly explain that multiple or additional fees (NSF or overdraft) may result from multiple presentments of the same transaction . . . Consumers typically have no control over when we returned ACH transaction or check will be presented again and lack knowledge of whether an intervening deposit will be sufficient to cover the transaction and related fees.

OCC Bulletin 2023-12 at 6.

28. State regulators likewise have noted that such Multiple Fee practices may be deceptive where the parties do not expressly agree “that multiple fees may be charged ‘per item’ or ‘per transaction’” or where “the Institution represents that only one NSF fee will be charged ‘per item’ or ‘per transaction’ without disclosing that the same processed item may trigger Multiple NSF Fees.” *Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Fund Fees*, N.Y. DEPT. FIN. SERVS. 3 (July 12, 2022), <https://on.ny.gov/3PNw2xH>.

29. Further, this abusive multiple fee practice is not universal in the financial services industry. Indeed, major banks like Chase—the largest consumer bank in the country—do not undertake the practice of charging more than one fee on the same item when it is reprocessed. Instead, Chase charges one fee even if an item is reprocessed for payment multiple times,

30. However, Defendant engages in this abusive and deceptive practice against the reasonable expectations of its customers.

31. The Contract allows Defendant to take certain steps when paying a check or similar item, when the accountholder does not have sufficient funds to cover it. Specifically, Defendant may (a) pay the item and charge a \$29.00 fee; or (b) reject the item and charge a \$29.00 fee.

32. In contrast to the Contract, however, Defendant regularly assesses two or more \$29.00 fees on an item.

A. The Imposition of Multiple Fees on an Item Violates Defendant’s Express Promises and Representations

33. The Contract states:

Non-Sufficient Funds occur any time your account does not contain sufficient funds to pay any item presented to the Bank for payment. The Bank may charge and you agree to pay a fee in accordance with federal and OK state law as provided in the Schedule of fees.

Ex. A at 7.

34. This promise means that Defendant may assess “a fee” (singular) when the account does not contain sufficient funds to pay an “item” (singular).

35. In breach of these promises, Defendant assesses multiple \$29.00 NSF Fees on an item or a \$29.00 NSF Fee followed by a \$29.00 Overdraft Fee.

36. The same “item” on an account cannot conceivably become a new one each time it is rejected for payment then reprocessed, especially when—as here—Plaintiff took no action to resubmit it.

37. There is zero indication anywhere in the Contract that the same item is eligible to incur multiple fees.

38. Even if Defendant reprocesses an instruction for payment, it is still the same “item.” Its reprocessing is simply another attempt to effectuate an account holder’s original order or instruction.

39. The Contract never discusses a circumstance where Defendant may assess multiple fees for a check or similar item that was returned for insufficient funds and later reprocessed one or more times and returned again.

40. In sum, Defendant promised that one fee would be assessed on an item, and this term must mean all iterations of the same instruction for payment. As such, Defendant breached the Contract when it charged more than one fee per item.

41. Reasonable consumers understand any given authorization for payment to be one, singular “item,” as that term is used in the Contract.

42. Taken together, the representations and omissions identified above convey to customers that all submissions for payment of the same item will be treated as the same “item,” which Defendant will either authorize (resulting in an overdraft item) or reject (resulting in a

returned item) when it decides there are insufficient funds in the account. Nowhere do Defendant and its customers agree that Defendant will treat each reprocessing of a check or similar item as a separate item, subject to additional fees.

43. Customers reasonably understand, based on the language of the Contract, that Defendant's reprocessing of checks or similar items are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger fees. In other words, it is always the same item.

44. Banks and credit unions like Defendant that employ this abusive practice require their accountholders to expressly agree to it.

45. Defendant's Contract provides no such authorization, and actually promises the opposite – Defendant may charge, at most, a fee, per item.

B. Plaintiff's Experience

46. In support of Plaintiff's claim, Plaintiff offers examples of fees that should not have been assessed against Plaintiff's checking account. As alleged below, Defendant: (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

47. On or around February 6, 2023, Plaintiff attempted a transaction to CITI AUTOPAY.

48. Defendant rejected payment of that item due to insufficient funds in Plaintiff's account and charged Plaintiff a \$29.00 NSF Check Charge for returning the item.

49. Unbeknownst to Plaintiff and without Plaintiff's request to Defendant to reprocess the item, on or around February 9, 2023, Defendant processed the same item again, rejected the item again and charged Plaintiff a second \$29.00 NSF Check Charge for returning the item.

50. *In sum, Defendant charged Plaintiff \$58 in fees on an item.*

51. On or around November 28, 2023, Plaintiff attempted a transaction to WAL-MART STORES.

52. Defendant rejected payment of that item due to insufficient funds in Plaintiff's account and charged Plaintiff a \$29.00 NSF Check Charge for returning the item.

53. Unbeknownst to Plaintiff and without Plaintiff's request to Defendant to reprocess the item, on or around December 5, 2023, Defendant processed the same item again, paid the item into overdraft and charged Plaintiff a \$29.00 NSF Check Charge for paying the item into overdraft.

54. *In sum, Defendant charged Plaintiff \$58 in fees on an item.*

55. Defendant also charged multiple fees on an item on March 2, 2023; April 20, 2023; April 21, 2023 and May 1, 2023; November 28, 2023; and November 30, 2023 and December 5, 2023.

56. Plaintiff understood this payment to be a single item as is laid out in the Contract, capable of receiving, at most, a single fee if Defendant returned it, or a single fee if Defendant paid it.

57. Defendant understood this too because, an item that has previously been rejected for insufficient funds and re-presented for payment is labelled as a 'RETRY PYMT' in Defendant's own bank statements it sends to Plaintiff. In other words, Defendant knows that it is simply a retry of the original item and not a new item subject to a new fee.

III. NONE OF THESE FEES WERE ERRORS

58. The improper fees charged by Defendant were not errors by Defendant, but rather intentional charges made by Defendant as part of its standard processing of transactions.

59. Plaintiff therefore had no duty to report the fee as an error.

60. Moreover, any such reporting would have been futile as Defendant's own contract admits that Defendant made a decision to charge the fee.

IV. THE IMPOSITION OF THESE IMPROPER FEES BREACHES DEFENDANT'S DUTY OF GOOD FAITH AND FAIR DEALING

61. Pursuant to Oklahoma law, a duty of good faith and fair dealing is imposed on every contract.

62. Parties to a contract are required not only to adhere to the express conditions in the contract, but also to act in good faith when they are vested with a discretionary power over the other party. Further, as to bank transactions, the Uniform Commercial Code ("UCC")—which has been adopted by all states—mandates good faith and fair dealing. As such, when a party such as Defendant gives itself discretion to act, the party with discretion is required to exercise that power and discretion in good faith. This creates an implied promise to act in accordance with the parties' reasonable expectations and means that Defendant is prohibited from exercising its discretion to enrich itself and gouge its customers. Indeed, Defendant has a duty to honor transaction requests in a way that is fair to Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater penalties.

63. Here—in the adhesion agreements Defendant imposed on Plaintiff and its other customers—Defendant provided itself with numerous discretionary powers affecting customers' bank accounts. But instead of exercising that discretion in good faith and consistent with consumers' reasonable expectations, Defendant abused that discretion to take money out of consumers' accounts without their permission and contrary to their reasonable expectations that they will not be charged these fees.

64. Defendant exercised its discretion in its own favor—and to the prejudice of Plaintiff and its other customers—when it assessed improper fees. Further, Defendant abused the power it

had over customers and their bank accounts and acted contrary to their reasonable expectations under the Contract. This is a breach of Defendant's implied covenant to engage in fair dealing and act in good faith.

65. It was bad faith and entirely outside Plaintiff's reasonable expectations for Defendant to use its discretion to assess fees in these circumstances.

CLASS ALLEGATIONS

66. Plaintiff brings this action individually and as a class action on behalf of the following proposed Classes:

Account Balance Class: All citizens of Oklahoma who are Defendant checking account holders who, during the applicable statute of limitations, were charged Overdraft Fees on transactions that did not actually overdraw a checking account.

Multiple Fee Class: All citizens of Oklahoma who are Defendant checking account holders who, during the applicable statute of limitations, were assessed multiple fees on an item.

Plaintiff reserves the right to modify or amend the definition of the Classes as this litigation proceeds.

67. Excluded from the Classes are Defendant, its parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

68. Plaintiff reserves the right to modify or amend the definition of the proposed Classes, if necessary, before this Court determines whether certification is appropriate.

69. The time period for the Classes is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendant remedies the conduct complained of herein.

70. The members of the Classes are so numerous that joinder is impractical. The Classes consist of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be readily ascertained only by resort to Defendant's records.

71. The claims of Plaintiff are typical of the claims of the Classes in that Plaintiff, like all members of the Classes, was charged improper fees as set forth herein. Plaintiff, like all members of the Classes, has been damaged by Defendant's misconduct. Furthermore, the factual basis of Defendant's misconduct is common to all members of the Classes and represents a common thread of unlawful and unauthorized conduct resulting in injury to all members of the Classes. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other members of the Classes.

72. There are numerous questions of law and fact common to the Classes and those common questions predominate over any questions affecting only individual members of the Classes.

73. Among the questions of law and fact common to the Classes include:

- a. Whether Defendant charged OD Fees when the account balance was not actually overdrawn;
- a. Whether Defendant charged multiple fees on an item;
- b. Whether these fee practices breached the Contract and Defendant's duty of good faith and fair dealing;
- c. Whether Defendant was unjustly enriched by this practice;
- d. The proper method or methods by which to measure damages; and
- e. The declaratory and injunctive relief to which the Classes are entitled.

74. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions, particularly on behalf of

consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

75. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the amount of each individual class member's claim is small relative to the complexity of the litigation, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Classes will continue to suffer losses and Defendant's misconduct will proceed without remedy.

76. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

77. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all Class members, is at risk of additional improper fees.

FIRST CLAIM FOR RELIEF

Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing (On Behalf of Plaintiff and the Account Balance Class)

78. Plaintiff incorporates by reference the preceding paragraphs.

79. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's Contract. Exs. A and B.

80. All of Defendant's account holders, including Plaintiff and the members of the

Account Balance Class, are subject to the Contract.

81. All contracts entered by Plaintiff and the Account Balance Class are identical or substantively identical because Defendant's form contracts were used uniformly.

82. Defendant misconstrued in its Contract its true OD Fee practices and breached the express terms of its Contract.

83. The Contract does not authorize Defendant to charge OD Fees on transactions that do not actually overdraw the account.

84. Defendant breached the terms of its Contract by charging OD Fees on transactions that do not actually overdraw the account.

85. Plaintiff and members of the Account Balance Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

86. Under Oklahoma law, good faith is an element of every contract between banks and/or credit unions and their customers because banks and credit unions are inherently in a superior position to their checking account holders and, from this superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

87. 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. Put differently, 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.

88. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of

inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain and abuse of a power to specify terms.

89. Defendant abused the discretion it granted to itself when it charged OD Fees on transactions that did not actually overdraw the account.

90. In these and other ways, Defendant violated its duty of good faith and fair dealing.

91. Defendant willfully engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) maximizing fee revenue from Plaintiff and other members of the Account Balance Class.

92. Plaintiff and members of the Account Balance Class have sustained damages as a result of Defendant's breaches of the parties' contracts and breaches of contract through violations of the covenant of good faith and fair dealing.

SECOND CLAIM FOR RELIEF

Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing (On Behalf of Plaintiff and the Multiple Fee Class)

93. Plaintiff incorporates by reference the preceding paragraphs.

94. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's Contract, Exs. A and B.

95. All of Defendant's account holders, including Plaintiff and the members of the Multiple Fee Class, are subject to the Contract.

96. All contracts entered by Plaintiff and the Multiple Fee Class are identical or substantively identical because Defendant's form contracts were used uniformly.

97. Defendant misconstrued in its Contract its true OD Fee practices and breached the express terms of its Contract.

98. The Contract does not authorize Defendant to charge multiple fees on an item.

99. Defendant breached the terms of its Contract by charging multiple fees on an item.

100. Plaintiff and members of the Multiple Fee Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

101. Under Oklahoma law, good faith is an element of every contract between banks and/or credit unions and their customers because banks and credit unions are inherently in a superior position to their checking account holders and, from this superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

102. 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. Put differently, 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.

103. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain and abuse of a power to specify terms.

104. Defendant abused the discretion it granted to itself when it charged multiple fees on an item.

105. In these and other ways, Defendant violated its duty of good faith and fair dealing.

106. Defendant willfully engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) maximizing fee revenue from Plaintiff and other members of the Multiple Fee Class.

107. Plaintiff and members of the Multiple Fee Class have sustained damages as a result of Defendant's breaches of the parties' contracts and breaches of contract through violations of the covenant of good faith and fair dealing.

THIRD CLAIM FOR RELIEF

Unjust Enrichment (On Behalf of Plaintiff and the Classes)

108. Plaintiff incorporates by reference the preceding paragraphs.

109. This Count is brought solely in the alternative to Plaintiff breach of contract and breach of the covenant of good faith and fair dealing claim.

110. To the detriment of Plaintiff and the Classes, Defendant has been, and continues to be, unjustly enriched as a result of its wrongful conduct alleged herein.

111. Plaintiff and the Classes conferred a benefit on Defendant when they paid Defendant fees that were not allowed under the Contract.

112. Defendant deceptively and/or unlawfully accepted said benefits, which under the circumstances, would be unjust to allow Defendant to retain.

113. Defendant's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

114. Plaintiff and the Classes, therefore, seek disgorgement of all wrongfully obtained fees received by Defendant as a result of its inequitable conduct as more fully stated herein.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, respectfully requests that the Court:

- a. Certify this case as a class action, designating Plaintiff as class representative and designating the undersigned as Class Counsel;

- b. Award Plaintiff and the Classes actual damages in an amount according to proof;
- c. Award Plaintiff and the Classes restitution in an amount to be proven at trial;
- d. Award Plaintiff and the Classes pre-judgment interest in the amount permitted by law;
- e. Award Plaintiff and the Classes attorney's fees and costs as permitted by law;
- f. Declare Defendant's practices outlined herein to be unlawful to the extent they constitute a breach of contract;
- g. Grant Plaintiff and the Classes a trial by jury;
- h. Grant leave to amend these pleadings to conform to evidence produced at trial; and
- i. Grant such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

Dated: September 4, 2024

Respectfully Submitted,



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**Pro hac vice applications forthcoming*

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EXHIBIT A



**Chickasaw
Community
Bank**

TERMS AND CONDITIONS DISCLOSURE

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. Please read this carefully. If you sign the signature card or open or continue to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement is subject to applicable federal laws and the laws of the state of Oklahoma (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. You will also be liable for our costs to collect the deficit as well as for our reasonable attorneys' fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your account including, but not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming an interest in your account.

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 business day that we are open.

WITHDRAWALS - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs to open the account or has authority to make withdrawals 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 who signs or has authority to make withdrawals to indorse any item payable to you or your order for deposit to this account or any other transaction with us. You agree that, as to any item that we have no opportunity to examine the signatures, such as an electronic check conversion transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation, you waive any requirement of multiple signatures for withdrawal. 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. You agree that we may charge fees for overdrafts and use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and overdraft fees. If we are presented with an item drawn against your account that would be a "substitute check," as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item. 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, or from any other savings account as defined by Regulation D. 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.

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 such an account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If, at the death of the owner(s) of this account, the beneficiary is not living, the beneficiary's estate acquires ownership of the account. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types 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, ORGANIZATIONS AND ASSOCIATION 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 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 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 (e.g., we paid the item in cash or we certified the item).

TELEPHONE TRANSFERS - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

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 - Your Duty to Report Unauthorized Signatures, Alterations and Forgeries - 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 or forgeries 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.

Your Duty to Report Other Errors - In addition to your duty to review your statements for unauthorized signatures, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error - such as an encoding error. You agree that the time you have to examine your statement and report to us will depend on the circumstances. However, such time period shall not exceed 60 days. Failure to examine your statement and report any such errors to us within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any such errors on items identified in that statement and as between you and us the loss will be entirely yours. **Errors Relating to Electronic Fund Transfers or Substitute Checks (For consumer accounts only)** - For information on errors relating to electronic fund transfers (e.g., computer, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

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, this is a temporary account agreement. Each person who signs to open the account or has authority to make withdrawals (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future 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 prohibited by law. For example, the right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar taxdeferred 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.

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."

CHECK PROCESSING - We may process items mechanically by relying on the information encoded along the bottom of the items. This means that we may not individually examine all of your items to determine if the item is properly completed, signed and indorsed. You agree that we have not failed to exercise ordinary care solely because we use an automated system to process items and do not inspect all items processed in such a manner. We reserve the right not to inspect each item because using an automated process helps us keep costs down for you and all account holders. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the time we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

CHECK CASHING - We may charge a fee for anyone that does not have an account with us who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash such a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

TRUNCATION, SUBSTITUTE CHECKS, AND OTHER CHECK IMAGES - If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to

indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

REMOTELY CREATED CHECKS - Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line. For example, if a person provides an account number in response to a telephone solicitation, the telephone solicitor can use the account number to issue a remotely created check to withdraw money from that account. You warrant and agree to the following for every remotely created check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to create the check in the amount and to the payee that appears on the check; (2) you will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and (3) if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

UNLAWFUL INTERNET GAMBLING NOTICE - Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

ACH AND WIRE TRANSFERS - This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted 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 payment order to credit 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.

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.

TEXT COMMUNICATIONS - The following applies to Chickasaw Community Bank card alerts

1. Message frequency varies by account.
2. Message and data rates may apply.
3. Text HELP to 72586 for help or call 1-877-409-2265.
4. Text STOP to 72586 to cancel.

Participating carriers include AT&T, Sprint, T-Mobile, Verizon Wireless, Boost, Virgin Mobile, MetroPCS, Alltel AWCC, Cricket, Google Voice, and U.S. Cellular.

ADDITIONAL INFORMATION - Dormant accounts as defined by federal and OK state law are subject to fees according to the Schedule of Fees. Non-Sufficient Funds occur any time your account does not contain sufficient funds to pay any item presented to the Bank for payment. The Bank may charge and you agree to pay a fee in accordance with federal and OK state law as provided in the Schedule of fees. The Bank reserves the right to refuse any power of attorney. If you wish to designate an attorney-in fact, you must do so on a form acceptable to the Bank for that purpose.

EXHIBIT B

What You Need to Know about Overdrafts and Overdraft Fees

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

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, 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

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 [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

➤ What if I want [Institution Name] 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 [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

.....
 I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: _____

Date: _____

[Account Number]: _____]