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1ST CIRCUIT COURT
STATE OF HAWAII
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TIMOTHY VANDEVEER,
individually and on behalf
of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

TIMOTHY VANDEVEER, individually and)
on behalf of all others similarly situated,)

Plaintiff,)

vs.)

AMERICAN SAVINGS BANK,)
AMERICAN SAVINGS HOLDING INC.)
and DOE DEFENDANTS 1-50,)

Defendants.)

Civil No. 11-1-0458-03)
(Class Action))

D A T

**COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS**

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit

COMPLAINT

Plaintiff TIMOTHY VANDEVEER, individually and on behalf of all persons similarly situated, for complaint against Defendants AMERICAN SAVINGS BANK, AMERICAN SAVINGS HOLDING INC. and DOE DEFENDANTS 1-50, allege as follows:

INTRODUCTION

1. This is a civil action seeking monetary damages, restitution and declaratory relief from Defendants AMERICAN SAVINGS BANK and AMERICAN SAVINGS HOLDING INC. (collectively “AMERICAN SAVINGS BANK” or “ASB” or the “Bank”) and Doe Defendants 1-50, arising from the unfair and unconscionable assessment and collection of excessive overdraft fees.

2. In the era of electronic banking and the ubiquitous use of debit card transactions, the assessment of overdraft fees has become a major profit center for many United States banks, including AMERICAN SAVINGS BANK. For years, banks covered customers who occasionally bounced checks and even did so for a time for customers using debit cards, without charging their customers. Since the early 1990’s, however, banks have devised methods to provide overdraft “protection” for customers and charge them in each instance. A recent FDIC report estimated that overdraft fees represent 74 percent of the total service charges that are imposed on deposit accounts in the United States. A 2008 FDIC study reports that overdraft fees for debit cards can carry an effective annualized interest rate that *exceeds 3,500 percent*.

3. In 2007, banks collected more than \$17 billion in overdraft fees. That number nearly doubled in 2008, as more and more consumers struggled to maintain positive checking account balances. *In 2009, banks brought in \$37.1 billion in overdraft charges alone*. Operating

59 banking locations in Hawaii, AMERICAN SAVINGS BANK benefits greatly from these staggering charges.

4. Almost by definition, these fees disproportionately affect the poor, who are most likely to maintain low balances. Moebs Services, a research company that has conducted studies for the government as well as banks, estimates that 90 percent of overdraft fees are paid by the poorest 10 percent of banks' customer base. Moreover, these fees have the tendency to create a domino effect, because the imposition of a service charge on an account with a negative balance will make it less likely that the account holder's balance will reach positive territory, resulting in more fees.

5. Before debit cards existed, banks occasionally extended the courtesy of honoring paper checks written on overdrawn or otherwise deficient accounts for customers who were typically in good standing. Banks extended this courtesy largely because the third party involved in a sales transaction allowed the customer to pay by check, expecting the funds to be available and the check to clear. For example, if a customer wrote a check to purchase groceries, the grocery store would only know whether the check cleared *after* the groceries had been purchased.

6. The same considerations are not present when customers use debit cards. Banks could simply decline to honor debit or point of sale transactions where accounts lack sufficient funds to execute the transactions. Retail and service transactions could still be executed if consumers presented an alternative form of payment. ATM transactions could still proceed if banks provided a warning that an overdraft fee would be assessed, and customers chose to proceed nevertheless. In fact, until a few years ago, most banks simply declined debit transactions that would overdraw an account.

7. Instead of simply declining debit transactions when there are insufficient funds, or warning its customers that an overdraft fee will be assessed if they proceed with the transaction, AMERICAN SAVINGS BANK routinely processes such transactions and then charges its customers an overdraft fee of \$28 for each charge – even when the transaction is for only a few dollars. Further, on information and belief, AMERICAN SAVINGS BANK charges an additional fee for each continuous 7-day period a customer’s account is overdrawn. This automatic, fee-based overdraft scheme is intentionally designed to maximize overdraft fee revenue for AMERICAN SAVINGS BANK. Additionally, as part of its inequitable motive to generate obscene profits gained through the imposition of unconscionable overdraft fees, AMERICAN SAVINGS BANK failed to adequately disclose to its customers that they could elect to opt out of overdraft protection.

8. In many instances, these overdraft fees cost AMERICAN SAVINGS BANK account holders hundreds of dollars in a matter of days, or even hours, when they may be overdrawn by only a few dollars. Even more egregious, customer accounts may not actually be overdrawn at the time the overdraft fees are charged, or at the time of the debit transaction.

9. Thus, it is through manipulation and alteration of customers’ transaction records that AMERICAN SAVINGS BANK maximizes overdraft penalties imposed on customers.

JURISDICTION AND VENUE

10. The Court has jurisdiction over Defendants and the claims set forth below because this cause is a cause not given by statute to other trial courts and the amount in controversy exceeds the jurisdictional minimum of this Court.

11. Venue is proper in this Circuit pursuant to HRS § 603-36(5) because AMERICAN SAVINGS BANK is subject to personal jurisdiction here and regularly conducts

business in this Circuit, and because all or a substantial part of the events or omissions giving rise to the claims asserted herein occurred and continue to occur in this Circuit.

THE PARTIES

12. Plaintiff, TIMOTHY VANDEVEER, is a resident of the City and County of Honolulu, state of Hawaii.

13. AMERICAN SAVINGS BANK is a Hawaii for profit corporation and state-chartered bank. AMERICAN SAVINGS BANK is the primary subsidiary of AMERICAN SAVINGS HOLDING INC., which is the bank holding company for AMERICAN SAVINGS BANK, both of which maintain their principal place of business and corporate headquarters at 1001 Bishop Street, Hawaii 96813. Among other things, AMERICAN SAVINGS BANK is engaged in the business of providing retail banking services to at least thousands of consumers, including Plaintiff and members of the putative Class, which include the issuance of debit cards for use by its customers in conjunction with their checking accounts. AMERICAN SAVINGS BANK serves its customers through 59 banking locations and more than 165 ATMs in Hawaii. According to its website, AMERICAN SAVINGS BANK is the fourth largest financial institution in the State of Hawaii with has over nearly \$5 billion in assets.

CLASS ALLEGATIONS

14. Plaintiff bring this action on behalf of themselves and all others similarly situated pursuant to Haw. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

15. The proposed class is defined as:

All Hawaii citizens at the time of filing this action who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, maintained a checking account with ASB and incurred one or more overdraft fees (the "Class").

16. Plaintiffs reserve the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

17. Excluded from the Class are AMERICAN SAVINGS BANK, its parents, subsidiaries, affiliates, officers and directors, any entity in which AMERICAN SAVINGS BANK 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.

18. The members of the Class are so numerous that joinder is impractical. The Class consists of thousands, if not tens of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to AMERICAN SAVINGS BANK's records.

19. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all Class members, were charged overdraft fees by AMERICAN SAVINGS BANK as a result of its practice of re-sequencing debit card transactions from highest to lowest. The representative Plaintiff, like all Class members, have been damaged by AMERICAN SAVINGS BANK's misconduct in that they have been assessed and/or will continue to be assessed unfair and unconscionable overdraft charges. Furthermore, the factual basis of AMERICAN SAVINGS BANK's misconduct is common to all Class members, and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Class.

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

21. Among the questions of law and fact common to the Class are whether AMERICAN SAVINGS BANK:

- a. Did not clearly disclose and/or refused to allow its customers to opt out of its overdraft protection program;
- b. Did not obtain affirmative consent from its customers prior to processing transactions that would result in overdraft fees;
- c. Does not alert its customers that a debit card transaction will trigger an overdraft fee, and does not provide its customers with an opportunity to cancel such transactions;
- d. Manipulates and reorders transactions so that it can increase the number of overdraft fees it imposes;
- e. Manipulates and reorders debits from highest to lowest in order to maximize the number of overdrafts and, consequently, the amount of overdraft fees;
- f. Imposes overdrafts and overdraft fees when, but for reordering transactions, there would otherwise be sufficient funds in the accounts;
- g. Fails to provide customers with accurate balance information;
- h. Delays posting of transactions by customers using debit cards so that customers are charged overdraft fees on transactions, even though the customers had sufficient funds in their accounts to cover the transactions upon execution;
- i. Charges exorbitant overdraft fees that bear no relationship to the actual costs and risks of covering insufficient funds transactions;

j. Requires its customers to enter into standardized account agreements which include unconscionable provisions;

k. Converts moneys belonging to Plaintiff and other members of the Class through its overdraft policies and practices;

l. Is unjustly enriched through its overdraft policies and practices;
and

m. Violates the consumer protection acts and laws of Hawai'i through its overdraft policies and practices.

22. Other questions of law and fact common to the Class include:

- a. The proper method or methods by which to measure damages, and
- b. The declaratory relief to which the Class is entitled.

23. Plaintiff's claims are typical of the claims of other Class members, in that they arise out of the same wrongful overdraft policies and practices and the same or substantially similar unconscionable provisions of AMERICAN SAVINGS BANK's account agreements and other related documents. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other Class member.

24. Plaintiff is committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

25. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, and due to the financial resources of

AMERICAN SAVINGS BANK, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and AMERICAN SAVINGS BANK's misconduct will proceed without remedy.

26. 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 claims to be heard 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.

COMMON FACTUAL ALLEGATIONS

A. American Savings Bank

27. According to its website, AMERICAN SAVINGS BANK is the fourth largest bank in the State of Hawaii. According to its website, AMERICAN SAVINGS BANK holds over \$4.9 billion in assets.

28. AMERICAN SAVINGS BANK is in the business of providing its customers with a variety of banking services. One of the services provided by AMERICAN SAVINGS BANK for customers who open a checking account is a debit card, also known as a check card or ATM card. Through those debit cards, customers can engage in transactions using funds directly from their accounts by engaging in "debit" or "point of sale" ("POS") transactions, or may withdraw money from their accounts at ATMs. Whether the card is used to execute POS transactions or to withdraw cash from ATMs, the transaction is processed electronically. As a

result, AMERICAN SAVINGS BANK is notified instantaneously when the card is swiped, and has the option to accept or decline transactions at such time.

29. AMERICAN SAVINGS BANK employs sophisticated software to automate its overdraft system. This program maximizes the number of overdrafts, and thus, the amount of overdraft fees charged per customer.

30. As a result of AMERICAN SAVINGS BANK's manipulation and alteration of customers' transactions records, funds in customers' accounts are depleted more rapidly and more overdraft fees are likely to be charged for multiple smaller transactions. Indeed, overdraft charges are likely to occur at times when, but for the manipulation and alteration, there would be funds in the account and no overdraft would occur. For example, if a customer, whose account has a \$50 balance at the time AMERICAN SAVINGS BANK processed several transactions, made four transactions of \$10 and one subsequent transaction of \$100 on the same day, the Bank would reorder the debits from largest to smallest, imposing five overdraft fees on the customer. Conversely, if the \$100 transaction was debited last—consistent with the actual order of transactions—only one overdraft fee would be assessed. *See* FDIC Study of Bank Overdraft Programs, November 2008, *available at*: <http://www.fdic.gov/bank/analytical/overdraft/>, at 11, n. 12.

31. Plaintiff and all members of the Class maintain or maintained a checking account with AMERICAN SAVINGS BANK. The terms of AMERICAN SAVINGS BANK's checking accounts are contained in standardized account holder agreements, presented to its customers on a "take it or leave it" basis, drafted and imposed by AMERICAN SAVINGS BANK, which was the party of vastly superior bargaining strength, and thus constitute agreements of adhesion. Copies of the Account Deposit Agreement, Deposit Account

Disclosures and Fees, Deposit Account Rules and Fee Schedule (“Account Documents”) in effect when Plaintiff opened his account in 2007 were unavailable.

B. American Savings Bank’s Re-Ordering of Checking Account Transactions

32. In an effort to maximize overdraft revenue, AMERICAN SAVINGS BANK manipulates and reorders debits from highest to lowest during given periods of time. AMERICAN SAVINGS BANK reorders transactions for no reason other than to increase the number of exorbitant overdraft fees it can charge. This practice violates the consumer protection laws of certain states and the covenant of good faith and fair dealing.

33. On information and belief, it is the Bank’s practice to *always* reorder debits from highest to lowest, and because the Bank groups together POS transactions that occurred on subsequent days with POS transactions that occurred on earlier days, and reorders them so that higher debits that occurred on subsequent days are posted to its customers’ accounts before lower debits that occurred on earlier days, contrary its customers’ reasonable expectations. The Bank’s practices thus violate the covenant of good faith and fair dealing as well as the consumer protection laws of Hawai’i.

34. Before the Effective Date, AMERICAN SAVINGS BANK automatically enrolled all of its customers into its courtesy overdraft program.

35. Transactions involving debit cards used by AMERICAN SAVINGS BANK customers, including the withdrawal of cash from ATM machines and POS transactions with vendors, are processed electronically. As a result, AMERICAN SAVINGS BANK is notified instantaneously when the customer’s debit card is swiped, and has the option to accept or decline these transactions.

36. Notwithstanding the instantaneous nature of these electronic debit card transactions, under AMERICAN SAVINGS BANK’s posting system, it fails to post charges in

the order in which they are assessed or received. AMERICAN SAVINGS BANK developed a policy and employs a practice whereby account charges and debits are posted to its customers' accounts out of chronological order for the sole purpose of maximizing the number of overdraft transactions and, therefore, the amount of overdraft fees charged to its customers.

37. Instead of processing such transactions in chronological order, AMERICAN SAVINGS BANK processes them starting with the largest debit and ending with the smallest debit, so as to generate the largest possible number of overdrafts and the greatest possible amount of overdraft fees.

38. AMERICAN SAVINGS BANK refrains from immediately posting charges to a customer's account as it receives them—sometimes for multiple business days. By holding charges rather than posting them immediately to an account, AMERICAN SAVINGS BANK is able to amass a number of charges on the account. Subsequently, AMERICAN SAVINGS BANK posts all of the amassed charges on a single date. When the group of charges is eventually posted to the customer's account, AMERICAN SAVINGS BANK posts them in order of largest to smallest—not in the order in which they were received or in the order in which they were charged. This delayed posting results in the imposition of multiple overdraft fees that would not otherwise be imposed. The delayed posting also prevents customers from ascertaining the accurate balances in their accounts.

39. AMERICAN SAVINGS BANK's policy and practice of posting charges from largest to smallest, rather than chronologically, or from smallest to largest, is specifically designed to maximize the generation of overdraft fees by triggering overdraft fees for account charges that would not otherwise result in such fees.

40. AMERICAN SAVINGS BANK enforces an unconscionable policy whereby charges assessed are posted to customers' accounts in a non-chronological order, from highest to lowest, and are held for multiple days and then batched together, to maximize the number of overdraft transactions and fees. AMERICAN SAVINGS BANK's processing practices substantially increase the likelihood that customers' smaller charges will result in multiple overdraft fees. The practices provide AMERICAN SAVINGS BANK with substantially higher service fee revenues than it would otherwise achieve absent these practices.

41. As a result, Plaintiff and members of the Class have been assessed overdraft fees for transactions which occurred when they actually had sufficient funds in their accounts to cover those transactions.

C. American Savings Bank's Cloaking of Accurate Balance Information

42. AMERICAN SAVINGS BANK actively promotes the convenience of its debit cards and other electronic debiting, but fails to provide customers with accurate balance information. When customers execute account transactions, they generally do not have access to an accurate balance register or balance information.

43. On information and belief, as part of its practice of cloaking accurate balance information, AMERICAN SAVINGS BANK included the courtesy overdraft limit in the available balance for telephone account inquiries, online banking, on teller receipts, as well as on ATM inquiries, until only recently. AMERICAN SAVINGS BANK only recently modified its practice of including the courtesy overdraft limit on ATM balance inquiries. Instead, AMERICAN SAVINGS BANK previously included the courtesy overdraft limit on the ATM balance inquiries, thereby intentionally providing inaccurate and unreliable information displayed in the online account information, over the phone, and on ATM inquiries misleading

consumers as to their accurate balance and generating overdraft fees for AMERICAN SAVINGS BANK.

44. AMERICAN SAVINGS BANK claims that online banking provides current balance information about customers' accounts. But in reality, AMERICAN SAVINGS BANK's computers are set up not to process transactions in the order received, but in order from highest to lowest dollar amount so as to ensure that the maximum number of overdraft charges are imposed on customers' accounts.

45. AMERICAN SAVINGS BANK provides inaccurate balance information to its customers through its electronic network. In certain cases, AMERICAN SAVINGS BANK informs its customers that they have a positive balance when, in reality, they have a negative balance, despite the Bank's actual knowledge of outstanding debits and transactions.

46. Even when AMERICAN SAVINGS BANK has actual knowledge of outstanding transactions which have already created a negative balance in a customer's account, it encourages the customer to incur more overdraft charges by approving—rather than prudently declining—subsequent debit card purchases and other electronic transactions.

47. AMERICAN SAVINGS BANK also assesses overdraft fees at times when actual funds in the customer's account are sufficient to cover all debits that have been submitted to the Bank for payment. It does this by placing a "hold" on actual funds in the customer's account. In doing so, AMERICAN SAVINGS BANK charges overdraft fees where it faces no risk, because the cash balance in the customer's account has not dropped below zero.

48. A debit card can be used to make a purchase in two ways: (1) an Automated Clearing House ("ACH") transaction in which a customer enters his/her PIN number at the point of sale; or (2) an "offline signature" transaction, in which the debit card is treated like a credit

card and the customer usually is required to sign a receipt. In the former, the money is debited from the account instantaneously. In the latter, the “offline signature” transaction occurs in two parts: first, authorization for the purchase amount is obtained by the merchant. Second, the transaction is not actually “settled” (that is, money between the bank and the merchant does not change hands) until the merchant submits the transaction to the bank sometime after the customer’s purchase. Before settlement, “authorization holds” are placed on the customer’s account, preventing access to money so held. For some transactions, the authorization hold is for an amount larger than the purchase actually made by the customer. AMERICAN SAVINGS BANK charges an overdraft fee when the authorization hold amount—not the purchase price—pushes an account balance into negative territory.

49. Such “authorization hold” policies, and the extent to which they are used by AMERICAN SAVINGS BANK to charge overdraft fees, are inconsistent with AMERICAN SAVINGS BANK’s Rules & Regulations.

50. The terms of the Account Documents fail to alert customers that they must often keep a large cushion of funds in their account in order to guard against an overdraft fee even when customers do not spend more than the funds in their account, and are materially deceptive. Accordingly, AMERICAN SAVINGS BANK charges customers overdraft fees even when there are sufficient funds in customers’ accounts to cover transactions.

51. Charging an overdraft fee when in fact an account has never been over-drafted is materially deceptive. By charging overdraft fees when in fact the customer’s account has not been over-drafted, AMERICAN SAVINGS BANK breached its contract with Plaintiffs.

D. American Savings Bank's Failure to Adequately Notify Customers of Overdrafts or Advise Customers of Their Right to Opt Out

52. At the time its debit cards are used in POS transactions or at ATMs, AMERICAN SAVINGS BANK is able to determine, almost instantaneously, whether there are sufficient funds in a customer's account to cover that particular transaction. The Bank has the technological capability to decline transactions (which it does when a pending transaction would exceed a pre-determined, overdraft tolerance limit for the account), or notify customers at that very moment that the particular debit card transaction would result in an overdraft. Prior to the effective date of the opt in/opt requirements of Regulation E (the "Effective Date"), AMERICAN SAVINGS BANK could have given customers the option to decline the transaction to avoid incurring the overdraft fee, but it did not do so because it sought to maximize the amount of revenue generated through its assessment of overdraft fees.

53. Notwithstanding its technological capabilities and actual knowledge, AMERICAN SAVINGS BANK failed to provide notice to Plaintiff and the Class that a particular debit card transaction would result in an overdraft and, hence, an overdraft fee. Because AMERICAN SAVINGS BANK's customers were not notified of the potential overdraft, and were not given the option of declining the debit card transaction or providing another form of payment, the customers were assessed monetary damages in the form of overdraft fees.

54. Prior to the Effective Date, AMERICAN SAVINGS BANK failed to make Plaintiff and Class members aware that they could opt out of its overdraft scheme upon request, thereby avoiding any overdraft fees from being charged.

E. American Savings Bank's Overdraft Practices Harmed Plaintiffs

55. AMERICAN SAVINGS BANK's wrongful overdraft policies and practices described above harmed Plaintiff and members of the Class. The following allegations regarding the named Plaintiff are made for purposes of illustrating the harm and damage sustained by Plaintiff and members of the Class as a result of AMERICAN SAVINGS BANK's wrongful overdraft policies and practices.

56. Plaintiff TIMOTHY VANDEVEER, is a current checking account customer of AMERICAN SAVINGS BANK.

57. In connection with their account, AMERICAN SAVINGS BANK issued a debit card or cards to Plaintiff. A debit card allows customers to access their checking account funds by using the card to execute a transaction. The charge is processed electronically, and the Bank has the option to accept or decline the transaction at the point of sale.

58. American Savings Bank wrongfully charged Plaintiff multiple overdraft fees. According to Plaintiff's calculations, the end of day balance for February 24, 2009 was \$69.81. Although it is disputed that end of day balance for February 24, 2009 as set forth on Plaintiff's bank statement as being -\$10.74 is accurate, for purposes of this calculation, we will use ASB's balance figure herein. For example, based on information and belief, Plaintiff was charged three overdraft fees the following day, on February 26, 2009, in the amount of \$28.00 each, for a total of \$112.00. Based on information and belief, the overdraft fees were based on the following ordering of transactions:

Balance Sheet per American Savings Bank Reordering Scheme
(Debits Processed from Highest to Lowest)

	Starting Balance 2/25/2009: (10.74)				
	DEBIT DESCRIPTION	CREDIT	DEBIT	FEES	BALANCE

2/25/2009	DEPOSIT	280.00			269.26
2/25/2009	OVERDRAFT FEE [for 2/24]			28.00	241.26
2/25/2009	PREAUTHORIZED DEBIT		120.00		121.26
2/25/2009	CHK #1165		82.72		38.54
2/25/2009	ATM WITHDRAWAL		40.00		(1.46)
2/25/2009	POS PURCHASE: 2/24		15.85		(17.31)
2/26/2009	POS PURCHASE:2/25		10.64		(27.95)
2/26/2009	OVERDRAFT FEE			28.00	
2/26/2009	OVERDRAFT FEE			28.00	
2/26/2009	OVERDRAFT FEE			28.00	
TOTAL	ENDING BALANCE 2/26	<u>\$(111.95)</u>	TOTAL FEES:	\$84.00	

59. If AMERICAN SAVINGS BANK had not manipulated and reordered Plaintiff's transactions from highest to lowest but instead posted them in chronological order, Plaintiff would have been assessed only two overdraft fees instead of three:

Balance Sheet if Debits Were Processed in Chronological Order

	Starting Balance 2/25/2009: (10.74)				
	DEBIT DESCRIPTION	CREDIT	DEBIT	FEES	BALANCE
2/25/2009	DEPOSIT	280.00			269.26
2/25/2009	OVERDRAFT FEE			28.00	241.26
2/25/2009	CHK #1165		82.72		158.54
2/25/2009	POS PURCHASE: 2/24		15.85		142.69
2/25/2009	ATM WITHDRAWAL: 2/24		40.00		102.69
2/25/2009	PREAUTHORIZED DEBIT		120.00		(17.31)
2/25/2009	POS PURCHASE: 2/25		10.64		(27.95)
2/26/2009	OVERDRAFT FEE			28.00	
2/26/2009	OVERDRAFT FEE			28.00	
TOTAL	ENDING BALANCE 2/26	<u>\$ (83.95)</u>	TOTAL FEES [2/25]:	\$ 56.00	

60. AMERICAN SAVINGS BANK failed to notify Plaintiff that they could be assessed overdraft fees on transactions even though there were sufficient funds in the checking account to cover the transaction at the time the transaction was executed. In addition, AMERICAN SAVINGS BANK never notified Plaintiff at the time they executed the purported insufficient funds transactions described above, that their checking account was overdrawn or that they would be charged an overdraft fee as a result of the transactions. Furthermore, AMERICAN SAVINGS BANK paid, rather than returned, all of the debit charges described above, even though Plaintiff' account purportedly lacked sufficient funds to cover the transactions.

61. Based on information and belief, the overdraft charges assessed Plaintiff are representative of hundreds of thousands, if not millions of dollars of overdraft fees that AMERICAN SAVINGS BANK wrongfully assessed and deducted from its customers' accounts. These wrongful takings are especially egregious considering the fact that the Bank knew at the time of approval whether there were sufficient funds in the account to cover the transaction.

B. The Damages Sustained by Plaintiff and the Class

62. Thus, as a consequence of AMERICAN SAVINGS BANK's overdraft policies and practices, Plaintiff and the Class have been wrongfully forced to pay overdraft fees. AMERICAN SAVINGS BANK has improperly deprived Plaintiff and the Class of significant funds, causing ascertainable monetary losses and damages.

63. As a consequence of AMERICAN SAVINGS BANK's improper overdraft fees, AMERICAN SAVINGS BANK has wrongfully deprived Plaintiff and the Class of funds to which it had no legitimate claim.

64. Plaintiff and the Class had sufficient funds to cover at least some of the transactions for which they and the Class were charged overdraft fees. Plaintiff and members of

the Class either had adequate funds to cover the transactions posted to their accounts, or the accounts were allowed to become overdrawn, even by *de minimis* margins, exclusively so that AMERICAN SAVINGS BANK could impose these wrongful charges. In many instances, AMERICAN SAVINGS BANK's manipulation of the process for imposing overdraft fees triggered a cascade of charges that exponentially added to the charges it collected from Plaintiff and Class members.

65. All conditions precedent to the relief sought herein have either occurred or have been performed or waived.

FIRST CLAIM FOR RELIEF
Unconscionability

66. Plaintiff repeat paragraphs 1 through 65 above.

67. AMERICAN SAVINGS BANK's overdraft policies and practices are or were substantively and procedurally unconscionable in the following respects, among others:

a. Prior to the Effective Date, the Bank did not disclose or reasonably disclose to customers that they had the option to "opt out" of the Bank's overdraft scheme;

b. Prior to the Effective Date, the Bank did not obtain affirmative consent from checking account customers prior to processing a transaction that would overdraw the account and result in an overdraft fee;

c. The Bank does not alert its customers that a debit card transaction will trigger an overdraft, and does not provide the customer the opportunity to cancel that transaction, before assessing an overdraft fee;

d. The Account Documents, including the Fee Schedule, are contracts of adhesion in that they are standardized forms, imposed and drafted by the Bank, which is a

party of vastly superior bargaining strength, and only relegates to the customer the opportunity to adhere to them or reject the agreement in its entirety;

e. The amount of overdraft fees is disclosed in an ineffective, ambiguous, misleading, and unfair manner, since it is not contained in the Initial Account Deposit Authorization and Agreement, but rather in a different and separate document, the Fee Schedule, which is not signed by the depositor; and

f. The Account Documents provided to customers is ineffective, ambiguous, deceptive, unfair, and misleading in that it does not include accurate language regarding the re-sequencing of debit transactions, even though AMERICAN SAVINGS BANK *always* reorders transactions in this way for customers in order to maximize overdrafts and overdraft fee revenues for the Bank.

68. Considering the great business acumen and experience of AMERICAN SAVINGS BANK in relation to Plaintiff and the Class, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law.

69. The imposition of overdraft charges which exceed the amount overdrawn (*e.g.*, the imposition of a \$28 charge on an overdraft of less than \$28) is itself unconscionable. Such charges are not reasonably related to the Bank's cost of covering the overdraft and/or its risk of nonpayment (where the Bank pays the overdraft), or to the Bank's cost of returning the item unpaid (where the Bank does not pay the overdraft).

70. Plaintiff and members of the Class have sustained damages as a result of AMERICAN SAVINGS BANK's unconscionable policies and practices alleged herein.

SECOND CLAIM FOR RELIEF

Conversion

71. Plaintiff repeat paragraphs 1 through 70 above.

72. AMERICAN SAVINGS BANK had and continues to have a duty to maintain and preserve its customers' checking accounts and to prevent their diminishment through its own wrongful acts.

73. AMERICAN SAVINGS BANK has wrongfully collected overdraft fees from Plaintiff and the members of the Class, and has taken specific and readily identifiable funds from their accounts in payment of these fees in order to satisfy them.

74. AMERICAN SAVINGS BANK has, without proper authorization, assumed and exercised the right of ownership over these funds, in hostility to the rights of Plaintiff and the members of the Class, without legal justification.

75. AMERICAN SAVINGS BANK continues to retain these funds unlawfully without the consent of Plaintiff or members of the Class.

76. AMERICAN SAVINGS BANK intends to permanently deprive Plaintiff and the members of the Class of these funds.

77. These funds are properly owned by Plaintiff and the members of the Class, not AMERICAN SAVINGS BANK, which now claims that it is entitled to their ownership, contrary to the rights of Plaintiff and the members of the Class.

78. Plaintiff and the members of the Class are entitled to the immediate possession of these funds.

79. AMERICAN SAVINGS BANK has wrongfully converted these specific and readily identifiable funds.

80. AMERICAN SAVINGS BANK's wrongful conduct is continuing.

81. As a direct and proximate result of this wrongful conversion, Plaintiff and the members of the Class have suffered and continue to suffer damages.

82. By reason of the foregoing, Plaintiff and the members of the Class are entitled to recover from AMERICAN SAVINGS BANK all damages and costs permitted by law, including all amounts that AMERICAN SAVINGS BANK has wrongfully converted.

THIRD CLAIM FOR RELIEF
Unjust Enrichment

83. Plaintiff repeat paragraphs 1 through 82 above.

84. Plaintiff, on behalf of themselves and the Class, assert a common law claim for unjust enrichment.

85. By means of AMERICAN SAVINGS BANK's wrongful conduct alleged herein, AMERICAN SAVINGS BANK knowingly provides banking services to Plaintiff and members of the Class that are unfair, unconscionable, and oppressive.

86. AMERICAN SAVINGS BANK knowingly received and retained wrongful benefits and funds from Plaintiff and members of the Class. In so doing, AMERICAN SAVINGS BANK acted with conscious disregard for the rights of Plaintiff and members of the Class.

87. As a result of AMERICAN SAVINGS BANK's wrongful conduct as alleged herein, AMERICAN SAVINGS BANK has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Class.

88. AMERICAN SAVINGS BANK's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

89. Under the common law doctrine of unjust enrichment, it is inequitable for AMERICAN SAVINGS BANK to be permitted to retain the benefits it received, and is still receiving, without justification, from the imposition of overdraft fees on Plaintiff and members of the Class in an unfair, unconscionable, and oppressive manner. AMERICAN SAVINGS BANK's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

90. The financial benefits derived by AMERICAN SAVINGS BANK rightfully belong to Plaintiff and members of the Class. AMERICAN SAVINGS BANK should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds received by the Bank. A constructive trust should be imposed upon all wrongful or inequitable sums received by AMERICAN SAVINGS BANK traceable to Plaintiff and the members of the Class.

91. Plaintiff and members of the Class have no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
Violations of Hawaii's Uniform Deceptive Trade Practice Act

92. Plaintiff repeat paragraphs 1 through 91 above.

93. This claim is asserted on behalf of the members of the Class pursuant to HRS § 480, *et seq.*

94. Plaintiff are consumers as defined by HRS § 480-1.

95. HRS § 480-2(a), declares unlawful "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

96. AMERICAN SAVINGS BANK violated § 480-2(a), by the conduct alleged above including, but not limited to, employing an unfair and deceptive policy and practice of re-sequencing debit purchases from largest to smallest, and misrepresenting and failing to disclose its policy and practice of re-sequencing debit purchases from largest to smallest in its Rules & Regulations and related documents. AMERICAN SAVINGS BANK's conduct of misrepresenting, concealing, suppressing, or otherwise omitting the foregoing created a likelihood of confusion or of misunderstanding.

97. As redress for AMERICAN SAVINGS BANK's repeated and ongoing violations of HRS § 480-2(a), Plaintiff and Class are entitled to, *inter alia*, damages, reasonable attorneys' fees and costs, and declaratory relief, pursuant to § 480-13.

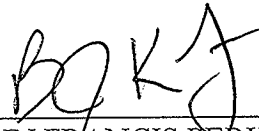
PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class demand a jury trial on all claims so triable and judgment as follows:

1. Declaring AMERICAN SAVINGS BANK's overdraft fee policies and practices to be wrongful, unfair and unconscionable;
2. Restitution of all overdraft fees paid to AMERICAN SAVINGS BANK by Plaintiff and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
3. Disgorgement of the ill-gotten gains derived by AMERICAN SAVINGS BANK from its misconduct;
4. Actual damages in an amount according to proof;
5. Punitive and exemplary damages;
6. Treble Damages Under Haw. Rev. Stat. § 480;

7. Pre-judgment interest at the maximum rate permitted by applicable law;
8. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
9. Such other relief as this Court deems just and proper.

Dated: Honolulu, Hawai'i, March 7, 2011

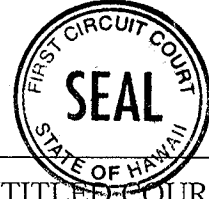


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Attorneys for Plaintiff
TIMOTHY VANDEVEER, individually and on
behalf of all others similarly situated

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, _____ MAR - 7 2011

J. KUBO



CLERK OF THE ABOVE-ENTITLED COURT