

1 **HINDMAN APC**
2 Jesse Hindman (CA Bar No. 222935)
3 402 West Broadway Suite 2700
4 San Diego, California 92101
5 Telephone: 619.255-4078
6 jesse@hindmanapc.com

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5 **KALIEL PLLC**
6 Jeffrey D. Kaliel, Esq. (CA Bar No. 238293)
7 jkaliel@kalielpllc.com
8 Sophia Gold (To be admitted *pro hac vice*)
9 sgold@kalielpllc.com
10 1875 Connecticut Avenue NW, 10th Floor
11 Washington, DC 20009
12 Telephone: 202-350-4783

Attorneys for Plaintiff

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15 JOE VILLANUEVA, on behalf of
16 himself and all others similarly situated,
17 Plaintiff,
18 v.
19 RABOBANK, N.A., and DOES 1
20 through 20, inclusive,
21 Defendant.

Case No: 37-2018-00028998-CU-BT-CTL
CLASS ACTION
[E-FILE]

23 Plaintiff JOE VILLANUEVA (“Plaintiff”) brings this action on behalf of himself
24 and all others similarly situated against Defendant Rabobank, N.A. (“Rabobank” or the
25 “Bank”), and states:
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1 I. NATURE OF ACTION

2 1. This is a nationwide class action seeking damages and other relief from
3 Rabobank for its deceptive assessment and collection of so-called continued overdraft
4 fees from its customers in violation of Rabobank’s standardized account agreement
5 entitled “Agreement and Disclosures” (“Deposit Agreement”).

6 2. Continued overdraft fees are charges that certain banks impose on
7 customers when a checking/savings account remains overdrawn for a period of time after
8 the initial overdraft transaction. Specifically, Rabobank charges its customers what it
9 calls on its bank statements a \$5.00 “Continued Overdraft Fee” each day, for up to ten
10 days, after a Rabobank checking account remains overdrawn. This charge is levied in
11 addition to the \$35.00 fee that is levied on the customer for each charge made against an
12 overdrawn account, but Rabobank’s account disclosures never inform consumers that
13 they will be charged both fees for an overdraft.

14 3. Indeed, Rabobank never informs its account holders that it will charge a
15 Continued OD Fee in its Deposit Agreement—making no reference to such a fee (or the
16 circumstances of its application) whatsoever. The only supposed disclosure of the
17 Continued OD Fee is in the Bank’s separate fee schedule, but that disclosure nowhere
18 states that both a \$35 OD Fee and a \$5 per day Continued Fee will be charged for the
19 same overdraft. Here is the entirety of what Rabobank tells consumers about its so-
20 called Continued OD Fee:

21
22 **Overdraft (created by check, in-person or ATM withdrawal, or by electronic means**
23 **including bill payment) each.....\$35.00**
24 **Overdraft (daily maximum charge).....\$140.00**
25 **Overdraft (per day charge, starting on the fifth day through day 15 if amount**
26 **overdrawn is greater than \$5)\$5.00 per day**
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1 11. Defendant Rabobank is a national bank subject to the National Bank Act
2 and regulations promulgated by the Office of the Comptroller of the Currency.
3 Rabobank is headquartered and has its principal place of business in Roseville, CA.
4 Rabobank provides retail banking services to consumers, including Plaintiff and the
5 Class, at approximately 107 locations in California. Rabobank has \$14 billion in assets.

6 **IV. FACTUAL BACKGROUND**

7 **A. Rabobank’s Personal Accounts Agreement**

8 12. Plaintiff and all members of the Class maintain checking and/or savings
9 accounts with Rabobank, the terms of which are governed by Rabobank’s standardized
10 account agreement entitled “Agreements and Disclosures” (“Deposit Agreement”). A
11 representative copy of Rabobank’s Account Agreement is attached as Exhibit A.

12 13. The Account Agreement states in relevant part:

13 The amount of overdraft and NSF fees are disclosed elsewhere. We
14 encourage you to make careful records and practice good account
15 management. This will help you to avoid writing checks or drafts without
16 sufficient funds and incurring the resulting fees.
Id. at p. 9.

17 14. There is no reference to a Continued OD Fee whatsoever in the Deposit
18 Agreement.

19 15. The Schedule of Fees (“Fee Schedule”), attached as Exhibit B, provides
20 only:

21 Nonsufficient funds each..... \$35.00
22 Nonsufficient funds (NSF) daily maximum.....\$140.00
23 Overdraft (created by check, in-person or ATM withdrawal, or by electronic
24 means including bill payment) each..... \$35.00
25 Overdraft (daily maximum charge).....\$140.00
26 Overdraft (per day charge, starting on the fifth day through day 15 if amount
27 overdrawn is greater than \$5)\$5.00 per day
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1 16. Based on this disclosure, consumers, including Plaintiff, understand that
2 when a transaction or a series of transactions overdraw their checking accounts, that an
3 overdraft fee will be assessed. Consumers have no reason to expect that an additional
4 overdraft fee will be imposed if they do not perform an additional transaction causing
5 their account to go further into overdraft. In light of the total lack of discussion of
6 Continuous OD Fees, reasonable consumers like Plaintiff did not understand they would
7 be charged both types of “overdraft” fees on the same transaction. Indeed, other fees
8 listed in the fee schedule are listed in the alternative: for example, an accountholder
9 cannot get *both* an NSF Fee and an OD Fee on the same transaction. But without
10 making it clear to consumers, Rabobank charges both a \$35 dollar OD Fee and a \$5
11 Continued OD Fee on accountholders based on the same overdraft event.

12 17. Reasonable consumers like Plaintiff do not understand that such a fee is in
13 addition to an initial \$35 overdraft fee. Rather, reasonable consumers like Plaintiff
14 understand the Rabobank fee schedule—combined with the total absence of any
15 disclosures related to Continued OD Fees in the deposit agreement—to indicate that the
16 \$5 per day charge is in the alternative to the \$35 “each” charge.

17 18. Consumers, including Plaintiff, do not understand there can be more than
18 one overdraft fee on a given transaction—but that is exactly what Rabobank does. An
19 overdraft fee is derived from a transaction which causes the customer’s account balance
20 to exceed the customer’s available funds. Imposing an additional fee for an already
21 overdrawn balance is counterintuitive when there is not an additional transaction causing
22 the balance to be overdrawn.

23 19. Plaintiff was deceived by Rabobank’s deposit agreement and fee schedule.

24 20. Indeed, many of the major banks operating in California do not charge both
25 types of overdraft fees on the same overdraft event, including Bank of America and
26 Wells Fargo. Had Plaintiff been provided with accurate disclosures, he would have
27 chosen a bank that did not charge two types of overdraft fees on the same event.
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1 **B. Assessment of Continued Overdraft Fees**

2 21. Rabobank assesses Continued Overdraft Fees as a means to increase bank
3 revenue on any checking or savings account that remains overdrawn for more than five
4 days. On the fifth day after the triggering overdraft event occurs, Rabobank charges its
5 customers \$5.00 for each day that the account remains overdrawn for up to ten days.

6 22. Historically, overdraft fees have been, and continue to be, a substantial
7 source of revenue for banks. Technological advances have allowed bank customers to
8 access money in their accounts in new ways and have consequently increased the
9 occurrence of overdraft episodes. As a result, overdraft fees have skyrocketed.

10 23. For example, recent reports from the U.S. Consumer Financial Protection
11 Bureau (“CFPB”) show that a broad investigation has been launched regarding bank
12 overdraft practices and procedures due to the concern that the growing cost of overdraft
13 practices could place bank customers at unnecessary risk. Indeed, CFPB Director
14 Richard Cordray acknowledged, “overdrafts can provide consumers with access to funds,
15 but the growing costs of overdraft practices have the capacity to inflict serious economic
16 harm.” In 2012 alone, banks took in approximately \$32 billion in overdraft-related fees.

17 24. Widespread overdraft practices are particularly problematic for low-income
18 families and individuals with lesser financial means. As illustrated by a survey
19 conducted by The Pew Charitable Trusts, overdraft-related fees target a financially
20 vulnerable population of consumers. Particularly, the study revealed that nearly 7 in 10
21 consumers who overdraft the most make less than \$50,000 and 25 percent pay a week’s
22 worth of wages in overdraft fees annually. Continued overdraft fees have a similar
23 negative impact upon those least able to repay.

24 25. As a recent CFPB report reflects, “sustained negative balance” fees are
25 becoming popular with banks and account for approximately 9% of total overdraft-
26 related fees collected by banks that impose such charges. According to the CFPB report
27 issued in July 2014, once a bank charges its customer a sustained overdraft fee on day
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1 five, the negative balance is likely cured by the customer within just a few days, rather
2 than weeks. As such, the bank's extension of credit to its overdrawn customer is
3 typically very short-term. Moreover, most negative balances created by an overdraft are
4 not high figures. Nearly two-thirds of transactions that cause overdrafts were for \$50.00
5 or less.

6 **C. Damages to Plaintiff**

7 26. On or about September 13, 2015, Plaintiff overdrew funds from his
8 Rabobank checking account and Rabobank assessed an initial overdraft fee of \$35.00.

9 27. On or about September 19, 2015, Rabobank assessed a continued overdraft
10 fee of \$5.00, and continued to assess such a fee for the next four days, totaling \$20.00 in
11 Continued OD Fees.

12 28. On or about March 5, 2015, Plaintiff overdrew funds from his Rabobank
13 checking account and Rabobank assessed an initial overdraft fee of \$35.00.

14 29. On or about March 15, 2015, Rabobank assessed a continued overdraft fee
15 of \$5.00, and continued to assess such a fee for the next three days, totaling \$15.00 in
16 Continued OD Fees.

17 **V. CLASS ALLEGATIONS**

18 30. Plaintiff brings this action on behalf of himself and all other similarly
19 situated Class members pursuant to Code of Civil Procedure section 382, which Class is
20 defined as follows:

21 All Rabobank checking account holders in California, who, within the applicable
22 statute of limitations preceding the filing of this action incurred one or more
23 Continued Overdraft Fees.

24 31. Excluded from the Class is Defendant, as well as its officers, employees,
25 agents or affiliates, and any judge who presides over this action, as well as all past and
26 present employees, officers and directors of Defendant and its subsidiaries and affiliates.

1 32. Plaintiff reserves the right to expand, limit, modify, or amend this class
2 definition, including the addition of one or more subclasses, in connection with his
3 motion for class certification, or at any other time, based upon, inter alia, changing
4 circumstances and/or new facts obtained during discovery.

5 33. This action is brought and may properly be maintained as a Class action
6 pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity,
7 typicality, adequacy, predominance, and superiority requirements of those provisions.

8 34. Numerosity: The Class members are so numerous that joinder of all
9 members is impracticable. Plaintiff is informed and believes that the proposed Class
10 contains thousands of individuals who have been damaged by Defendant's conduct as
11 alleged herein. The precise number of Class members is unknown to Plaintiff.

12 35. Existence and Predominance of Common Questions of Law and Fact: This
13 action involves common questions of law and fact, which predominate over any
14 questions affecting individual Class members. These common legal and factual
15 questions include, but are not limited to, the following:

16 a. Whether Rabobank charged Continued Overdraft Fees in violation of its
17 contract;

18 b. Whether Rabobank deceived consumers regarding its assessment of
19 Continued Overdraft Fees;

20 c. Whether Plaintiff and other members of the Class have sustained damages
21 as a result of Rabobank's assessment and collection of the Continued Overdraft Fee, and
22 the proper measure of damages.

23 36. Typicality: Plaintiff's claims are typical of the claims of the members of the
24 Class because they arise out of the same wrongful business practice of Rabobank as
25 described above.

26 37. Adequacy: Plaintiff will fairly and adequately protect the interests of the
27 members of the Class. Plaintiff is an adequate representative in that he has a Rabobank
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1 account and suffered damages as a result of Rabobank's assessment and collection of
2 Continued Overdraft Fees. Additionally, Plaintiff has retained counsel experienced in
3 complex consumer class action litigation, and Plaintiff intends to prosecute this action
4 vigorously. Plaintiff has no antagonistic or adverse interest to those of the Class.

5 38. Superiority: The nature of this action and the nature of laws available to
6 Plaintiff and the Class make the use of the class action format a particularly efficient and
7 appropriate procedure to afford relief to him and the class for the wrongs alleged. The
8 damages or other financial detriment suffered by individual Class members is relatively
9 modest compared to the burden and expense that would be entailed by individual
10 litigation of their claims against Defendant. It would thus be virtually impossible for
11 Plaintiff and Class members, on an individual basis, to obtain effective redress for the
12 wrongs done to them. Absent the class action, Class members and the general public
13 would not likely recover, or would not likely have the chance to recover, damages or
14 restitution, and Defendant will be permitted to retain the proceeds of its fraudulent and
15 deceptive misdeeds.

16 39. Defendant keeps extensive computerized records of its customers and has
17 one or more databases through which a significant majority of Class members may be
18 identified and ascertained, and it maintains contact information, including email and
19 home addresses, through which notice of this action could be disseminated in accordance
20 with due process requirements.

21 **FIRST CAUSE OF ACTION**

22 **Breach of Contract**

23 40. Plaintiff repeats paragraphs 1 through 39 above.

24 41. Plaintiff and Rabobank have contracted for bank account deposit, checking,
25 ATM, and debit card services, as described in Rabobank's Deposit Agreement and
26 related documentation.

1 c. A judgment awarding Plaintiff and all members of the Class restitution
2 and/or other equitable relief, including, without limitation, disgorgement of all profits
3 and unjust enrichment that Defendant obtained from Plaintiff and the Class as a result of
4 its unlawful, unfair, and fraudulent business practices described herein;

5 d. Awarding Plaintiff and the Class damages, prejudgment interest from the
6 date of loss, and his costs and disbursements incurred in connection with this action,
7 including reasonable attorneys' fees, expert witness fees, and other costs; and

8 e. Providing such further relief as may be just and proper.

9 **VII. DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial for all of the claims so triable.

11 Dated: June 12, 2018

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14 402 West Broadway Suite 2700
15 San Diego, California 92101
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20 sgold@kalielpllc.com
1875 Connecticut Avenue NW, 10th Floor
Washington, DC 20009
Telephone: 202-350-4783

Attorneys for Plaintiff