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CLERK OF STATE COURT
BIBB COUNTY, GEORGIA
21-SCCV-092317
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IN THE STATE COURT OF BIBB COUNTY
STATE OF GEORGIA

VALERIE FAYE JOHNSON,
individually and on behalf of a class of
persons similarly situated as defined
herein,

Plaintiff,

v.

BANK OZK a/k/a
BANK OF THE OZARKS

Defendant.

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CASE NO.: _____


Patricia M. Graves, Clerk of State Court
Bibb County, Georgia

CLASS ACTION COMPLAINT

COMES NOW Plaintiff Valerie Faye Johnson (“Plaintiff”), by and through her attorneys, and hereby files the following Class Action Complaint against Defendant Bank OZK a/k/a Bank of the Ozarks (“Defendant”). In support thereof, Plaintiff alleges the following based upon her personal knowledge as to herself, and as to all other matters upon information and belief, based upon the investigation made by and through her attorneys:

I. INTRODUCTION

1. This putative class action, which is based upon uniform contracts and uniform business practices employed by Defendant, is straight-forward: *First*, Defendant contractually promises that it will not charge overdraft (OD) fees or insufficient fund (NSF) fees (hereafter referred to collectively as “OD/NSF Fees”) for an item when there is sufficient money in the customer’s account to pay for the item, but then, in practice, Defendant uses an undisclosed and improper practice designed to assess OD/NSF Fees for its own financial benefit. *Second*, Defendant further violates its standard form contracts with customers through its common

business practice of improperly assessing multiple OD/NSF Fees on a single item when Defendant is only authorized to charge a single OD/NSF Fee on the same attempted transaction/item. And finally, Defendant violates its standard form contracts with customers through its common business practice of improperly assessing certain unauthorized ATM-related fees (hereafter referred to as “ATM Fees”) for balance inquiries that precede cash withdrawals from out-of-network ATM machines.

2. The business practices of Defendant that are described in this Complaint are not random or isolated to Plaintiff, nor are they the result of a mistake or miscalculation. Rather, Defendant’s conduct is part of a common and uniform business practice and protocol employed when OD/NSF Fees and ATM Fees are assessed against Defendant’s customers. Upon information and belief, thousands of other customers throughout Georgia have been subjected to these practices that violate Defendant’s standard form contracts with its customers.

3. This class action, which is based upon Defendant’s standard form contracts and uniform business practices, seeks to provide relief to those customers of Defendant who were subject to these improper business practices.

II. PARTIES, JURISDICTION AND VENUE

4. Plaintiff Valerie Faye Johnson is an adult resident citizen residing in Macon who has an account with Defendant.

5. Defendant Bank of the Ozarks is an Arkansas-based bank that is headquartered in Little Rock, Arkansas and has locations throughout the state of Georgia, including in this county.

6. Venue and jurisdiction are proper in this county in that the Plaintiff resides in this county, Defendant conducts business and has offices in this county, the transactions that are the

subject of this action occurred in this county, and the Plaintiff sustained damages in this county. No federal causes of action are asserted in this action, nor does Plaintiff assert any claims for equitable or injunctive relief. Further, as shown in the class definition, Plaintiff seeks to represent a Georgia-only class consisting of Georgia citizens residing in the State of Georgia.

III. FACTUAL ALLEGATIONS

7. The business practices and contractual violations by Defendant that are challenged in this action are three-fold. First, Plaintiff challenges Defendant's common business practice of assessing OD/NSF Fees when there are sufficient funds to cover the transaction in the customer's account. Second, Plaintiff challenges Defendant's common business practice of assessing multiple OD/NSF Fees on a single item or transaction. And third, Plaintiff challenges Defendant's common business practice of charging certain ATM-related fees for balance inquiries that precede cash withdrawals from out-of-network ATMs. These actions by Defendant violate the standard form contracts between Defendant and its customers.

A. Defendant's Improper Practice of Assessing OD/NSF Fees for Transactions When There are Sufficient Funds in the Account to Cover Those Transactions.

8. In violation of its customer contracts, Defendant assesses OD/NSF Fees for transactions despite the fact that there are sufficient funds in the customer's account to cover those transactions. These practices were employed on Plaintiff and reflect the ongoing and aggressive tactics utilized by banks to increase revenues by generating more overdraft or NSF Fees from unsuspecting customers.

9. Plaintiff's account with Defendant is governed by Defendant's standard form account agreement. The language of Defendant's account agreement is standard form and

consistent among its customers. Defendant's standard form contract promises that Defendant will only assess customers overdraft fees or OD/NSF Fees on those transactions that actually overdraw the customer's account. That is, Defendant promises that it will only charge OD/NSF Fees on items that would place the account in the negative. Despite these contractual promises, Defendant has a uniform and standard business practice of disregarding the actual amount of money in the customer's account or whether the account is actually in the negative, and instead assesses OD/NSF Fees based on a different method and a different, internal account balance.

10. Despite the language of Defendant's contract and the resulting reasonable expectations of its customers, Defendant improperly uses a balance other than the accountholder's "ledger balance" or "account balance" (i.e., the balance numbers customers see when checking their account statements) in determining whether OD/NSF Fees will be assessed. Rather, in practice, Defendant uses a different, lower number/balance from which to make an OD/NSF Fee determination. Upon information and belief, Defendant assesses OD/NSF Fees when a customer's so-called "available balance" goes negative. Defendant's internal "available balance" is the reported balance less any holds that Defendant has placed on a deposit or to pay a transaction that has been authorized, but has not yet settled and that may not even ultimately be settled. Defendant knows that a customer's "available balance" is often less than the number reported on an account statement, and is therefore more likely to trigger OD/NSF Fees if utilized.

11. Defendant does not disclose to customers that a different balance from the "account balance" or "ledger balance" is utilized when determining whether to assess OD/NSF Fees. Without this disclosure, accountholder customers, such as Plaintiff, cannot protect themselves from costly OD/NSF Fees assessed by Defendant. By using these business practices

to assess OD/NSF Fees, Defendant increases the fee revenue that it can generate for itself.

12. Plaintiff and class members could not have known or reasonably expected that Defendant would assess OD/NSF Fees in the manner described herein.

13. Defendant assessed Plaintiff OD/NSF Fees on items that did not overdraw her account or put her account in the negative. For example, on June 22, 2018, Plaintiff was assessed an OD/ NSF Fee from Defendant despite having sufficient funds in her account to cover the transaction.

B. Defendant Improperly Assesses Multiple OD/NSF Fees on a Single Attempted Transaction or Item Without Proper Contractual Authority.

14. In accordance with Defendant's standard form account agreement, Defendant is authorized to assess only a single NSF Fee or overdraft fee when a transaction is declined for insufficient funds or paid into insufficient funds. Stated otherwise, Defendant's standard form contract expressly states, and reasonable consumers would expect, that the same, singular item can only incur a single OD/NSF Fee as opposed to multiple OD/NSF Fees for the same transaction.

15. In violation of its standard form contracts, Defendant has a common and uniform business practice of assessing multiple OD/NSF Fees against an accountholder on the same, singular item/transaction. Upon information and belief, Defendant's contractual documents never disclose this practice. To the contrary, Defendant's standard form contracts indicate that Defendant will only charge a single fee on an item for which the account does not have sufficient funds.

16. Upon information and belief, there is no disclosure or contractual authority for Defendant to continue to assess multiple OD/NSF Fees on the same attempted transaction/item

that is being reprocessed by Defendant. Indeed, customers, like Plaintiff, take no actions in having a singular transaction reprocessed by Defendant. Customers have the reasonable belief and expectation that all submissions for payment of the same transaction will be treated as the same, singular item. Customers have the reasonable expectation and belief that Defendant's reprocessing of payments are simply additional attempts to complete the original transaction for the same item and will not trigger additional OD/NSF Fees.

17. These practices violate Defendant's standard form contracts with customers, as well as Defendant's duty of good faith and fair dealing implied in every contract.

18. Plaintiff was subject to this improper business practice of being assessed multiple OD/NSF Fees for the same item. Defendant reprocessed a previously declined item an additional time and, upon reprocessing, charged Plaintiff an additional OD/NSF Fee for the same item.

19. For example, on October 19, 2018, Plaintiff attempted an electronic payment for utilities billing via BillMatrix, which Defendant rejected payment of due to insufficient funds in Plaintiff's account. The debit for this utilities payment via BillMatrix was only \$2.25. As a result, Plaintiff was charged an OD/NSF Fee of \$35. Thereafter, and without Plaintiff's request to Defendant to reprocess the item, five (5) days later on October 24, 2018, Defendant processed the same item yet again, and again Defendant rejected the item due to insufficient funds and charged Plaintiff another \$35 NSF Fee.

20. In sum, Defendant assessed Plaintiff \$70 in NSF Fees in its effort to process a single payment of \$2.25.

21. Plaintiff understood the payment to be a single item pursuant to the terms of Defendant's contract, capable at most of receiving a single NSF Fee.

22. These practices were employed by Defendant merely to increase NSF Fee revenues at the expense of unknowing customers like Plaintiff.

C. Defendant Improperly Assesses ATM Fees on Balance Inquiries That Precede a Cash Withdrawal from an Out-Of-Network ATM.

23. Defendant also violates its standard form account agreement with customers by improperly charging certain ATM Fees on balance inquiries that precede the customer's cash withdrawal from an out-of-network ATM machine.

24. When Defendant's accountholders use a non-Bank of the Ozarks ATM machine, the ATM fees associated can add up very quickly unbeknownst to the accountholder. Not only does the third-party ATM operator charge the consumer a fee for use of its ATM, a charge which typically averages about \$3.00, but Defendant charges an out-of-network ATM Fee for a cash withdrawal as well, essentially amounting to a punitive double-fee on accountholders that can rise to a total of several dollars for simply accessing their own money. On top of these fees and charges, Defendant also assesses a third fee on accountholders when the consumer makes a balance inquiry that precedes a cash withdrawal from an out-of-network ATM. That is, when Defendant's accountholders, like Plaintiff, accept the typical ATM screen prompt asking whether they would like to check their account balance prior to withdrawing funds, Defendant charges its accountholders two (2) out-of-network ATM Fees: one for the balance inquiry and another for the cash withdrawal.

25. Defendant charges these two (2) ATM Fees for out-of-network ATM transactions in violation of its standard form account agreement with its customers. Defendant knows that

reasonable consumers, like Plaintiff, do not, in general, understand a balance inquiry to be an independent transaction worthy of a separate fee. Defendant knows that consumers expect a balance inquiry fee to be an included part of a cash withdrawal. However, Defendant engages in the improper standard business practice of assessing ATM Fees for balance inquiries that precede a cash withdrawal from an out-of-network ATM, which violates its standard form account agreement with customers.

26. Upon information and belief, Defendant has no contractual authority to assess ATM Fees for balance inquiries that precede a cash withdrawal from an out-of-network ATM machine.

27. Plaintiff was an accountholder of Defendant who was subjected to these improper practices. For example, on July 16, 2018, Plaintiff used an out-of-network ATM at Family Dollar in Macon, Georgia. As is typically done in an ATM withdrawal, Plaintiff was prompted by a screen asking if she wanted to check her account balance. This prompt screen said nothing about an additional fee for a balance inquiry. Plaintiff had no reason to believe that a balance inquiry, preceded by a cash withdrawal, would constitute an independent basis for a fee assessed against Plaintiff. Plaintiff conducted a balance inquiry that preceded her cash withdrawal from the out-of-network ATM at Family Dollar in Macon, Georgia. Plaintiff was improperly charged by Defendant for this balance inquiry, which violates Defendant's standard form contract.

IV. CLASS ACTION ALLEGATIONS

29. Pursuant to O.C.G.A. §9-11-23(b)(3), Plaintiff respectfully seeks certification of the following class:

All Georgia citizens residing in the state of Georgia who, on or before July 31, 2018, were charged OD/NSF Fees by Defendant on items that did not overdraw their accounts, or who were charged multiple OD/NSF Fees by Defendant on the same item from an account held with Defendant, or who were charged ATM Fees by Defendant for balance inquiries that preceded a cash withdrawal.

30. Excluded from the proposed class are Defendant, any of Defendant's affiliated corporations or agents, any entity in which Defendant has a controlling interest, and any agents, employees, officers, and/or directors of Defendant or any other such entities and its representatives, heirs, successors, and/or assigns.

31. **Numerosity.** The class is so numerous that it would be impracticable to join all effected class members in a single action.

32. **Existence and Predominance of Common Questions of Law and Fact.** There are common questions of law and fact common and of general interest to the class. These common questions of law and fact predominate over any questions effecting only individual members of the class. Said common questions include, but are not limited to, the following:

- a. Whether Defendant engaged in a widespread and systematic practice of violating contracts with customers throughout Georgia by virtue of the conduct described herein;
- b. Whether Plaintiff and class members are entitled to class relief as requested herein;
- c. Whether Defendant charged OD/NSF Fees on items that did not overdraw customer accounts;
- d. Whether Defendant improperly charged more than one (1) OD/NSF Fee for the same item;

e. Whether Defendant improperly charged ATM Fees for balance inquiries;

f. Whether any of the conduct described herein violates Defendant's duty of good faith and fair dealing implied in every contract.

33. **Typicality.** The claims of the named Plaintiff is typical of the claims of the class. The claims arise out of the same standard form improper conduct perpetrated on members of the class.

34. **Adequate Representation.** Plaintiff will fairly and adequately protect the interests of the members of the class and have no interest antagonistic to those of other class members. Plaintiff has retained class counsel competent to prosecute class actions, and is financially able to represent the class.

35. **Superiority.** The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interest of judicial economy strongly favor adjudicating the claims as a class action rather than on an individual basis because the amount of any individual's damages are too small to make it practicable to bring individual lawsuits.

36. Class action treatment is proper and this action should be maintained as a class action pursuant to O.C.G.A. §9-11-23 because questions of law and fact predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

COUNT I
Breach of Contract

37. Plaintiff adopts and incorporates all previous allegations in full.

38. Defendant has violated standard form contracts with Plaintiff and class members by, among other things:

- (a) assessing customers OD/NSF Fees on items that did not overdraw their accounts;
- (b) improperly charging more than one (1) OD/NSF Fee on the same item;
- (c) determining whether NSF Fees will be assessed based upon the “available balance” as opposed to the customer’s actual or ledger balance;
- (d) improperly charging and collecting from customers certain ATM-related fees for balance inquiries that precede a cash withdrawal;
- (e) failing to adhere to the duty of good faith and fair dealing implied in every contract, to the extent discretion was to be exercised by Defendant.

39. As a result of Defendant’s breach of contract, Plaintiff and class members are entitled to recover compensatory damages representing those amounts that were improperly assessed and retained by Defendant in violation of the contract.

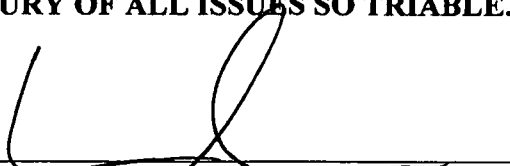
V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendant as follows:

- (a) entering an Order certifying the proposed class under O.C.G.A. §9-11-23, designating Plaintiff as the class representative, and appointing Plaintiff’s undersigned attorneys as counsel for the class;

- (b) entering a judgment on Count I, Breach of Contract, against Defendant and in favor of Plaintiff and the members of the class and awarding damages for breach of contract in an amount to be determined at trial.

PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.



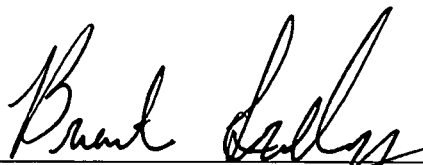
William Gregory Dobson, Esq.

Georgia Bar No.: 237770

Michael J. Lober, Esq.

Georgia Bar No.: 455580

Lober & Dobson, LLC
830 Mulberry Street, Suite 201
Macon, Georgia 31201
(478) 745-7700 Telephone
(478) 745-4888 Facsimile
Email: wgd@lddl原因.com
mjlober@lddl原因.com



Brent Irby, Esq.

Irby Law, LLC
2201 Arlington Avenue South
Birmingham, AL 35205
(205) 335-9102
brent@irbylaw.net

WEP A. Daulton
McBride
GA Bar No. 800824

PLEASE SERVE DEFENDANT AS FOLLOWS:

BANK OZK a/k/a BANK OF THE OZARKS

c/o National Registered Agents, Inc.
289 South Culver Street
Lawrenceville, Georgia 30046