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FIRST CIRCUIT COURT  
STATE OF HAWAII  
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Individually, and on behalf  
of herself and all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LINDA ROBINSON, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

FIRST HAWAIIAN BANK and DOE  
DEFENDANTS 1-50,

Defendants.

Civil No. 17-1-0167-01 KTN

(Class Action)

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.

*[Signature]*  
Clerk, Circuit Court, First Circuit

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## COMPLAINT

Plaintiff, LINDA ROBINSON, individually and on behalf of herself and all persons similarly situated, sues Defendant, FIRST HAWAIIAN BANK, and alleges as follows:

### INTRODUCTION

1. This is a civil action seeking monetary damages, restitution, declaratory relief, and injunctive relief against Defendant FIRST HAWAIIAN BANK (“FHB” or “the Bank”), arising from FHB’s routine practice of wrongfully assessing overdraft fees on certain debit card transactions and usuriously assessing what FHB calls a “Continuous OD FEE” on certain checking accounts.
2. At the moment debit card transactions are authorized on an account with positive available funds to cover the transaction, FHB immediately decrements the consumer’s checking accounts for the amount of the purchase and sets aside available funds to cover that specific transaction. As a result, and with limited exceptions,<sup>1</sup> customers’ accounts *always* have sufficient available funds to “cover” these transactions throughout their entire life-cycle.
3. However, FHB still assesses crippling \$30 overdraft fees on many of these transactions, in violation of its promises not to do so.
4. Despite putting aside sufficient available funds for debit card transactions, the Bank charges overdraft fees on those same transactions if they purportedly settle—days later—into a negative balance (“Authorize Positive, Purportedly Settle Negative Transactions” or “APPSN Transactions”).

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<sup>1</sup> A small number of debit card transactions settle for an amount different than the amount initially authorized.

5. Here is how it works. A customer's available funds are the funds that FHB considers "available" for immediate use; available funds reflect a real-time snapshot of all account activity. Therefore, "available funds" are adjusted, in real-time, to account for debit card transactions at the instant they are made. When a customer makes a purchase with a debit card, FHB sequesters the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available funds. Such funds are not available for any other use by the accountholder, and such funds are specifically associated with a given debit card transaction.

6. That means when any *subsequent*, intervening debit transactions are initiated on a checking account, they are compared against an available funds amount that has been reduced to account for earlier debit card transactions. This means that many subsequent transactions incur overdraft fees due to the unavailability of the funds sequestered for those debit card transactions.

7. Still, despite keeping those held funds off-limits for other transactions, FHB improperly charges overdraft fees on APPSN Transactions—which always have sufficient available funds to be "covered."

8. There is no justification for these practices, other than to maximize FHB's overdraft fee revenue. APPSN Transactions only exist because intervening checking account transactions supposedly reduce the "available funds" on an account. But FHB is free to protect its interests and either reject those intervening transactions or charge overdraft fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year. But FHB was not content with these millions in overdraft fees. Instead, it sought millions *more* in overdraft fees on APPSN Transactions.

9. Besides being deceptive, unfair and unconscionable, these practices breach promises made in the Bank's account documents, which fundamentally misconstrue the true nature of the Bank's processes and practices.

10. Debit card transactions take place in two parts: part one is when the consumer initiates the transaction at a merchant. Part two is when money is transferred to the merchant. The latter takes place days after part one, and it happens in the middle of the night in a process the banking industry refers to as "nightly batch posting."

11. Indeed, while the account documents state that overdraft fees will be assessed only when there are insufficient *available funds*—again, a term of art that refers to a real time, running, account balance—the Bank uses a different account balance to assess overdraft fees. If it truly used "available funds" to determine overdraft fees, as it promises, it would not charge overdraft fees on APPSN Transactions.

12. In actuality, the Bank does not actually use "available funds" to make overdraft determinations at all—rather, it uses a separate, secret balance during the "nightly batch posting" process in which many transactions are posted at once.

13. The amount of "available funds" do not and cannot change for APPSN Transactions during nightly batch processing because that amount has already been decremented once—at the time that consumer actually initiated the transaction.

14. FHB is not authorized by the account documents to charge overdraft fees on APPSN Transactions, but it has done so and continues to do so, to the tune of millions of dollars in consumer harm every year.

15. Separately, a purported "Continuous OD Fee" is assessed by FHB against a customer's account, in addition to an initial \$30.00 overdraft fee, for each 7-day period that the

account remains in a negative balance condition. In reality, FHB's assessment and collection of the Continuous OD Fee from its customers constitutes interest for the use, forbearance, or detention of money. The amount of interest charged far exceeds the permissible limit under the laws of the state of Hawai'i and is, therefore, usurious.

16. Plaintiff and other FHB customers have been injured by FHB's practices. On behalf of herself and the putative class, Plaintiff seeks damages, restitution and injunctive relief for FHB's violation of the Hawaii consumer protection law, unjust enrichment, conversion, and violation of Hawaii's usury statute.

#### **PARTIES**

17. Plaintiff is a resident of the County of Honolulu, State of Hawai'i. At all times relevant, Plaintiff patronized at least one FHB branch located on Oahu.

18. Defendant FHB, is a state chartered bank with its headquarters and principal place of business located in Honolulu, Hawai'i.

19. Among other things, FHB is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Classes, which includes the issuance of checks and debit cards for use by its customers in conjunction with their checking accounts. FHB operates branches, and thus conducts business, throughout the State of Hawai'i.

#### **JURISDICTION AND VENUE**

20. The Court has jurisdiction over Defendant 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.

21. Venue is proper in this Circuit pursuant to Hawaii Revised Statutes ("HRS") § 603-36(5) because Defendant 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.

### **OVERDRAFT FEE ALLEGATIONS**

22. FHB issues debit cards to its checking account customers, including Plaintiff, which allows its customers to have electronic access to their checking accounts for purchases, payments, withdrawals and other electronic debit transactions.

23. FHB charges fees (currently in the amount of \$30) for debit card transactions that purportedly result in an overdraft due to insufficient available funds.

#### **A. Mechanics of a Debit Card Transaction**

24. A typical debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from the Bank. When a merchant physically or virtually “swipes” a customer’s debit card, the credit card terminal connects, via an intermediary, to the customer’s bank, which verifies that the customer’s account is valid and that sufficient available funds exist to “cover” the transaction amount.

25. At this step, if the transaction is approved, FHB immediately decrements the available funds/available balance in a consumer’s account and sequesters funds in the amount of the transaction, but does not yet transfer the funds to the merchant.

26. Sometime thereafter, the funds are actually transferred from the customer’s account to the merchant’s account. This is referred to in the banking industry as “posting” or “settling”—something which may occur several days after the transaction was initially initiated.

27. There is no change—no impact whatsoever—to the available funds in an account when posting or payment of a transaction that settles in the same amount for which it authorized occurs. That is because available funds amounts do not change for debit card transactions that settle in the same amount for which they were authorized.

**B. First Hawaiian Account Documents**

28. In plain, clear, and simple language, the checking account documents repeatedly promise that the Bank will only charge overdraft fees on transactions with insufficient available funds to “cover” a given transaction.

29. In its overdraft disclosures, the bank states:

**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.

30. In account documents, the Bank clearly states that it will immediately place debit holds on debit card transactions:

Holds may be placed on your account (e.g., for deposits or debit card transactions) that will reduce your Available Balance and may cause your account to become overdrawn.

31. The Bank states that it will immediately reduce the available balance on an account in the amount of the transaction:

**How is my Available Balance determined?**

Your Current Balance is your balance at the start of the day, plus or minus the transactions for that day. Your Available Balance is your Current Balance minus holds on your funds. Holds include deposits with a hold on the amount and debit card holds for pending purchases or payments using your debit card. Please note that for certain types of debit card transactions, some merchants obtain authorizations for a partial amount (such as gas stations) while others may be for a greater amount (such as restaurants) of the purchase. Therefore, the hold amounts may not always equal the transaction amount.

32. The Bank assures accountholders that they will not incur overdraft fees on transactions that do not exceed the available balance:

**You can spend up to the amount of your Available Balance after accounting for pending or outstanding transactions without incurring an overdraft or insufficient funds transaction.**

33. In addition to making another assurance that available balance, and only available balance, is the exclusive basis for determining whether an overdraft fee will be charged on a given transaction, the Bank also confirms that overdrafts “occur” only at the time “you...use your debit card to make a purchase...for an amount greater than your Available Balance”:

**What is an overdraft?**

An overdraft occurs when you write a check, make an ATM transaction, use your debit card to make a purchase, or make an automatic bill payment or other electronic payment for an amount greater than your Available Balance.

34. Next, the Bank repeatedly states that it will charge overdraft fees only when it “authorize[s] and pay[s]” a given transaction into an insufficient balance—a clear indication that these actions of “authorizing and paying” are coextensive, and overdrafts are only “covered” (and fees charged) when the transaction initially occurs on an insufficient balance—not when a transaction is authorized into positive funds:

If we do not authorize and pay an overdraft, your transaction will be declined for point-of-sale transactions or returned unpaid for transactions posting to your account. If we do authorize and pay an overdraft, overdraft fees will apply and you must repay the overdraft promptly along with any applicable fees.

[...]

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

We do not authorize and pay overdrafts for the following types of transactions below unless you sign up for DebitPlus, our overdraft feature for everyday debit card and ATM transactions:

- 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.



**C. The Account Documents Fundamentally Misconstrue the Bank's True Overdraft Fee and Debit Processing Practices**

35. The Account Documents misconstrue the Bank's true debit card processing and overdraft fee practices in at least four ways:

36. First, and most fundamentally, the Bank charges overdraft fees on debit card transactions for which there are sufficient available funds to "cover" the transactions. That is despite repeated contractual representations that the Bank will only charge overdraft fees on transactions with insufficient available funds to "cover" a given transaction.

37. The Bank assesses overdraft fees on APPSN Transactions that do have sufficient available funds to "cover" them throughout their lifecycle.

38. Those available funds are sequestered at the moment a debit card transaction is approved by FHB.

39. Second, the account documents repeatedly state that overdraft assessments are based on available funds or "available balance." But in reality, the Bank does not even use an "available funds" calculation or "available balance" to determine whether transactions are eligible for overdraft fees—it uses a different, secret balance to do so during nightly batch posting.

40. When the Bank uses a balance other than available balance or funds available—a secret posting balance—to assess overdraft fees, it violates a contractual promise to use available balance calculation as the exclusive method with which to determine whether overdraft fees will be assessed.

41. Third, sufficient funds for APPSN Transactions are debited from the account immediately.

42. FHB promises it will do this, as noted above.

43. If it truly complied with these provisions, no overdraft fees could possibly be assessed on APPSN Transactions.

44. Because these withdrawals take place upon initiation, they cannot be re-debited later. But that is what FHB does when it re-debits the account during nightly batch processing.

45. In reality, the Bank's actual practice is to assay the same debit card transaction twice to determine if the transaction overdraws an account—both at the time a transaction is authorized and at the time of settlement. (Indeed, some transactions never make it past the starting gate and generate an overdraft fee at the point of sale, precisely because at that assessment they are overdrawn and because FHB makes a determination at authorization, pursuant to the contract.) Then the Bank makes that determination again, at settlement.

46. At the time of settlement, however, an available balance *does not change at all* for these transactions previously authorized into good funds. As such, FHB cannot then charge an overdraft fee on such a transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

47. This discrepancy between the Bank's actual practice and the contract causes consumers to incur more overdraft fees than they should.

48. In sum, there is a wide gap between the Bank's practices as described in the account documents and the Bank's practices in reality.

**D. Reasonable Consumers Understand Debit Card Transactions are Debited Immediately**

49. The assessment of overdraft fees on APPSN Transactions is fundamentally inconsistent with immediate withdrawal of funds for debit card transactions. That is because if funds are immediately debited, they cannot be depleted by intervening transactions (and it is that subsequent depletion that is the necessary condition of APPSN Transactions). If funds are

immediately debited, then, they are necessarily applied to the debit card transactions for which they are debited.

50. FHB was, and is, aware that this is precisely how its accountholders reasonably understand debit card transactions to work.

51. FHB is well aware that many consumers prefer debit cards for these very reasons. Consumer research indicates that consumers prefer debit cards as a budgeting device; because they don't allow debt like credit cards do; and because the money comes directly out of a checking account.

52. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of 'float' time that a check usually takes to clear." See [http://www.consumer-action.org/helpdesk/articles/what\\_do\\_i\\_need\\_to\\_know\\_about\\_using\\_a\\_debit\\_card](http://www.consumer-action.org/helpdesk/articles/what_do_i_need_to_know_about_using_a_debit_card) (last visited January 27, 2016) (emphasis added).

53. This is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have (along with credit cards) viewed debit cards "as a more convenient option than refilling their wallets with cash from an ATM."<sup>2</sup>

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<sup>2</sup>Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MARKETWATCH, Mar. 23, 2016, <http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23>

54. Not only have consumers increasingly substituted cash with debit cards, but they believe that a debit card purchase is the functional equivalent to a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly. The FHB account agreement's statement that providing a debit card to a merchant "authorize[s] the third party to withdraw funds from your account at . . . [the] point of sale terminal," fully supports the reasonable belief that once a debit card is swiped and authorized into available funds, the purchase is complete, just like a cash purchase. Despite this contractual representation, FHB still manages to charge overdraft fees on the APPSN Transactions days after they settle into positive funds.

55. FHB was aware of a consumer perception that debit transactions reduce an available balance *in a specified order*—namely, the order the transactions are actually initiated—and its account agreement only supports this perception.

#### **E. Plaintiff's Experience**

56. On April 8, 2016, Plaintiff was assessed two overdraft fees (each in the amount of \$30.00) for two debit card transactions in the amounts of \$15.68 and \$20.00 that each occurred and were authorized on April 7, 2016, despite her having a positive balance in excess of the total of those transactions at all times on April 7, when they were authorized and made.

57. Thus, Plaintiff's account was assessed overdraft fees due to a negative "available balance" that was generated by transactions that occurred subsequent to the transactions which were authorized into a positive "available balance," but had not yet settled to Plaintiff's account.

58. FHB assessed overdraft fees on the held transactions even though it had sequestered available funds for those transactions at the time they were authorized.

#### **CONTINUOUS OD FEE ALLEGATIONS**

59. The gist of the Continuous OD Fee is as follows: If the account of Customer "A" is in overdraft status (i.e. negative balance) by \$50.00 for example, FHB first charges an overdraft

fee of \$30.00 per transaction. However, if Customer A fails to replenish his or her account to bring the balance to a positive figure within 7 days, then the bank assesses an additional \$10.00 fee, as provided for in FHB's account disclosures, against the account of Customer A for having extended this credit for the 7-day time period.

60. Unlike an initial overdraft fee, the Continuous OD Fee is an additional charge to a customer for which the bank has provided nothing new in the way of services. The charge is based solely on the alleged indebtedness to the bank remaining unpaid by the customer for a period of time.

61. By way of background, overdraft fees have been a substantial source of revenue for banks for a number of years. Overdraft fee revenues continue to proliferate. As technology has rapidly grown and enabled bank customers new ways to access the money in their accounts, overdraft episodes and the attendant imposition of overdraft fees have skyrocketed. Recent reports from the U.S. Consumer Financial Protection Bureau ("CFPB"), for example, show that a broad investigation has been launched regarding bank overdraft practices and procedures due to its concern that the growing cost of overdraft practices could place bank customers at unnecessary risk. In 2012 alone, banks took in approximately \$32 billion in overdraft-related fees.

62. As a recent CFPB report reflects, "sustained negative balance" fees (a term synonymous with Continuous OD Fee) are becoming popular with banks and account for nearly 10% of total overdraft-related fees collected by banks which impose such charges. According to the CFPB report issued in July 2014, once a bank charges its customer a sustained overdraft fee on day five, the negative balance is likely cured by the customer within just a few days, rather than weeks. As such, the bank's extension of credit to its overdrawn customer is typically very short-term. Moreover, most negative balances created by an overdraft are not high figures. Nearly two-

thirds of transactions that cause overdrafts were for \$50.00 or less. As these statistics highlight, a bank's exposure for carrying a customer's overdraft is ordinarily very small and limited. But rather than charging legally permissible interest until its customer cures the overdraft balance, FHB instead charges a Continuing Negative Balance fee that in reality is interest at an illegal rate.

**A. First Hawaiian Bank's Practice**

63. The specific issue in this case is FHB's practice of deducting the Continuous OD Fee from the accounts of its customers, including Plaintiff and others similarly situated. Under this practice, if the customer fails to repay the full amount of the overdraft and the overdraft fees within 7 days, the bank charges a Continuous OD Fee of \$10.00. FHB renders no additional service to its customers in exchange for charging this extra fee other than advancing the original money to a customer's account in an amount to cover the overdraft, for which the bank previously charged the initial overdraft fee(s). FHB uses the fact that it has loaned funds to its customer as a pretext to justify charging the customer a secondary service charge that exceeds lawful limits, rendering the Continuous OD Fee a usurious charge.

64. FHB charges a fee against any account merely by virtue of the customer failing to pay the bank a specific sum of money (the amount of the overdraft) for a period of 7 days. There is nothing in FHB's written materials disclosing that this additional "fee" is, in reality, a charge of interest on extended credit.

**B. Plaintiff's Experience**

65. In Plaintiff's case, her "Account Activity" statement for the date range May 1, 2016 through July 1, 2016, shows that she went into overdraft status on June 14, 2016, and that her account remained in that status until June 23, 2016.

66. On June 21, 2016, FHB charged Plaintiff a Continuous OD Fee of \$10.00.

67. Between June 14, 2016, and June 21, 2016, Plaintiff's negative account balance

fluctuated between negative \$85.68 on June 14, 2016, to negative \$250.68 on June 21, 2016. On June 21, 2016, after FHB charged the \$10.00 Continuous OD Fee, her account balance was negative \$250.68.

68. The \$10.00 Continuing Negative Balance fee was in addition to 4 overdraft fees totaling \$120.00 that FHB also charged during this same time period for the transactions that created the "overdraft" status in the first place.

### CLASS ALLEGATIONS

69. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

70. The proposed Classes are defined as:

All FHB checking account holders in the State of Hawai'i who, from September 1, 2010, through the date of class certification, were charged overdraft fees on transactions that were authorized into a positive available balance (the "Debit Hold Class")

All FHB checking account holders in the State of Hawai'i who within the applicable statute of limitations period prior to the date of filing this Complaint, through the date of class certification, who were assessed one or more Continuous OD Fees (the "Usury Class")

71. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

72. Excluded from the Classes are FHB, its parents, subsidiaries, affiliates, officers and directors, any entity in which FHB 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.

73. The members of the Classes are so numerous that joinder is impractical. The

Classes consists of thousands of members, the identity of who is within the knowledge of and can be ascertained only by resort to FHB's records.

74. The claims of the representative Plaintiff are typical of the claims of the Classes in that the representative Plaintiff, like all Class members, was charged overdraft and Continuing OD Fees by FHB. The representative Plaintiff, like all Class members, has been damaged by FHB's misconduct in that she has been assessed usurious Continuing OD Fees. Furthermore, the factual basis of FHB's misconduct is common to all Class members, and represents a common thread of unfair conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other Class member.

75. There are numerous common questions of law and fact, and those common questions predominate over any questions affecting only individual Class members.

76. Among the questions of law and fact common to the Classes are whether FHB:

- a. Charged overdraft fees to the Debit Hold Class on transactions authorized into a sufficient available balance;
- b. Charged interest to its customers in the Usury Class under the guise of a Continuous OD Fee in amounts that violate applicable usury laws;
- c. Developed and engaged in an unlawful practice that mischaracterized or concealed the true usurious nature of the Continuous OD Fee to those in the Usury Class;
- d. Charged its customer a Continuous OD Fee that bears no relationship to the actual costs and risks of covering insufficient funds transactions, and is instead based on the amount of time credit has been extended when the account is in a negative balance condition; and
- e. Plaintiff and other members of the Usury Class have sustained damages as a result of FHB's assessment and collection of the Continuous OD Fee, and the proper measure of



damages.

77. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions 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.

78. 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 FHB, 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 FHB's conduct will proceed without remedy.

79. 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.

80. FHB has acted or refused to act on grounds generally applicable to Plaintiff and other members of the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief, as described below, with respect to the Classes as a whole.

**FIRST CLAIM FOR RELIEF**  
**Violations of Hawaii's Uniform Deceptive Trade Practice Act**  
**(On Behalf of the Debit Hold Class)**

81. Plaintiff repeats and incorporates paragraphs 1 through 80 above.

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

83. Plaintiff is a consumer as defined by HRS § 480-1.

84. 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."

85. FHB violated HRS Chapter 480 and specifically § 480-2(a), by the conduct alleged above including, but not limited to, employing the unfair and deceptive acts and practices set forth herein. FHB's conduct of misrepresenting, concealing, suppressing, or otherwise omitting its actual practices created a likelihood of confusion or of misunderstanding.

86. As redress for FHB repeated and ongoing violations of HRS § 480-2(a), Plaintiffs and the Class are entitled to, *inter alia*, damages, reasonable attorneys' fees and costs, and declaratory relief, pursuant to § 480-13.

**SECOND CLAIM FOR RELIEF**  
**Conversion**  
**(On Behalf of the Debit Hold Class)**

87. Plaintiff repeats and incorporates paragraphs 1 through 80 above.

88. FHB 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.

89. FHB 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.

90. FHB 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.

91. FHB continues to retain these funds unlawfully without the consent of Plaintiff or members of the Class.

92. FHB intends to permanently deprive Plaintiff and the members of the Class of these funds.

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

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

95. FHB has wrongfully converted these specific and readily identifiable funds.

96. FHB's wrongful conduct is continuing.

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

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

**THIRD CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of the Debit Hold Class)**

99. Plaintiff repeats and incorporates paragraphs 1 through 80 above, excluding statements which allege that valid contractual terms govern the challenged conduct.

100. Plaintiff, on behalf of herself and the Class, asserts a common law claim for unjust

enrichment.

101. By means of FHB's wrongful conduct alleged herein, FHB knowingly provided banking services to Plaintiff and members of the Class that was unfair, unconscionable, and oppressive.

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

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

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

105. Under the common law doctrine of unjust enrichment, it is inequitable for FHB 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. FHB's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

106. The financial benefits derived by FHB rightfully belong to Plaintiff and members of the Class. FHB 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 them. A constructive trust should be imposed upon all wrongful or inequitable sums received by FHB traceable to Plaintiff and the members of the Class.

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

**FOURTH CLAIM FOR RELIEF**  
**Violations of Hawaii Revised Statutes, Chapter 478—Interest and Usury**  
**(On Behalf of the Usury Class)**

108. Plaintiff repeats and incorporates paragraphs 1 through 80, as if fully set forth herein.

109. Interest, by definition, is compensation for the use or forbearance of money or as damages for its detention, typically measured by time, which is exactly the case with FHB's Continuous OD Fee. Any such charges imposed on a customer for use or forbearance of money or as damages for its detention – no matter how labelled by FHB – are in fact interest and in this case usurious, as alleged below,

110. Claims for usury in Hawai'i are governed by Hawai'i's interest and usury statutes, which are found in Hawai'i Revised Statutes § 478-1, *et seq.*

111. Under § 478-1, the Continuous OD Fee is "consumer credit" as the "fee" imposed is actually credit extended for personal, family, or household purposes in an amount less than \$250,000.00. Each Continuous OD Fee following the 7-day period is a separate event of the extension of consumer credit, and a separate act of usury.

112. Under § 478-2, the maximum allowable rate of interest that FHB can charge its customers for this extension of credit absent a written agreement is 10% per year.

113. By assessing and collecting Continuous OD Fee, FHB has knowingly extended credit to Plaintiff and others similarly situated for use in their checking and/or money market accounts. Such extensions of credit are loans without a specific loan agreement.

114. Although FHB is only permitted to charge Plaintiff and others similarly situated a maximum of 10% annualized interest on these loans and extensions of credit, FHB has knowingly charged and collected Continuous OD Fees from Plaintiff and others similarly situated far

exceeded the legal rate.

115. Using the maximum amount of Plaintiff's negative balance during the relevant period (\$250.68), and applying a 10% annualized interest rate over a 7-day period, the maximum amount that FHB was legally permitted to charge Plaintiff was \$0.48. In this case, FHB charged \$10.00, which was over 17 times the maximum legal rate.

116. The Continuous OD Fees charged to Plaintiff and others similarly situated for such advances of money are egregiously high, usurious, and illegal.

117. By labeling its charge a Continuous OD Fee, FHB cannot mask the true nature of the charge, especially since it overtly identifies in its disclosures that the fee is tied to the time that the account is in a negative balance condition.

118. Plaintiff and those similarly situated have sustained damages based FHB's violation of this Hawai'i's usury laws through its assessment and collection of the Continuous OD Fee.

119. The usurious transactions at issue all occurred within 6 years prior to the commencement date of this action.

120. Plaintiff and those similarly situated are entitled to recover the usurious interest they paid under § 478-5, which provides:

If a greater rate of interest than that permitted by law is contracted for with respect to any consumer credit transaction, any home business loan or any credit card agreement, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs. If interest has been paid, judgment shall be for the principal less the amount of interest paid.

121. Plaintiff and those similarly situated hereby demand recovery of the amounts owed to them as a result of the violations asserted herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Classes demand a trial on all claims so triable and

judgment as follows:

1. Certifying this matter as a Class Action pursuant to Rule 23(b)(2) and 23(b)(3);
2. Designating Plaintiff as an appropriate Class Representative;
3. Awarding Plaintiff and the Classes damages;
4. Awarding injunctive and declaratory relief;
5. Awarding Pre-judgment interest at the maximum rate permitted by applicable law;
6. Awarding reasonable attorneys' fees;
7. Awarding Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
8. Such other relief as this Court deems just and proper.

Dated: HONOLULU, HAWAII, January \_\_\_\_\_, 2017.

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JOHN FRANCIS PERKIN  
BRANDEE J.K. FARIA

Attorneys for Plaintiff  
LINDA ROBINSON,  
individually and on behalf  
of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LINDA ROBINSON, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

FIRST HAWAIIAN BANK and DOE  
DEFENDANTS 1-50,

Defendants.


Civil No. 17-1-0167-01 KTN  
(Class Action)

DEMAND FOR JURY TRIAL

**DEMAND FOR JURY TRIAL**

Plaintiff LINDA ROBINSON, individually and on behalf of all others similarly situated,  
hereby demands a trial by jury as to all issues so triable in the above-entitled cause.

DATED: Honolulu, Hawaii, January 27, 2017.

  
\_\_\_\_\_  
JOHN FRANCIS PERKIN  
BRANDEE J.K. FARIA

Attorneys for Plaintiff  
LINDA ROBINSON,  
individually and on behalf  
of all others similarly situated.



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LINDA ROBINSON, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

FIRST HAWAIIAN BANK and DOE  
DEFENDANTS 1-50,

Defendants.

Civil No. 17-1-0167-01 KTN  
(Class Action)

SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to file with the Court and serve upon PERKIN & FARIA, LLLC, attorneys for Plaintiff, whose address is Davies Pacific Center, 841 Bishop Street, Suite 1000, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default

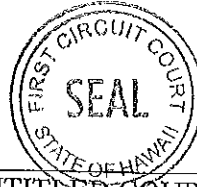
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judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, JAN 27 2017, 2017.

F. OTAKE



CLERK OF THE ABOVE-ENTITLED COURT