

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL KOMORKSI, individually and
on behalf of all others similarly situated,

Plaintiff,

V.

THE PNC FINANCIAL SERVICES
GROUP, INC.,

Defendant.

Case No.: 1:20-cv-1265

Hon.

NOTICE OF REMOVAL

Defendant PNC Financial Services Group, Inc. (“PNC”) hereby removes the above-captioned putative class action to the United States District Court for the Northern District of Illinois. Removal is based on 28 U.S.C. §§ 1332, 1441 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005 (“CAFA”), and authorized by 28 U.S.C. § 1453.

As grounds for removal, PNC states the following:

I. BACKGROUND

1. On January 28, 2020, plaintiff Michael Komorski (“Plaintiff” or “Komorski”) filed a putative class action Complaint in the County Department, Chancery Division of the Circuit Court of Cook County, Illinois.

2. On February 11, 2020, PNC was served with the Summons and the Complaint (attached as Exhibit 1 hereto). In addition, on February 6, 2020, PNC was served with Plaintiff's Motion for Class Certification (attached hereto as Exhibit 2).

3. The Complaint alleges that Plaintiff and putative class members were damaged by PNC's purported practice of "(a) assessing...[Overdraft] Fees on transactions that did not overdraw checking account available balances; and (b) abusing its discretion...to repeatedly,

routinely, and automatically authorize overdraft transactions even where it knows or should know that a continued overdraft will have devastating effects.” Compl. ¶ 10.

4. The Complaint contains five counts. Counts I-III of the Complaint allege causes of action for breach of contract. *Id.* pp. 13-18, Count IV alleges a breach of the implied covenant of good faith and fair dealing. *Id.* pp. 19-21. Count V alleges violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* *Id.* pp. 21-25.

5. Pursuant to 735 ILCS 5/2-801, Plaintiff seeks to certify three nationwide classes and three Illinois-based subclasses. Compl. ¶ 42.

II. CITIZENSHIP OF THE PARTIES

6. Plaintiff alleges that he is a “citizen of the state of Illinois.” *Id.* ¶ 13.

7. Defendant PNC is a Pennsylvania corporation with its principal place of business in Pennsylvania.¹ *Id.* ¶ 12; p. 1 (caption referring to PNC as “a Pennsylvania corporation”).

III. DIVERSITY JURISDICTION EXISTS UNDER CAFA

8. Pursuant to 28 U.S.C. § 1332, as amended by CAFA, district courts have original jurisdiction over putative class actions with 100 or more putative class members, in which the aggregate amount in controversy exceeds \$5,000,000, and any member of the putative class is a citizen of a state different from any defendant. Complete diversity among parties is not required. 28 U.S.C. § 1332(d)(2)(A). Congress intended for CAFA to “expand substantially federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions be heard in federal court if properly removed.” S. Rep. 109-14, at 43

¹ Plaintiff’s Complaint incorrectly refers to PNC Financial Services Group, Inc. as “a national bank” (Compl. ¶ 12) rather than acknowledge that it is a holding company and that PNC Bank, N.A. is the entity that provides banking services to Plaintiff. To the extent that Plaintiff intended to refer to PNC Bank, N.A. instead as the defendant, its “articles of association ...show that its main office is located in Wilmington, Delaware—making it a Delaware citizen for diversity purposes.” *Weber v. PNC Invs. LLC*, 2020 WL 563330 (W.D. Pa. Feb. 5, 2020). Accordingly, even if Plaintiff had named PNC Bank, N.A. as a defendant, diversity of citizenship would still exist.

(2005), reprinted in 2005 U.S.C.C.A.N. 3, 41; see H. Rep. 108-144, at 36-37 (2005); *J.B. ex rel. Benjamin v. Abbott Labs., Inc.*, 2012 WL 1655980, at *2 (N.D. Ill. May 9, 2012) (same).

9. Covered Class Action. This action meets CAFA’s definition of a class action, which is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute ... authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). In particular, Plaintiff seeks to certify three nationwide classes and three Illinois subclasses pursuant to 735 ILCS 5/2-801, which is the class action statute under Illinois law and analogous to Rule 23 of the Federal Rules of Civil Procedure. Compl. ¶ 42. PNC denies, however, that this case should be certified as a class action, and expressly reserves its right to oppose any attempts by Plaintiff to certify any classes.

10. Class Action Consisting of 100 or More Members. Plaintiff alleges that there are “thousands of members of the Classes and Subclasses” thereby satisfying CAFA’s requirement that the putative class consist of at least 100 members. Compl. ¶ 44; 28 U.S.C. § 1332(d)(5)(B).

11. Citizenship of Parties. As shown above, the requisite minimal diversity of citizenship exists under 28 U.S.C. §§ 1332(d)(2). Plaintiff is a citizen of Illinois. Compl. ¶ 13. By contrast, PNC is deemed a citizen of Pennsylvania for diversity of citizenship purposes. *Id.* ¶ 12; *supra* ¶ 7.

12. Consent. PNC is the only defendant and thus consent of other defendants to removal is inapplicable. Regardless, pursuant to 28 U.S.C. § 1453(b), this action may be removed under CAFA without the consent of other defendants. *First Bank v. DJL Props., LLC*, 598 F.3d 915, 917 (7th Cir. 2010).

13. Amount in Controversy. There is more than \$5 million in controversy in this action. Under 28 U.S.C. § 1332(d), the amount in controversy in a putative class action is

determined by aggregating the amount at issue of the claims of all members of the putative class. 28 U.S.C. § 1332(d)(6). While PNC denies that Plaintiff or any putative class member is entitled to recover in any amount, and specifically denies that Plaintiff or any putative class member is entitled to the relief in the various forms and amounts sought, the Plaintiff's allegation that "PNC makes several hundred million dollars a year" (Compl. ¶ 2) by the imposition of overdraft fees easily satisfies CAFA's \$5 million threshold.²

14. No CAFA Exception Applies. PNC does not bear the burden of proof in its Notice of Removal to show that CAFA's exceptions to jurisdiction are inapplicable. *Westerfeld v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010) ("Once CAFA's initial jurisdictional requirements have been established by the party seeking removal...the burden shifts to the party seeking remand to establish that one of CAFA's express jurisdictional exceptions applies."); *In re Sprint Nextel Corp.*, 593 F.3d 669, 673 (7th Cir. 2010) (same). Nevertheless, neither the "home state exception" nor "local controversy exception" is applicable here.

15. Under the "home state exception," a district court shall decline jurisdiction where "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, *and the primary defendants*, are citizens of the State in which the action was originally filed." 28 U.S.C. 1332(d)(4)(B) (emphasis added). Here, PNC is the only defendant. Because PNC is not a citizen of Illinois, *supra* ¶ 7, the home state exception is inapplicable regardless of the number of putative class members that are Illinois citizens.

² Furthermore, Illinois law provides for a ten-year statute of limitation for breach of a written contract. *Blanchard & Assocs. v. Lupin Pharms. Inc.*, 900 F.3d 917, 923 (7th Cir. 2018) As such, assuming that Plaintiff's allegation of "several hundred millions of dollars *a year*" (Compl. ¶ 2, emphasis added) in overdraft charges by PNC is true, over \$1 billion in overdraft charges are at issue in Counts I-III. PNC denies that Plaintiff or putative class members are entitled to any recovery in this lawsuit.

16. The “local controversy” exception also is inapplicable. The local controversy exception is “a narrow exception that was carefully drafted to ensure that it does not become a jurisdictional loophole.” *Westerfeld*, 621 F.3d at 825 (quoting S. Rep. No. 109-14, at 39 reprinted in 2005 U.S.C.C.A.N. 3, 38). Under the “local controversy exception,” a district court shall decline to exercise jurisdiction over a class action in which: (i)(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed; (II) at least 1 defendant is a defendant (aa) from whom significant relief is sought by members of the plaintiff class; (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and (cc) who is a citizen of the State in which the action was originally filed; and (III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and (ii) during the three year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons. 28 U.S.C. § 1332(d)(4)(A). Because PNC is the only defendant and it is not a citizen of Illinois, *supra* ¶ 7, the local controversy exception is inapplicable, 28 U.S.C. § 1332(d)(4)(A)(i)(II)(aa)-(cc), regardless of the number of putative class members that are Illinois citizens or any of the other requirements of the local controversy exception.

IV. PROCEDURAL REQUIREMENTS

17. Removal is Timely. This Notice of Removal has been timely filed within thirty days of receipt of the Summons and Complaint on February 11, 2020 by PNC. 28 U.S.C. § 1446(b).

18. Removal To Proper Court. The Circuit Court of Cook County is located within the United States District Court for the Northern District of Illinois, Eastern Division. 28 U.S.C.

§ 93(a)(1). This Notice of Removal is therefore properly filed in this Court, pursuant to 28 U.S.C. 1441(a).

19. Pleadings and Process. Attached hereto as Exhibit 1 and 2 is a copy of all process, pleadings, and orders received in the state court action, and attached as Exhibit 3 is a copy of the state court docket sheet. 28 U.S.C. § 1446(a).

20. Notice. A Notice of Filing of Notice of Removal will be contemporaneously filed with the clerk of the state court in which the action is pending and served on Plaintiff's counsel, pursuant to 28 U.S.C. § 1446(d). A Notice of Removal to All Adverse Parties will be served contemporaneously on Plaintiff's counsel, pursuant to 28 U.S.C. §§ 1446(a), (d).

21. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. 28 U.S.C. § 1446(a).

22. Bond and Verification. Pursuant to Section 1016 of the Judicial Improvements and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal. Pursuant to Section 1016 of the Act, this Notice need not be verified.

* * *

23. Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as amended by CAFA, and this action therefore may be removed to this Court under 28 U.S.C. §§ 1441, 1446 & 1453.

24. In the event that Plaintiff seeks to remand this case, or the Court considers remand *sua sponte*, PNC respectfully requests the opportunity to submit such additional briefing, argument or evidence in support of removal as may be necessary.

WHEREFORE, defendant PNC respectfully removes this action to the United States District Court for the Northern District of Illinois.

Dated: February 21, 2020

RESPECTFULLY SUBMITTED,

By: /s/ Thomas V. Panoff

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*Counsel for Defendant PNC Financial
Services Group, Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that on February 21, 2020, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and that copies of the foregoing instrument were sent by first-class U.S. mail and email to the following parties:

Eugene Turin
MCGUIRE LAW, P.C.
55 W. Wacker Dr., 9th Floor
Chicago, Illinois 60601
eturin@mcgpc.com

Counsel for Plaintiff

Dated: February 21, 2020

By: /s/ Thomas V. Panoff

Thomas V. Panoff

*Counsel for Defendant PNC Financial
Services Group, Inc.*

EXHIBIT 1

Return Date: No return date scheduled
Hearing Date: 5/27/2020 10:00 AM - 10:00 AM
Courtroom Number: 2405
Location: District 1 Court
Cook County, IL

FILED
1/28/2020 12:14 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH01060

8249976

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served By Publication
Summons - Alias Summons

2121 - Served
2221 - Not Served
2321 - Served By Mail
2421 - Served By Publication

(08/01/18) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MICHAEL KOMORSKI, on behalf of a class,

(Name all parties)

v.

THE PNC FINANCIAL SERVICES GROUP, INC.

Case No. 2020-CH-01060

PNC Financial Services Group, Inc.,
c/o Demchak William, One PNC Plaza
249 5th Ave., Pittsburgh, PA 15222-2707

☒ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance and pay the required fee **within thirty (30) days after service of this Summons**, not counting the day of service. To file your answer or appearance you need access to the internet. Please [visit www.cookcountyclerkofcourt.org](http://www.cookcountyclerkofcourt.org) to initiate this process. Kiosks with internet access are available at all Clerk's Office locations. Please refer to the last page of this document for location information.

If you fail to do so, a judgment by default may be entered against you for the relief requested in the complaint.

To the Officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

Summons - Alias Summons

(08/01/18) CCG 0001 B

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>, or talk with your local circuit clerk's office.

Atty. No.: 56618

1/28/2020 12:14 PM DOROTHY BROWN
Witness: _____

Atty Name: Eugene Y. Turin

Atty. for: Plaintiff

Address: 55 West Wacker Drive, 9th Fl.

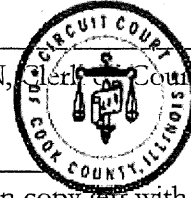
City: Chicago

State: IL Zip: 60601

Telephone: 312 893 7002

Primary Email: eturin@mcgpc.com

DOROTHY BROWN, Clerk of Court



Date of Service: _____
(To be inserted by officer on copy left with
Defendant or other person):

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

- FILED DATE: 1/28/2020 12:14 PM 2020CH01060
- ☐ Richard J Daley Center
50 W Washington
Chicago, IL 60602
 - ☐ District 2 - Skokie
5600 Old Orchard Rd
Skokie, IL 60077
 - ☐ District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008
 - ☐ District 4 - Maywood
1500 Maybrook Ave
Maywood, IL 60153
 - ☐ District 5 - Bridgeview
10220 S 76th Ave
Bridgeview, IL 60455
 - ☐ District 6 - Markham
16501 S Kedzie Pkwy
Markham, IL 60428
 - ☐ Domestic Violence Court
555 W Harrison
Chicago, IL 60607
 - ☐ Juvenile Center Building
2245 W Ogden Ave, Rm 13
Chicago, IL 60602
 - ☐ Criminal Court Building
2650 S California Ave, Rm 526
Chicago, IL 60608
 - ☐ Domestic Relations Division
Richard J Daley Center
50 W Washington, Rm 802
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Civil Appeals
Richard J Daley Center
50 W Washington, Rm 801
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Criminal Department
Richard J Daley Center
50 W Washington, Rm 1006
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ County Division
Richard J Daley Center
50 W Washington, Rm 1202
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Probate Division
Richard J Daley Center
50 W Washington, Rm 1202
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Law Division
Richard J Daley Center
50 W Washington, Rm 801
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☐ Traffic Division
Richard J Daley Center
50 W Washington, Lower Level
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
- Daley Center Divisions/Departments**
- ☐ Civil Division
Richard J Daley Center
50 W Washington, Rm 601
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm
 - ☒ Chancery Division
Richard J Daley Center
50 W Washington, Rm 802
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois

cookcountyclerkofcourt.org

Return Date: No return date scheduled
Hearing Date: 5/27/2020 10:00 AM - 10:00 AM
Courtroom Number: 2405
Location: District 1 Court
Cook County, IL

FILED
1/28/2020 9:57 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH01060

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MICHAEL KOMORSKI, individually and)
on behalf of all others similarly situated,)

Plaintiff,)

v.)

THE PNC FINANCIAL SERVICES)
GROUP, INC., a Pennsylvania)
corporation,)

Defendant.)

Case No. 2020CH01060

Hon.

8245270

CLASS ACTION COMPLAINT

Plaintiff Michael Komorski ("Plaintiff"), individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Defendant The PNC Financial Services Group, Inc. ("Defendant") (hereinafter "PNC" or "Bank") to stop Defendant's practice of assessing and collecting improper and excessive overdraft fees arising from a practice that breaches the Bank's contracts and/or is deceptive and designed to unfairly increase the Bank's fee revenue, and to obtain redress for all persons injured by its conduct. Plaintiff alleges as follows based on personal knowledge as to his own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by his attorneys.

INTRODUCTION

1. PNC charges account holders a \$36 overdraft ("OD") fee when there are insufficient funds to pay a requested transaction and PNC chooses to accept the charge.

2. Through the imposition of OD fees, PNC makes several hundred million dollars a year. These fees are by definition often assessed on consumers struggling to make ends meet with minimal funds in their accounts.

3. In particular, an FDIC study has reported that OD fees often fall disproportionately on racial and ethnic minorities, the elderly, and the young. Every additional OD Fee that PNC assesses can be devastating to those living at the economic margins of our society. OD Fees must be assessed sparingly (and consistently with PNC's contracts), if they are not to destroy the very accountholders on whom they are assessed.

4. Unfortunately, PNC undertakes to maximize OD Fees through a deceptive, unfair, and unconscionable assessment practice which also violates PNC's accountholder contracts – specifically, the promise to charge OD Fees only on transactions which actually overdraw an account.

5. Plaintiff Komorski presents a good example of PNC's crushing and punitive OD Fee policies.

6. As happened to Plaintiff on numerous occasions, PNC charges OD Fees even when the transaction has not overdrawn an account. For example, Plaintiff was charged two OD Fees on December 10, 2019. But, according to the monthly account statement prepared by PNC, Plaintiff's account balance was never negative for those transactions. By definition, there were always funds to “pay” that transaction – yet PNC assessed an OD Fee on it anyway.

7. PNC is not authorized by contract to charge OD Fees on transactions that have not overdrawn an account, but it has done so and continues to do so.

8. These huge cumulative fees are comprised of PNC's \$36 Overdraft Fee, which is the initial charge on a supposed insufficient funds transaction, and a \$7 Continuous OD Fee

(“COD”) if Plaintiff does not bring his account into a positive balance after paying the Bank’s fees along with any transactions “covered” by the Bank.

9. Second, as happened to Plaintiff, PNC also charged OD fees on transactions of less than \$5 after all the transactions are posted for the day as a direct result of Defendant assessing an unauthorized OD Fee. This is another violation of the Bank’s contractual promise that there is a \$5 threshold for which consumers will not be charged OD Fees.

10. Plaintiff seeks redress for two specific unlawful practices that PNC Financial perpetrates on its checking account customers to increase the OD Fees assessed on them. Plaintiff asserts this action under Fed. R. Civ. P. 23, on behalf of himself and all others similarly situated throughout the United States, for damages and other relief arising from PNC’s routine practice of (a) assessing OD Fees on transactions that did not overdraw checking account available balances; and (b) abusing its discretion under the contract to repeatedly, routinely, and automatically authorize overdraft transactions even where it knows or should know that a continued overdraft will have devastating effects.

11. Plaintiff and other PNC customers have been injured by PNC’s practices. On behalf of himself and putative class and subclass, Plaintiff seeks damages, restitution, and injunctive relief for PNC’s breach of contract and violation of state consumer protection statutes.

PARTIES

12. Defendant PNC Financial Service Groups, Inc., is a national bank with its U.S. headquarters and principal place of business located in Pittsburgh, Pennsylvania. PNC conducts business throughout Illinois and operates around 181 retail banking centers in Illinois.

13. At all relevant times, Plaintiff has been a resident and citizen of the state of Illinois and has had a checking account with PNC at a branch in Illinois.

JURISDICTION AND VENUE

14. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States, because Defendant is doing business within this state and because Plaintiff's claims arise out of Defendant's unlawful in-state actions.

15. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101, because Defendant is doing business in Cook County and thus resides there under § 2-102, and because the transaction out of which this cause of action arises occurred in Cook County.

FACTS SPECIFIC TO PLAINTIFF

PNC's Unauthorized Collection of Overdraft Fees

16. Plaintiff has a checking account with one of the banks controlled and operated by PNC which has branches in Illinois, including in Melrose Park.

17. PNC issues debit cards to its personal and business 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.

18. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from PNC. When a merchant physically or virtually "swipes" a customer's debit card, the credit card terminal connects, via an intermediary, to PNC, which verifies that the customer's account is valid and that available funds are sufficient to "cover" the transaction amount.

19. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, PNC Financial immediately decrements the consumer's checking accounts for the amount of the purchase and sets aside funds in the checking account to cover that

specific transaction. As a result, and with limited exceptions, customers' accounts always have sufficient available funds to cover these transactions throughout their entire life-cycle.

20. However, PNC still assesses \$36 OD Fees on many of these transactions, in violation of its contractual promises not to do so.

21. In plain, clear, and simple language, the checking account contract documents discussing OD Fees promise that the PNC immediately deducts funds from an account's available balance and that an overdraft occurs only "when you do not have enough money in your account to cover a transaction, but we pay it anyway...":

What You Need to Know about Overdraft and Overdraft Fees

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

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection which links your account to a secondary checking, savings, money market account, credit card, personal line of credit or Choice Home Equity Line of Credit which may be less expensive than our standard overdraft practices.*

To learn more, ask us about these Overdraft Protection options.

This notice explains our standard overdraft practices.

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

We do authorize and pay overdraft for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdraft for the following types of transactions unless you ask us to:

- ATM transactions
- Everyday debit card transactions

We pay overdraft 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 overdraft, your transaction will be declined.

What fees will I be charged if PNC pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of \$36 each time we pay an overdraft, with a limit of 4 charges per day.
- Also, a \$7 fee may be assessed each day your account remains overdrawn for a period of 5 or more consecutive calendar days, up to a maximum of \$98. This charge is in addition to any Overdraft Item Fees or Returned Item Fees assessed.

PNC's "Overdraft Disclosure", attached hereto as Exhibit 1.

22. Unfortunately, PNC charges OD Fees on debit card transaction for which there *are* sufficient available funds to pay the transactions. That is, in direct violations of the contractual representations that PNC will only charge OD Fees on transactions with insufficient available funds. *See* Exhibit 1.

23. On December 10, 2019, Plaintiff was assessed two OD Fees that posted to his account. However, according to the bank statement issued by PNC, his account never went negative for such transactions. *See* PNC Bank Online Banking statements for Plaintiff's account for the time period of 11/30/2019 – 12/31/2019, attached hereto as Exhibit 2.

24. Specifically, and as shown in the excerpt provided further below, the first "Overdraft Item Fee" on 12/10/2019 is associated with the transaction code "00019351910192969," which is directly linked to the transaction on 12/09/2019 "ACH Web-Single E-Payment Discover 3230." This charge was for \$118, which if PNC had allowed it to properly post to his account would have brought Plaintiff's account into a positive balance of \$111.64. *See* PNC Business Checking for Plaintiff's account for the time period of 11/01/2019 – 12/31/2019, attached hereto as Exhibit 3; *see also* Exhibit 2.

25. The second "Overdraft Item Fee" on 12/10/2019 is associated with the transaction code "00019343908714514," which is directly linked to the transaction on 12/09/2019 "Corporate ACH Mobile Pmt Capital One." This charge was for \$25, which if PNC had allowed it to properly post to his account would have brought Plaintiff's account into a positive balance of \$86.64. *Id.*

12/11/2019	OVERDRAFT ITEM FEE	\$36.00	-\$227.37
12/11/2019	OVERDRAFT ITEM FEE	\$36.00	-\$191.37
12/11/2019	OVERDRAFT ITEM FEE	\$36.00	-\$155.37
12/10/2019	RECURRING DEBIT CARD XXXXX9344 AAA LIFE INSURANCE XXXXX1662 MI	\$73.04	-\$119.37
12/10/2019	DEBIT CARD PURCHASE XXXXX8374 SIX FLAGS GREAT AMERIC XXXXX2133 IL	\$40.82	-\$46.33
12/10/2019	DEBIT CARD PURCHASE XXXXX8374 IL TOLLWAYAUTOREPLENI XXXXX7277 IL	\$20.00	-\$5.51
12/10/2019	OVERDRAFT ITEM FEE	\$36.00	\$14.49
12/10/2019	OVERDRAFT ITEM FEE	\$36.00	\$50.49
12/09/2019	INTERNATIONAL POS FEE VIS 1207 GB	\$0.15	\$86.49
12/09/2019	CORPORATE ACH 934139800469152 CAPITAL ONE MOBILE PMT	\$25.00	\$86.64
12/09/2019	ACH WEB-SINGLE 3230 DISCOVER E- PAYMENT	\$118.00	\$111.64

Exhibit 3.

26. Similarly, on November 15, 2019, Plaintiff was assessed one OD Fee that posted to his account. However, according to the bank statement issued by PNC, his account never went negative and always had funds to cover the original charge. *See* PNC Business Checking for Plaintiff's account for the time period of 11/01/2019 – 11/29/2019, attached hereto as Exhibit 4; *see also* Exhibit 3.

27. Specifically, the "Overdraft Item Fee" on 11/15/2019 is associated with the transaction code "POS66660001 1469588" which was directly linked to the transaction on 11/14/2019 "POS Purchase Shell Service Stone Park Il." This charge was for \$47.33, which if PNC had allowed it to properly post to his account would have brought Plaintiff's account into a positive balance of \$2.81. *See* Exhibit 4; *see also* Exhibit 3.

11/18/2019	DEBIT CARD PURCHASE XXXXX8374 STARBUCKS PLEASANT PRA PLEASANT PR WI	\$9.66	\$135.69
11/18/2019	ATM DEPOSIT 90765580 DEPOSIT 3556 N.ASHLAND CHICAGO IL	\$147.00	\$145.35
11/18/2019	ONLINE TRANSFER FROM XXXXX0919	\$2.53	-\$1.65
11/18/2019	ONLINE TRANSFER FROM XXXXX0919	\$70.00	-\$4.18
11/18/2019	OVERDRAFT ITEM FEE	\$36.00	-\$74.18
11/15/2019	RECURRING DEBIT CARD XXXXX9319 ESPN Plus XXXXX1800 NY	\$4.99	-\$38.18
11/15/2019	OVERDRAFT ITEM FEE	\$36.00	-\$33.19
11/14/2019	POS PURCHASE POS66660001 1469588 SHELL SERVICE STONE PARK IL	\$47.33	\$2.81
11/14/2019	POS PURCHASE POS12518201 1477237 TA CHICAGO NOR RUSSELL IL	\$28.92	\$50.14
11/14/2019	DEBIT CARD PURCHASE XXXXX8374 TA # 30 WADSWORTH RUSSELL IL	\$5.11	\$79.06

Exhibit 3.

28. In short, in all of the situations above Plaintiff had sufficient funds to “pay” the transactions that supposedly caused the OD Fees, therefore he was improperly charged such OD Fees.

29. This is in violation of the checking account contract which discusses that PNC will only charge OD Fees only when there are insufficient funds to “pay” a given transaction. *See* Exhibit 1.

30. As happened to Plaintiff, PNC charges OD Fees even when the transaction has not overdrawn an account.

31. Critically, in both of the above situations, these unconscionable OD Fees pushed Plaintiff into a further overdraft situation. For example, on December 10, 2019, Plaintiff had two additional transactions – (a) from “IL Tollway” and (b) from “Six Flags” – which resulted in Plaintiff incurring *further* additional OD fees of \$36 dollars each that posted on December 11, 2019. *See* Exhibit 2; *see also* Exhibit 3.

32. Moreover, on 11/15/2019, Plaintiff incurred a Debit Card Charge of \$4.99, which incurred another \$36 OD Fee on 11/18/2019. Not only was this OD Fee a direct result of wrongfully pushing the Plaintiff into a negative balance as described in Paragraph 27, but it also violated Defendant's policy of only charging OD Fees on transactions of less than \$5 after all the transactions are posted for the day. *See* PNC's Business Checking Accounts and Related Charges Additional Services and Options, attached hereto as Exhibit 5, at 5. Adding insult to the injury, as a result of wrongfully pushing Plaintiff into an overdraft, Defendant also charged Plaintiff a Continuous OD Charge of \$7 on 11/18/2019. *See* Exhibit 4; *see also* Exhibit 3.

33. PNC Financial has taken \$482 dollars in Overdraft Fees from Plaintiff in 2019 alone.

34. Not only did PNC freely abused its discretion by charging Overdraft Fees on transactions that never brought the balance into negative, but it has also repeatedly and automatically authorized and covered transactions that would incur *further* overdraft fees even after Plaintiff was already in an overdraft situation. Knowing that overdraft fees are difficult or impossible to recover from for low-income consumers, PNC freely provided Mr. Komorski with virtually unlimited overdraft, almost never using its discretion to deny overdraft transactions – driving Mr. Komorski into an inextricable cycle of debt and overdrawn balances.

35. None of this had to happen, because PNC specifically gave itself the discretion to deny overdraft transactions—"We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction." *See* Exhibit 1.

36. While PNC promised to use its "discretion" in permitting or denying overdraft transactions, it almost never did. Instead, it knowingly left the spigot open, because there was a profit to be made.

37. Of course, overdraft approval decisions are automated at a bank the size of PNC. The bank uses a computer program or “Matrix” to assign a unique credit limit on each checking account, and that Matrix is designed to maximize overdraft fee revenue for the bank.

38. As the Consumer Financial Protection Bureau has stated:

Generally, institutions that set overdraft coverage limits assign a single limit to each account and use that account limit for making decisions regarding check and ACH transactions during nightly processing as well as for authorizing ATM and POS debit card transactions for those accounts opted in for overdraft coverage on these items...Many institutions set dynamic limits based on a ‘matrix’ or set of formulas that weigh various account and accountholder characteristics in an attempt to manage more precisely account credit risk, overdraft program revenues, and customer retention. These characteristics commonly include account tenure, average balance, overdraft history, and deposit patterns as well as other relationships the accountholder may have with the institution. Limits assigned to accounts at institutions using dynamic overdraft limits may change over time as an accountholder’s usage patterns and relationship to the institution change. Thus the distribution of limits assigned to accounts by an institution may change based on changes in policy, customer behavior, and market conditions that affect both, and banks report periodically evaluating and adjusting their algorithms for setting dynamic coverage limits.

39. Based on Plaintiff Komorski’s experience, it is clear that PNC’s “matrix” weighed none of the factors discussed by the CFPB, except for one: overdraft fee revenue.

40. PNC’s “matrix” is programmed to maximize OD fees at all costs. So, while PNC feigned in its disclosure that it would use its discretion to authorize overdraft transactions fairly, it did not. It used that discretion to gouge consumers like Plaintiff.

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

CLASS ALLEGATIONS

42. Plaintiff brings this action on behalf of himself and a Class and Subclass of similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent the following Classes and Subclasses:

The Positive Balance Class: All PNC checking account holders who, within the applicable statute of limitations, were charged OD Fees on transactions for which there were sufficient funds available.

The COD Fee Class: All PNC checking account holders who, within the applicable statute of limitations, have incurred one or more COD Fees as a result of OD Fees on transactions for which there were sufficient funds available.

The \$5 Minimum Transaction Subclass: All PNC checking account holders who, within the applicable statute of limitations, were charged OD Fees on transactions of less than \$5 after all the transactions are posted for the day.

The Positive Balance Illinois Subclass: All PNC checking account holders within the state of Illinois who, within the applicable statute of limitations, were charged OD Fees on transactions for which there were sufficient funds available.

The COD Fee Illinois Subclass: All PNC checking account holders within the state of Illinois who, within the applicable statute of limitations, have incurred one or more COD Fees as a result of OD Fees on transactions for which there were sufficient funds available.

The \$5 Minimum Transaction Illinois Subclass: All PNC checking account holders within the state of Illinois who, within the applicable statute of limitations, were charged OD Fees on transactions of less than \$5 after all the transactions are posted for the day.

43. Excluded from the Classes and Subclasses are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officer or director.

44. There are thousands of members of the Classes and Subclasses, making the members of the Classes and Subclasses so numerous that joinder of all members is impracticable. Although the exact number of members of the Classes and Subclasses is currently unknown to Plaintiff, the members can be easily identified through Defendant's records.

45. Plaintiff's claims are typical of the claims of the Classes and Subclasses he seeks to represent, because the bases of Defendant's liability to Plaintiff and the Classes and Subclasses is substantially the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the other members of the Classes and Subclasses.

46. There are many questions of law and fact common to the claims of Plaintiff and the Classes and Subclasses, and those questions predominate over any questions that may affect individual members of the Classes and Subclasses. Common questions for the Classes and Subclasses include, but are not limited to, the following:

- a. Whether Defendant imposed OD Fees on debit card transactions when those transactions would not have overdrawn the account;
- b. Whether Defendant's imposition of overdraft fees on transactions that did not overdraw accounts breached its contract with consumers;
- c. Whether Defendant's imposition of overdraft fees that did not overdraw accounts result in additional COD fees;
- d. Whether Defendant's imposition of overdraft fees that did not overdraw accounts result in additional fees on transactions of less than \$5;

- e. Whether Defendant developed and engaged in an unlawful practice that mischaracterized or concealed its true overdraft fee practices; and
- f. Whether Plaintiff and the other members of the Classes and Subclasses are entitled to damages and injunctive relief.

47. Absent a class action, most members of the Classes and Subclasses would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

48. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Classes and Subclasses he seeks to represent. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Classes and Subclasses and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Classes and Subclasses.

49. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Classes and Subclasses, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and Subclasses and making injunctive or corresponding declaratory relief appropriate for the Classes and Subclasses as a whole.

COUNT I
Breach of Contract
(On behalf of Plaintiff and the Positive Balance Class and Subclass)

50. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

51. Plaintiff, as well as the other members of the Positive Balance Class and Subclass, have contracted with PNC for bank account deposit, checking, ATM, and debit card services.

52. PNC breached promises included in the account documents as described herein when it charged overdraft fees on transactions that did not overdraw checking accounts.

53. No contract provision authorizes PNC to charge OD Fees that do not bring the account into a negative balance. Rather, the contract only authorizes PNC to charge OD Fees on transactions for which sufficient funds did not exist at the time of authorization.

54. Therefore, PNC breached the terms of its account documents by charging OD Fees to Plaintiff and the other members of the Positive Balance Class and Subclass on transactions that were authorized into a sufficient available balance, but whose available balances were allegedly insufficient at the time the transactions were settled.

55. Plaintiff and the other members of the Positive Balance Class and Subclass have performed all, or substantially all, of the obligations imposed on them under the contract.

56. Plaintiff and the other members of the Positive Balance Class and Subclass have sustained damages as a result of PNC's breach of the contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Positive Balance Class and Subclass, respectfully requests that this Court enter an Order:

- a. Certifying the Positive Balance Class and Subclass as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's OD Fee policies and practices to be in breach of its contracts with Plaintiff and the Positive Balance Class and Subclass;

- c. Ordering PNC to immediately cease the wrongful conduct set forth above and enjoining PNC from continuing to charge OD Fees on transactions that do not actually overdraw accounts;
- d. Restitution of all OD Fees paid to PNC by Plaintiff and the Positive Balance Class and Subclass as a result of the wrongs alleged herein in an amount to be determined at trial;
- e. Pre-judgment interest at the maximum rate permitted by applicable law;
- f. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- g. awarding such further and other relief as the Court deems just and equitable.

COUNT II

Breach of Contract

(On behalf of Plaintiff and the COD Fee Class and Subclass)

57. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

58. Plaintiff, as well as the other members of the COD Fee Class and Subclass, have contracted with PNC for bank account deposit, checking, ATM, and debit card services.

59. PNC breached promises included in the account documents as described herein when it charged COD Fees as a result of overdraft fees on transactions that did not bring the account into a negative balance.

60. No contract provision authorizes PNC to charge COD Fees as a result of OD Fees that do not bring the account into a negative balance. Rather, the contract only authorizes PNC to charge COD Fees following an overdraft as a result of transactions for which sufficient funds did not exist at the time of authorization.

61. Therefore, PNC breached the terms of its account documents by charging COD Fees on transactions that were authorized into a sufficient available balance, but whose available balances were allegedly insufficient at the time the transactions were settled.

62. Plaintiff and the other members of the COD Fee Class and Subclass have performed all, or substantially all, of the obligations imposed on them under the contract.

63. Plaintiff and the other members of the COD Fee Class and Subclass have sustained damages as a result of PNC's breach of the contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed COD Fee Class and Subclass, respectfully requests that this Court enter an Order:

- a. Certifying the COD Fee Class and Subclass as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's COD Fee policies and practices to be in breach of its contracts with Plaintiff and the COD Fee Class and Subclass;
- c. Ordering PNC to immediately cease the wrongful conduct set forth above and enjoining PNC from charging excessive COD Fees as a result of invalid OD Fees;
- d. Restitution of all COD Fees paid to PNC by Plaintiff and the COD Fee Class and Subclass as a result of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual and punitive damages in an amount to be determined at trial;
- f. Pre-judgment interest at the maximum rate permitted by applicable law;

- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

COUNT III

Breach of Contract

(On behalf of Plaintiff and the \$5 Minimum Transaction Class and Subclass)

64. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

65. Plaintiff, as well as the other members of the \$5 Minimum Transaction Class and Subclass, have contracted with PNC for bank account deposit, checking, ATM, and debit card services.

66. PNC breached promises included in the account documents as described herein when it charged OD Fees on transactions of less than \$5 after all the transactions are posted for the day.

67. No contract provision authorizes PNC to charge OD Fees on transactions of less than \$5 after all the transactions are posted for the day. Rather, the contract only authorizes PNC to charge OD Fees on transactions for which sufficient funds did not exist at the time of authorization.

68. Therefore, PNC breached the terms of its account documents by charging OD Fees on transactions of less than \$5 dollars at the time the transactions were settled.

69. Plaintiff and the other members of the \$5 Minimum Transaction Class and Subclass have performed all, or substantially all, of the obligations imposed on them under the contract.

70. Plaintiff and the other members of the \$5 Minimum Transaction Class and Subclass have sustained damages as a result of PNC's breach of the contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Positive \$5 Minimum Transaction Class and Subclass, respectfully requests that this Court enter an Order:

- a. Certifying the \$5 Minimum Transaction Class and Subclass as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's policies and practices of charging OD Fees on transactions under \$5 to be in breach of its contracts with Plaintiff and the \$5 Minimum Transaction Class and Subclass;
- c. Ordering PNC to immediately cease the wrongful conduct set forth above and enjoining PNC from charging OD Fees on transactions under \$5;
- d. Restitution of all invalid OD Fees paid to PNC by Plaintiff and the \$5 Minimum Transaction Class and Subclass as a result of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual and punitive damages in an amount to be determined at trial;
- f. Pre-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

COUNT IV

**Breach of the Covenant of Good Faith and Fair Dealing
(On behalf of Plaintiff and the Classes and Subclasses)**

71. Plaintiff incorporates the preceding allegations as if fully set forth herein.

72. Plaintiff and PNC have contracted for bank account deposit, checking, ATM, and debit card services.

73. Under the law of each of the states where PNC does business, good faith is an element of every contract pertaining to the assessment of overdraft and other bank fees. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

74. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

75. PNC has breached the covenant of good faith and fair dealing through its overdraft policies as alleged herein.

76. Specifically, PNC harmed consumers, including Plaintiff and the other members of the Positive Balance Class and Subclass, by abusing its contractual discretion to extract OD Fees

on transactions that no reasonable consumer would believe could cause OD Fees, and to extract excessive and unconscionable OD Fees

77. PNC interpreted and applied contract terms in a way no reasonable consumer would anticipate when it charged Plaintiff and the other members of the Positive Balance Class and Subclass OD Fees on transactions that would have otherwise settled into a positive balance.

78. PNC interpreted and applied contract terms in a way no reasonable consumer would have anticipated when it charged Plaintiff and the other members of the COD Fee Class and Subclass COD Fees on the day after an account was determined to be negative only as a result of wrongfully pushing customers into overdraft by unauthorized OD Fees on transactions that would have settled into a positive balance.

79. PNC interpreted and applied contract terms in a way no reasonable consumer would have anticipated when it charged Plaintiff and the other members of the \$5 Minimum Transaction Class and Subclass OD Fees on transactions of less than \$5.

80. PNC abuses its contractual discretion to approve or decline overdraft transactions by programming its “matrix” to maximize overdraft fee revenue at all costs, and to repeatedly authorize transactions that result in hundreds of dollars of overdraft fees each year.

81. Plaintiff and the other members of the Classes and Subclass have performed all, or substantially all, of the obligations imposed on them under the account documents.

82. Plaintiff and the other members of the Classes and Subclasses have sustained damages as a result of PNC’s breach of the covenant of good faith and fair dealing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Classes and Subclasses, respectfully requests that this Court enter an Order:

- a. Certifying the Classes and Subclasses as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's OD Fee and COD Fee policies and practices to be in violation of its contracts with Plaintiff and the Classes and Subclasses;
- c. Ordering PNC to immediately cease the wrongful conduct set forth above and enjoining PNC from continuing to charge OD Fees on transactions that do not actually overdraw accounts, enjoining PNC from charging excessive OD Fees, and otherwise enjoining PNC from conducting business via the unlawful and unfair business acts and practices complained of herein;
- d. Restitution of all OD Fees and COD Fees paid to PNC by Plaintiff and the Classes and Subclasses as a result of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual and punitive damages in an amount to be determined at trial;
- f. Pre-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Awarding such further and other relief as the Court deems just and equitable.

COUNT V

**Violation of the Illinois Consumer Fraud and Deceptive Practices Act,
815 ILCS 505/1, *et seq.*
(On behalf of Plaintiff and the Subclasses)**

83. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

84. PNC engaged in deceptive and unfair acts or practices relating to the imposition of OD Fees, the consequent OD Fees on less-than-\$5 transaction, and the consequent COD Fees on consumers in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq. (“ICFA”).

85. The express purpose of the ICFA is to “protect consumers” “against fraud, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . .” 815 ILCS 505/1.

86. Plaintiff and the other members of the Subclasses are “consumers” within the meaning of 815 ILCS 505/1(e).

87. Defendant was engaged in “trade or commerce” as defined by 815 ILCS 505/1(f).

88. The ICFA declares unlawful “unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omissions of such material fact. . . in the conduct of any trade or commerce.”

89. PNC engaged in unfair or deceptive acts or practices or otherwise violated the ICFA by, inter alia, knowingly and intentionally employing an unfair and deceptive policy and practice of charging Plaintiff and the other members of the Positive Balance Subclass overdraft fees on transactions that would have otherwise settled into a positive balance, and misrepresenting and failing to disclose its policy and practice of charging overdraft fees on transactions that were approved and authorized into a sufficient available balance.

90. PNC also engaged in unfair, unlawful conduct, made affirmative misrepresentations, or otherwise violated the ICFA by, inter alia, abusing its discretion to interpret

undefined terms in a manner harmful to consumers and beneficial to PNC by allowing transactions to occur that should have otherwise been denied to collect excessive OD Fees.

91. In addition, PNC engaged in unfair or deceptive acts or practices or otherwise violated the ICFA by, inter alia, by programming its “matrix” to maximize overdraft fee revenue at all costs, and to repeatedly authorize transactions that result in hundreds of dollars of overdraft fees each year, despite its representation to consumers that it would exercise discretion in determining when to allow overdraft charges to occur and charge OD Fees. PNC also failed to disclose to consumers that they could be subject to hundreds of dollars in OD Fees and COD Fees annually.

92. Moreover, PNC engaged in unfair or deceptive acts or practices or otherwise violated the ICFA by, inter alia, charging COD Fees to Plaintiff and the other members of the COD Fee Subclass on the day after an account is determined to be negative because of unauthorized OD Fees that should have never been charged to begin with.

93. Furthermore, PNC engaged in unfair or deceptive acts or practices or otherwise violated the ICFA by, inter alia, charging Plaintiff and the other members of the \$5 Minimum Transaction Subclass further OD Fees on transactions of less than \$5, despite its representation to consumers that it would not do so.

94. PNC intended that Plaintiff and members of the Subclasses rely on the acts of concealment and omissions, so that Plaintiff and the members of the Subclasses would continue to incur OD and COD Fees.

95. PNC’s conduct caused Plaintiff and the members of the Subclasses to suffer ascertainable losses in the form of excessive OD and COD Fees that, but for PNC’s unfair and deceptive practices and policies described herein, would not have otherwise been imposed.

96. Plaintiff and the other members of the Subclasses are entitled to damages, treble damages, declaratory relief, injunctive relief, and reasonable attorneys' fees, as permitted by law.

97. Accordingly, Plaintiff, on behalf of himself and the Subclasses, prays for the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Classes and Subclasses, respectfully requests that this Court enter an Order:

- a. Certifying the Classes and Subclasses as defined above, appointing Plaintiff as class representative and the undersigned as class counsel;
- b. Declaring that Defendant's OD Fee and COD Fee policies and practices to be wrongful, unfair, and unconscionable;
- c. Ordering PNC to immediately cease the wrongful conduct set forth above and enjoining PNC from continuing to charge OD Fees on transactions that do not actually overdraw accounts, enjoining PNC from charging excessive OD Fees, and otherwise enjoining PNC from conducting business via the unlawful and unfair business acts and practices complained of herein;
- d. Restitution of all OD Fees and COD Fees paid to PNC by Plaintiff and the Classes and Subclasses as a result of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual and punitive damages in an amount to be determined at trial;
- f. Pre-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and

- h. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: January 28, 2020

Respectfully Submitted,

MICHAEL KOMORSKI, individually and
on behalf of classes of similarly situated
individuals

By: /s/ Eugene Turin
One of Plaintiff's Attorneys

Eugene Turin
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Chicago, IL 60601
Tel: (312) 893-7002
eturin@mcgpc.com

Attorneys for Plaintiff and the Putative Classes and Subclasses

Exhibit 1

OVERDRAFT NOTIFICATION

Applies to consumer checking and money market products except Foundation Checking

What You Need to Know about Overdrafts and Overdraft Fees

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

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection which links your account to a secondary checking, savings, money market account, credit card, personal line of credit or Choice Home Equity Line of Credit which may be less expensive than our standard overdraft practices.* To learn more, ask us about these Overdraft Protection options.

This notice explains our standard overdraft practices.

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

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to:

- 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 overdrafts, your transaction will be declined.

What fees will I be charged if PNC pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of **\$36** each time we pay an overdraft, with a limit of 4 charges per day.
- Also, a **\$7** fee may be assessed each day your account remains overdrawn for a period of 5 or more consecutive calendar days, up to a maximum of \$98. This charge is in addition to any Overdraft Item Fees or Returned Item Fees assessed.

What if I want PNC to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call **1-877-588-3605** or visit pnc.com/overdraftsolutions.

You, or any joint owner on the referenced account, have the right to revoke this choice at any time by calling 1-877-588-3605 and choosing option 1, visiting pnc.com/overdraftsolutions or by visiting your local PNC branch.

*Some accounts are not eligible to be linked as overdraft protection based on titling, product requirements or system constraints.

Exhibit 2

Business Checking

PNC Bank



For the Period 11/30/2019 to 12/31/2019

Primary Account Number: [REDACTED]

Page 1 of 6

Number of enclosures: 0

- For 24-hour banking sign on to
- PNC Bank Online Banking on pnc.com
- FREE Online Bill Pay

For customer service call 1-877-BUS-BNKG

Monday - Friday: 7 AM - 10 PM ET

Saturday & Sunday: 8 AM - 5 PM ET

Para servicio en español, 1-877-BUS-BNKG

Moving? Please contact your local branch

- ☒ Write to: Customer Service
PO Box 609
Pittsburgh, PA 15230-9738
- Visit us at PNC.com/smallbusiness
- TDD terminal: 1-800-531-1648
For hearing impaired clients only

IMPORTANT ACCOUNT CHANGE FOR ALL BUSINESS ACCOUNTS WITH TREASURY MANAGEMENT SERVICES

Effective JANUARY 1, 2020, charges for certain Treasury Management services will change. The impact of these changes on your organization will depend on the mix of services you use at PNC and your transaction volume. If applicable, the fees for some of the services may be reduced or offset by the Earning Credit for your account.

Rather than listing all the detail for all services, we would be happy to review with you the changes that are applicable to your account and to discuss other services and options that may address the evolving needs of your company. If you are interested, please contact Treasury Management Client Care (TMCC) at 1-800-669-1518

Among the changes that become effective January 1, 2020, Branch Initiated Wire fees will be impacted for Business Banking clients, including but not limited to the following:

- The fee for OUTGOING BOOK TRANSFERS will be \$70.00 each.
- The fee for DOMESTIC OUTGOING WIRE TRANSFERS will be \$90.00 each.
- The fee for INTERNATIONAL WIRE TRANSFERS (SAME CURRENCY) will be \$125.00 each.
- The fee for INCOMING FED WIRES will be \$13.00 each.
- The fee for WIRE TRANSFER MANUAL REPAIRS will be \$17.00 each.
- The fee for WIRE COPIES will be \$20.00 each.
- The fee for MAIL ADVICE will be \$12.00 each.
- The fee for a CLIENT REQUESTED CANCELLED WIRE will be \$15.00 each.

Cyber Security Awareness

Do you know what to do if you receive a fraudulent email, text or phone call that appears to come from PNC? Forward the message to PNC at abuse@pnc.com. If you responded to a fraudulent text or email, clicked on a link, opened an attachment and/or disclosed personal information, immediately change your online banking password, using another device if possible. Then contact PNC Bank's Online Banking Team at 1-800-762-2035, select 1 for personal account or 2 for a business account, then select option 3.

For the Period 11/30/2019 to 12/31/2019

Page 2 of 6

Daily Balance continued on next page

D

For the Period 11/30/2019 to 12/31/2019

Page 3 of 6

Date	Ledger balance	Date	Ledger balance	Date	Ledger balance
1/1/2019	1000	1/1/2019	1000	1/1/2019	1000
1/2/2019	1000	1/2/2019	1000	1/2/2019	1000
1/3/2019	1000	1/3/2019	1000	1/3/2019	1000
1/4/2019	1000	1/4/2019	1000	1/4/2019	1000
1/5/2019	1000	1/5/2019	1000	1/5/2019	1000
1/6/2019	1000	1/6/2019	1000	1/6/2019	1000
1/7/2019	1000	1/7/2019	1000	1/7/2019	1000
1/8/2019	1000	1/8/2019	1000	1/8/2019	1000
1/9/2019	1000	1/9/2019	1000	1/9/2019	1000
1/10/2019	1000	1/10/2019	1000	1/10/2019	1000
1/11/2019	1000	1/11/2019	1000	1/11/2019	1000
1/12/2019	1000	1/12/2019	1000	1/12/2019	1000
1/13/2019	1000	1/13/2019	1000	1/13/2019	1000
1/14/2019	1000	1/14/2019	1000	1/14/2019	1000
1/15/2019	1000	1/15/2019	1000	1/15/2019	1000
1/16/2019	1000	1/16/2019	1000	1/16/2019	1000
1/17/2019	1000	1/17/2019	1000	1/17/2019	1000
1/18/2019	1000	1/18/2019	1000	1/18/2019	1000
1/19/2019	1000	1/19/2019	1000	1/19/2019	1000
1/20/2019	1000	1/20/2019	1000	1/20/2019	1000
1/21/2019	1000	1/21/2019	1000	1/21/2019	1000
1/22/2019	1000	1/22/2019	1000	1/22/2019	1000
1/23/2019	1000	1/23/2019	1000	1/23/2019	1000
1/24/2019	1000	1/24/2019	1000	1/24/2019	1000
1/25/2019	1000	1/25/2019	1000	1/25/2019	1000
1/26/2019	1000	1/26/2019	1000	1/26/2019	1000
1/27/2019	1000	1/27/2019	1000	1/27/2019	1000
1/28/2019	1000	1/28/2019	1000	1/28/2019	1000
1/29/2019	1000	1/29/2019	1000	1/29/2019	1000
1/30/2019	1000	1/30/2019	1000	1/30/2019	1000
1/31/2019	1000	1/31/2019	1000	1/31/2019	1000

Date posted	Amount	Transaction description	Reference number

Date posted	Amount	Transaction description	Reference number

Date posted	Check number	Amount	Reference number	Date posted	Check number	Amount	Reference number

[illegible]

Debit Card Purchases continued on next page

Business Checking

For 24-hour account information, sign-on to
pnc.com/mybusiness/

For the Period 11/30/2019 to 12/31/2019

Primary Account Number: [REDACTED]

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Business Checking Account Number: [REDACTED] - continued

Debit Card Purchases

continued

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/10	20.00	8374 Debit Card Purchase II Tollway-Autorepleni 800-8247277 II	19273910082388374344
12/10	40.82	8374 Debit Card Purchase Six Flags Great Americ 847-2492133 II	19272910082388374344

POS Purchases

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ATM/Misc. Debit Card Transactions

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ACH Deductions

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12/09	118.00	ACH Web-Single E-Payment Discover 3230	00019343909058949
12/09	25.00	Corporate ACH Mobile Pmt Capital One 934139800469152	00019343908714514
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Service Charges and Fees

Date posted	Amount	Transaction description	Reference number
12/02	1.20	International POS Fee Vis 1128 Gb	49423910010377259334
12/02	10.00	Service Charge Period Ending 11/29/2019	
12/06	14.98	PNC Express Funds Fee	10377259
12/09	.15	International POS Fee Vis 1207 Gb	08126910010377259343
12/10	36.00	Overdraft Item Fee	00019343909058949
12/10	36.00	Overdraft Item Fee	00019343908714514

Service Charges and Fees continued on next page

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For the Period 11/30/2019 to 12/31/2019

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continued

[illegible]

Other Deductions continued on next page

Exhibit 3

Thursday, January 16, 2020

Business Checking XXXXXXXXXX **Available Balance:** XXXXXXXXXX

FILED DATE: 1/28/2020 9:57 AM 2020CH01060

Category	Item	Value	Unit
Total	Item 1	100	kg
	Item 2	200	kg
	Item 3	300	kg
	Item 4	400	kg

Nickname: None

Type: Business Checking

Text Banking Nickname: [REDACTED]

Address: [REDACTED]

These transactions have been submitted to us since the last business day and are not yet posted to your account. When they have posted, they will be reflected in your Posted Transactions. Pending items may affect your Available Balance and are not a statement of your account.

Date	Description	Withdrawals	Deposits

[illegible]

[illegible]

[illegible]

11/20/2019	ATM DEPOSIT 96721910 DEPOSIT 1 WINSTON PLAZA MELROSE PARK IL		\$290.00	\$10.61
11/20/2019	OVERDRAFT ITEM FEE	\$36.00		-\$279.39
11/19/2019	CONTINUOUS OD CHARGE - 01 DAY	\$7.00		-\$243.39
11/19/2019	ACH WEBSINGLE XXXXX1610 TJX REWARDS CC TJX EPAY	\$35.00		-\$236.39
11/19/2019	OVERDRAFT ITEM FEE	\$36.00		-\$201.39
11/18/2019	CONTINUOUS OD CHARGE - 01 DAY	\$7.00		-\$165.39
11/18/2019	ACH WEB-RECUR 2411370 T-MOBILE PCS SVC	\$193.36		-\$158.39
11/18/2019	DEBIT CARD PURCHASE XXXXX8374 UBER TRIP HELP.UBER.C CA	\$34.90		\$34.97
11/18/2019	DEBIT CARD PURCHASE XXXXX8374 IL TOLLWAYAUTOREPLENI XXXXX7277 IL	\$20.00		\$69.87
11/18/2019	ONLINE TRANSFER TO XXXXX0919	\$5.00		\$89.87
11/18/2019	DEBIT CARD PURCHASE XXXXX8374 SIX FLAGS GREAT AMERIC XXXXX2133 IL	\$40.82		\$94.87
11/18/2019	DEBIT CARD PURCHASE XXXXX8374 STARBUCKS PLEASANT PRA PLEASANT PR WI	\$9.66		\$135.69
11/18/2019	ATM DEPOSIT 90765580 DEPOSIT 3556 NASHLAND CHICAGO IL		\$147.00	\$145.35
11/18/2019	ONLINE TRANSFER FROM XXXXX0919		\$2.53	-\$1.65
11/18/2019	ONLINE TRANSFER FROM XXXXX0919		\$70.00	-\$4.18
11/18/2019	OVERDRAFT ITEM FEE	\$36.00		-\$74.18
11/15/2019	RECURRING DEBIT CARD XXXXX9319 ESPN Plus XXXXX1800 NY	\$4.99		-\$38.18
11/15/2019	OVERDRAFT ITEM FEE	\$36.00		-\$33.19
11/14/2019	POS PURCHASE POS66660001 1469588 SHELL SERVICE STONE PARK IL	\$47.33		\$2.81
11/14/2019	POS PURCHASE POS12518201 1477237 TA CHICAGO NOR RUSSELL IL	\$28.92		\$50.14
11/14/2019	DEBIT CARD PURCHASE XXXXX8374 TA # 30 WADSWORTH RUSSELL IL	\$5.11		\$79.06
11/14/2019	DEBIT CARD PURCHASE XXXXX8374 CHIPOTLE 2820 PLEASANT PR WI	\$12.45		\$84.17
11/14/2019	RECURRING DEBIT CARD XXXXX9318 XSPORT BROADWAY XXXXX1450 IL	\$59.00		\$96.62
11/14/2019	DEBIT CARD PURCHASE XXXXX8374 IL TOLLWAYAUTOREPLENI XXXXX7277 IL	\$20.00		\$155.62
11/14/2019	DEBIT CARD PURCHASE XXXXX8374 STARBUCKS STORE 23002 SCHAUMBURG IL	\$14.39		\$175.62
[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]

FILED DATE: 1/28/2020 9:57 AM 2020CH01060

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FILED DATE: 1/28/2020 9:57 AM 2020CH01060

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit 4

Business Checking

PNC Bank



For the Period 11/01/2019 to 11/29/2019

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Number of enclosures: 0

- For 24-hour banking sign on to
- PNC Bank Online Banking on pnc.com
- FREE Online Bill Pay

For customer service call 1-877-BUS-BNKG

Monday - Friday: 7 AM - 10 PM ET

Saturday & Sunday: 8 AM - 5 PM ET

Para servicio en español, 1-877-BUS-BNKG

Moving? Please contact your local branch

- ☒ Write to: Customer Service
PO Box 609
Pittsburgh, PA 15230-9738
- Visit us at PNC.com/smallbusiness
- TDD terminal: 1-800-531-1648
- For hearing impaired clients only

**IMPORTANT ACCOUNT CHANGE FOR ALL BUSINESS ACCOUNTS
WITH TREASURY MANAGEMENT SERVICES**

Effective JANUARY 1, 2020, charges for certain Treasury Management services will change. The impact of these changes on your organization will depend on the mix of services you use at PNC and your transaction volume. If applicable, the fees for some of the services may be reduced or offset by the Earning Credit for your account.

Rather than listing all the detail for all services, we would be happy to review with you the changes that are applicable to your account and to discuss other services and options that may address the evolving needs of your company. If you are interested, please contact Treasury Management Client Care (TMCC) at 1-800-669-1518

Among the changes that become effective January 1, 2020, Branch Initiated Wire fees will be impacted for Business Banking clients, including but not limited to the following:

The fee for OUTGOING BOOK TRANSFERS will be \$70.00 each.

The fee for DOMESTIC OUTGOING WIRE TRANSFERS will be \$90.00 each.

The fee for INTERNATIONAL WIRE TRANSFERS (SAME CURRENCY) will be \$125.00 each.

The fee for INCOMING FED WIRES will be \$13.00 each.

The fee for WIRE TRANSFER MANUAL REPAIRS will be \$17.00 each.

The fee for WIRE COPIES will be \$20.00 each.

The fee for MAIL ADVICE will be \$12.00 each.

The fee for a CLIENT REQUESTED CANCELLED WIRE will be \$15.00 each.

Cyber Security Awareness

Do you know what to do if you receive a fraudulent email, text or phone call that appears to come from PNC? Forward the message to PNC at abuse@pnc.com. If you responded to a fraudulent text or email, clicked on a link, opened an attachment and/or disclosed personal information, immediately change your online banking password, using another device if possible. Then contact PNC Bank's Online Banking Team at 1-800-762-2035, select 1 for personal account or 2 for a business account, then select option 3.

Business Checking

For 24-hour account information, sign-on to
pnc.com/mybusiness/

For the Period 11/01/2019 to 11/29/2019

Business Checking Account Number: [REDACTED] - continued

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Holidays Can Bring Increased Scams

Watch out for Phishing, Vishing, and SMiShing scams, which often increase during the busy holiday season. These scams target potential victims via email, telephone, and text message, and are social engineering attempts to harvest sensitive personal information or to install malware onto your computer or mobile device. If a message looks suspicious, do not respond to it and do not open attachments and don't click links. Forward the message to PNC at abuse@pnc.com.

Business Checking Summary

Account number: [REDACTED]

Overdraft Protection has not been established for this account.
Please contact us if you would like to set up this service.

Balance Summary

Beginning balance	Deposits and other additions	Checks and other deductions	Ending balance
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		Average ledger balance	Average collected balance
		[REDACTED]	[REDACTED]

Overdraft and Returned Item Fee Summary

	Total for this Period	Total Year to Date
Total Overdraft Item Fees (OD)	144.00	288.00
Total Continuous Overdraft Fees (COD)	14.00	14.00
Total Overdraft Fees	158.00	302.00

Deposits and Other Additions

Description	Items	Amount
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Checks and Other Deductions

Description	Items	Amount
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Daily Balance

Date	Ledger balance	Date	Ledger balance	Date	Ledger balance
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

For the Period 11/01/2019 to 11/29/2019

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Date posted	Amount	Transaction description	Reference number
██████████	██████████	██████████	██████████

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	

Date posted	Amount	Transaction description	Reference number
12/1/2018	100.00	Payment from customer	1001
12/2/2018	50.00	Payment from customer	1002
12/3/2018	75.00	Payment from customer	1003
12/4/2018	25.00	Payment from customer	1004
12/5/2018	150.00	Payment from customer	1005
12/6/2018	30.00	Payment from customer	1006
12/7/2018	40.00	Payment from customer	1007
12/8/2018	60.00	Payment from customer	1008
12/9/2018	80.00	Payment from customer	1009
12/10/2018	90.00	Payment from customer	1010

Date posted	Check number	Amount	Reference number	Date posted	Check number	Amount	Reference number

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	

Debit Card Purchases continued on next page

Business Checking Account Number: [REDACTED] - continued

Debit Card Purchases

continued

Date posted	Amount	Transaction description	Reference number
01/01/2020	1000.00	Initial deposit	001
01/02/2020	500.00	Withdrawal	002
01/03/2020	750.00	Deposit	003
01/04/2020	250.00	Withdrawal	004
01/05/2020	1500.00	Deposit	005
01/06/2020	300.00	Withdrawal	006
01/07/2020	400.00	Deposit	007
01/08/2020	600.00	Withdrawal	008
01/09/2020	800.00	Deposit	009
01/10/2020	1200.00	Withdrawal	010
01/11/2020	900.00	Deposit	011
01/12/2020	1100.00	Withdrawal	012
01/01/2021	1300.00	Deposit	013
01/02/2021	700.00	Withdrawal	014
01/03/2021	1000.00	Deposit	015
01/04/2021	400.00	Withdrawal	016
01/05/2021	1600.00	Deposit	017
01/06/2021	500.00	Withdrawal	018
01/07/2021	900.00	Deposit	019
01/08/2021	1100.00	Withdrawal	020
01/09/2021	1300.00	Deposit	021
01/10/2021	700.00	Withdrawal	022
01/11/2021	1000.00	Deposit	023
01/12/2021	1200.00	Withdrawal	024
01/01/2022	1400.00	Deposit	025
01/02/2022	800.00	Withdrawal	026
01/03/2022	1100.00	Deposit	027
01/04/2022	600.00	Withdrawal	028
01/05/2022	1700.00	Deposit	029
01/06/2022	900.00	Withdrawal	030
01/07/2022	1200.00	Deposit	031
01/08/2022	1400.00	Withdrawal	032
01/09/2022	1600.00	Deposit	033
01/10/2022	1000.00	Withdrawal	034
01/11/2022	1300.00	Deposit	035
01/12/2022	1500.00	Withdrawal	036
01/01/2023	1700.00	Deposit	037
01/02/2023	1100.00	Withdrawal	038
01/03/2023	1400.00	Deposit	039
01/04/2023	1600.00	Withdrawal	040
01/05/2023	1800.00	Deposit	041
01/06/2023	1200.00	Withdrawal	042
01/07/2023	1500.00	Deposit	043
01/08/2023	1700.00	Withdrawal	044
01/09/2023	1900.00	Deposit	045
01/10/2023	1300.00	Withdrawal	046
01/11/2023	1600.00	Deposit	047
01/12/2023	1800.00	Withdrawal	048
01/01/2024	2000.00	Deposit	049
01/02/2024	1400.00	Withdrawal	050
01/03/2024	1700.00	Deposit	051
01/04/2024	1900.00	Withdrawal	052
01/05/2024	2100.00	Deposit	053
01/06/2024	1500.00	Withdrawal	054
01/07/2024	1800.00	Deposit	055
01/08/2024	2000.00	Withdrawal	056
01/09/2024	2200.00	Deposit	057
01/10/2024	1600.00	Withdrawal	058
01/11/2024	1900.00	Deposit	059
01/12/2024	2100.00	Withdrawal	060
01/01/2025	2300.00	Deposit	061
01/02/2025	1700.00	Withdrawal	062
01/03/2025	2000.00	Deposit	063
01/04/2025	2200.00	Withdrawal	064
01/05/2025	2400.00	Deposit	065
01/06/2025	1800.00	Withdrawal	066
01/07/2025	2100.00	Deposit	067
01/08/2025	2300.00	Withdrawal	068
01/09/2025	2500.00	Deposit	069
01/10/2025	1900.00	Withdrawal	070
01/11/2025	2200.00	Deposit	071
01/12/2025	2400.00	Withdrawal	072
01/01/2026	2600.00	Deposit	073
01/02/2026	2000.00	Withdrawal	074
01/03/2026	2300.00	Deposit	075
01/04/2026	2500.00	Withdrawal	076
01/05/2026	2700.00	Deposit	077
01/06/2026	2100.00	Withdrawal	078
01/07/2026	2400.00	Deposit	079
01/08/2026	2600.00	Withdrawal	080
01/09/2026	2800.00	Deposit	081
01/10/2026	2200.00	Withdrawal	082
01/11/2026	2500.00	Deposit	083
01/12/2026	2700.00	Withdrawal	084
01/01/2027	2900.00	Deposit	085
01/02/2027	2300.00	Withdrawal	086
01/03/2027	2600.00	Deposit	087
01/04/2027	2800.00	Withdrawal	088
01/05/2027	3000.00	Deposit	089
01/06/2027	2400.00	Withdrawal	090

POS Purchases

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

POS Purchases continued on next page

FILED DATE: 1/28/2020 9:57 AM 2020CH01060


Primary Account Number: [REDACTED]
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POS Purchases *continued*[illegible][illegible]

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	

FILED DATE: 1/28/2020 9:57 AM 2020CH01060

Business Checking

 For 24-hour account information, sign-on to
pnc.com/mybusiness/

For the Period 11/01/2019 to 11/29/2019

Primary Account Number [REDACTED]

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Business Checking Account Number: [REDACTED] - continued

ACH Deductions *continued*

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Service Charges and Fees

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11/15	36.00	Overdraft Item Fee	POS66660001 1469588
11/18	36.00	Overdraft Item Fee	42585910010377259319
11/18	7.00	Continuous OD Charge - 01 Day	I-GEN119111800016339
11/19	36.00	Overdraft Item Fee	00019322909292432
11/19	7.00	Continuous OD Charge - 01 Day	I-GEN119111900012682
11/20	36.00	Overdraft Item Fee	00019322910641974
11/27	33.28	PNC Express Funds Fee	10377259

Other Deductions

Date posted	Amount	Transaction description	Reference number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Detail of Services Used During Current Period

Note: The total charge for the following services will be posted to your account on 12/02/2019 and will appear on your next statement as a single line item entitled Service Charge Period Ending 11/29/2019.

Description	Volume	Amount	
Account Maintenance Charge	1	10.00	
Combined Transactions	20	.00	Included in Account
ACH Debits	12	.00	Included in Account
Checks Paid	2	.00	Included in Account
Deposited Item - Consolidated	5	.00	Included in Account
Deposit Tickets Processed	1	.00	Included in Account
Total For Services Used This Period		10.00	
Total Service Charge		10.00	

FILED DATE: 1/28/2020 9:57 AM 2020CH01060

Exhibit 5

Business Checking Accounts and Related Charges**Effective December 8, 2019**

All Markets. All prices are subject to change. Products, services and prices may vary by market.

**Account Opening and Usage****BUSINESS CHECKING****Minimum Deposit to Open** \$100.00**Monthly Account Maintenance Fee** \$10.00*No monthly account maintenance fee for the first three months after your account is opened***No Monthly Account Maintenance Fee if you meet any one of the following:**

- Maintain **\$500 average monthly collected balance** in this account

Relationship Pricing and Information on Account Linking for Purposes of Avoiding the Monthly Account Maintenance Fee¹

PNC will link eligible PNC business credit cards and PNC Merchant Services® to your business checking account only as described below.

Use a linked PNC business credit card¹ to make a **minimum of \$500 in eligible purchases**² in the billing cycle ending immediately prior to the date the monthly account maintenance fee is to be assessed to the checking account.

Eligible PNC business credit cards will be automatically linked by PNC to this business checking account *if it is using the same primary name*. If you have multiple business checking accounts using the same primary name as the eligible business credit card, PNC will choose which business checking account to link based on the following factors, in order of priority: a) the business checking account open the longest, and b) the business checking account with the lowest account number. **If PNC cannot automatically link a business credit card based on these factors, you must request that PNC link it.**

- Maintain a PNC Merchant Services account¹ and generate a **minimum of \$500 in qualifying monthly processing deposits**³. The business checking account receiving PNC Merchant Services processing deposits is the only account eligible to avoid the Monthly Account Maintenance Fee¹

Except as described above, PNC will only link accounts at your direction. If you have not directed PNC to link your accounts, the accounts will not be linked and you will not receive relationship benefits on your unlinked PNC accounts.

Monthly Transactions at no charge 150*Based on the aggregated volume of deposits, deposited items, paid items, and ACH credits and debits received*

- Fee for each additional transaction over 150... \$0.50

Monthly Cash Deposit Volume at no charge \$5,000*For cash deposited over-the-counter, in the night depository or via Quick Deposit*

- Fee for additional cash deposited over \$5,000... \$0.25 per \$100

BUSINESS CHECKING PLUS**Minimum Deposit to Open** \$100.00**Monthly Account Maintenance Fee** \$20.00*No monthly account maintenance fee for the first three months after your account is opened***No Monthly Account Maintenance Fee if you meet any one of the following:**

- Maintain **\$5,000 average monthly collected balance** in this account

Relationship Pricing and Information on Account Linking for Purposes of Avoiding the Monthly Account Maintenance Fee¹

PNC will link eligible PNC business checking, PNC business money market savings, PNC business credit cards and PNC Merchant Services, to your Business Checking Plus account only as described below.

Maintain **\$20,000 average combined collected balance in linked checking** (excludes Corporate Checking and Core Commercial Checking) and money market accounts¹

We will only link eligible deposit accounts at your direction. If you have not directed PNC to link another account to your PNC business checking account, the accounts will not be linked and you will not receive any applicable waivers of monthly service charges or other relationship benefits on your unlinked PNC accounts.

- Use a linked PNC business credit card¹ to make a **minimum of \$5,000 in eligible purchases**² in the billing cycle ending immediately prior to the date the Monthly Account Maintenance Fee is to be assessed to the checking account.

Eligible PNC business credit cards will be automatically linked by PNC to this business checking account *if it is using the same primary name*. If you have multiple business checking accounts using the same primary name as the eligible business credit card, PNC will choose which business checking account to link based on the following factors, in order of priority: a) the business checking account open the longest, and b) the business checking account with the lowest account number. **If PNC cannot automatically link a business credit card based on these factors, you must request that PNC link it.**

- Maintain a PNC Merchant Services account¹ and generate a **minimum of \$5,000 in qualifying monthly processing deposits**³. The business checking account receiving PNC Merchant Services processing deposits is the only account eligible to avoid the Monthly Account Maintenance Fee

Except as described above, PNC will only link accounts at your direction. If you have not directed PNC to link your accounts, the accounts will not be linked and you will not receive relationship benefits on your unlinked PNC accounts.

Monthly Transactions at no charge 500*Based on the aggregated volume of deposits, deposited items, paid items, and ACH credits and debits received*

- Fee for each additional transaction over 500... \$0.50

Monthly Cash Deposit Volume at no charge \$10,000*For cash deposited over-the-counter, in the night depository or via Quick Deposit*

- Fee for additional cash deposited over \$10,000 \$0.25 per \$100

Additional Benefits:

- Cash Flow Insight Base Monthly Fee No charge
- Personal Checking for Business Owners:

- Performance Checking or Virtual Wallet with Performance Spend with No Monthly Maintenance Fee

We will only waive the monthly account maintenance fee on your eligible personal checking account at your direction. **If you do not direct PNC to apply a waiver to your eligible personal checking account, a waiver will not be applied.**

NON-PROFIT CHECKING

Available only to those customers qualified as a Non-Profit/Not-for-Profit organization

Minimum Deposit to Open \$100.00**Monthly Account Maintenance Fee** \$5.00*No monthly account maintenance fee for the first three months after your account is opened***No Monthly Account Maintenance Fee if you do the following:**

- Maintain **\$500 average monthly collected balance** in this account

Monthly Transactions at no charge 150*Based on the aggregated volume of deposits, deposited items, paid items, and ACH credits and debits received*

- Fee for each additional transaction over 150 \$0.50

Monthly Cash Deposit Volume at no charge \$5,000
For cash deposited over-the-counter, in the night depository or via Quick Deposit

- Fee for additional cash deposited over \$5,000.....\$0.25 per \$100

ANALYSIS BUSINESS CHECKING**Minimum Deposit to Open** \$100.00**Earnings Credit**

An Earnings Credit is applied to reduce or offset the monthly account maintenance fee and certain transaction fees. The earnings credit rate used may vary based on the average monthly collected balance of the account(s). The earnings credit rate on your account is subject to change without notice.

Please call 1-877-BUS-BNKG (1-877-287-2654) for current rate and balance tier information or for an example of how the earnings credit is applied to the balances in your account.

Monthly Account Maintenance Fee \$20.00**Monthly Transaction Fees**

Deposit Ticket.....	\$0.75 per ticket
Check Paid.....	\$0.20 per check
ACH Credit/Debit Received.....	\$0.15 per item
Item Deposited.....	\$0.15 per item
Cash Deposited:	
Over-the-Counter.....	\$0.12 per \$100
Quick Deposit, Night Deposit and Merchant Vault.....	\$0.10 per \$100

Account Balance Fee Varies*

*The Account Balance Fee covers various expenses incurred by PNC for servicing deposit accounts. The Account Balance Fee will appear in the Analyzed Charges section of your monthly analysis statement and is assessed monthly on the average ledger balance in the account (per \$100) and may be offset by Earnings Credit. The Account Balance Fee is variable and subject to change without notice. Questions? Contact your PNC Business Banker.

Sweep Checking Monthly Fee \$30.00

A convenient way for excess balances in your account to earn a competitive rate of interest while maintaining the security of FDIC insurance to the maximum permitted by law. For current rates, call 1-877-BUS-BNKG (1-877-287-2654).

BUSINESS INTEREST CHECKING**Minimum Deposit to Open** \$100.00**Monthly Account Maintenance Fee** \$20.00

No monthly account maintenance fee for the first three months after your account is opened

No Monthly Account Maintenance Fee if you do the following:

- Maintain **\$5,000 average monthly collected balance** in this account

Monthly Transactions at no charge 150

Based on the aggregated volume of deposits, deposited items, paid items, and ACH credits and debits received

- Fee for each additional transaction over 150.....\$0.50

Monthly Cash Deposit Volume at no charge \$5,000

For cash deposited over-the-counter, in the night depository or via Quick Deposit

- Fee for additional cash deposited over \$5,000.....\$0.25 per \$100

Balance Earns Interest

This account offers a variable interest rate which is subject to change without notice. Please call 1-877-BUS-BNKG (1-877-287-2654) for current interest rate, APY and non-promotional balance tier information. An Earnings Credit does not apply.

TREASURY ENTERPRISE PLAN**Minimum Deposit to Open** \$100.00**Monthly Account Maintenance Fee** \$50.00

No monthly account maintenance fee for the first three months if your account is opened on or after 02/01/2019.

No Monthly Account Maintenance Fee if you do the following:

- Maintain **\$30,000 average monthly collected balance**⁴ in this account

Monthly Transactions⁴ at no charge 2,500

Based on the aggregated volume of deposits, deposited items, paid items, and ACH credits and debits received

- Fee for each additional transaction over 2,500.....\$0.50

Monthly Cash Deposit Volume⁴ at no charge ... \$50,000

For cash deposited over-the-counter, in the night depository or via Quick Deposit

- Fee for additional cash deposited over \$50,000.....\$0.25 per \$100

Earnings Credit

A standard Treasury Management Earnings Credit is applied only to the average monthly collected balances in excess of \$50,000 to reduce or offset certain transaction fees. For current rates, call 1-800-762-2117.

Account Balance Fee Varies*

*The Account Balance Fee covers various expenses incurred by PNC for servicing deposit accounts. The Account Balance Fee will appear in the Analyzed Charges section of your monthly analysis statement and is assessed monthly on the average ledger balance in the account (per \$100) and may be offset by Earnings Credit. The Account Balance Fee is variable and subject to change without notice. Questions? Contact your PNC Business Banker.

4 Beneficiary Checking Accounts – Treasury Enterprise Plan:

The monthly account maintenance fee will be waived on up to 4 beneficiary checking accounts. The monthly average collected balance, transaction, and cash deposited volumes are aggregated for the master and 4 beneficiary accounts to determine Monthly Account Maintenance Fee, transaction and cash deposit fee amounts.

INVESTMENT OPTIONS**Options 1:****Treasury Enterprise Plan – Premium Business Money Market Account**⁵

- Includes same transaction features as Premium Business Money Market
- No Monthly Account Maintenance Fee

The variable rate on your Premium Business Money Market deposit account is subject to change without notice. For current interest rate, APY and non-promotional balance tier information, call 1-877-BUS-BNKG (1-877-287-2654).

Options 2:**Treasury Enterprise Plan – Business Sweep Account**⁶

- Balances swept from your Treasury Enterprise Plan account will earn interest in a money market account while maintaining the security of FDIC insurance to the maximum permitted by law.
 - No additional Monthly Account Maintenance Fee
- The interest rate is the same across all balance tiers. For current interest rates, call 1-877-BUS-BNKG (1-877-287-2654).

Treasury Enterprise Plan Information Reporting – PINACLE® Express⁷

PINACLE Express functionality included at no additional charge⁷

- Previous day reporting
- Current day reporting
- Check management (Stop Payment and Check Inquiry)
- Image On-Demand
- Account transfer
- Event Notification
- Client Service
- Optional free services include access to Online Statements and selected Special Reports

Additional PINACLE Express functionality is available, which can include the following (additional fees apply⁷):

- Funds Transfer (Wire)
- ACH
- A/R Advantage (Lockbox)
- Positive Pay and Issue Maintenance
- Reverse Positive Pay
- Deposit On-Site
- Escrow Services
- Special Reports: EDI

For standard PINACLE Express services and specific pricing information, contact your Business Banker, Business Advisor or Treasury Management Officer.

IOLTA / IOTA / IOLA / MJ IOTA / IBRETA / MAHT

Minimum Deposit to Open \$0.00

Monthly Account Maintenance Fee No charge

Charges for the use of products and services in support of managing this account, which are not reasonable service charges according to your state's rules and regulations, will be the responsibility of the firm or company handling the account. Charges will be assessed on a monthly analysis statement or charged to the firm or company's billing account.

PREMIUM BUSINESS MONEY MARKET

Minimum Deposit to Open \$100.00

Monthly Account Maintenance Fee \$12.00

No Monthly Account Maintenance Fee if you do the following:

- Maintain **\$2,500 average monthly collected balance** in this account

Monthly Transaction Fees

- Check Paid at no charge** 6
- Fee for each additional check paid over 6⁶ \$25.00
- Items Deposited at no charge** 30
- Fee for each additional item deposited over 30 \$0.50

Monthly Cash Deposited at no charge \$5,000

- Fee for additional cash deposited over \$5,000 \$0.40 per \$100

Balance Earns Interest

This account offers a variable interest rate which is subject to change without notice. Please call 1-877-BUS-BNKG (1-877-287-2654) for current interest rate, APY and non-promotional balance tier information.

Account Linking and Information Sharing: Important Notice to All Products Included Here

When you link accounts with other accounts, any account owner on any linked accounts may have access to limited information about any of the linked accounts. This is true even if they are not a signer on the linked account; also, any signer added later to one of the linked accounts will be able to see the limited information. The limited information that may be available includes the existence of the account and information to determine if the criteria for fee waiver benefits has been met, such as: the balance of the account, the total dollar amount of PNC Merchant Services deposits processed per monthly statement cycle and the total dollar amount of eligible monthly PNC business credit card(s) purchases.

ATM Transaction Fees

ATM transaction fees are assessed per withdrawal, deposit, transfer or balance inquiry. Please note that not all ATMs accept deposits.

ATM Transaction Fee at PNC Bank ATMs No charge

ATM Transaction Fee at non-PNC Bank ATMs:

In the United States, Canada, Puerto Rico and the U.S. Virgin Islands:

- Business Checking, Business Interest
- Checking, Premium Business Money Market
- and Non-Profit Checking \$3.00 each
- All other accounts No charge

In all other countries

- Business Checking Business Interest
- Checking, Premium Business Money Market
- and Non-Profit Checking \$5.00 each
- All other accounts No charge

Number of Reimbursements for non-PNC**Bank ATM Fees⁸**

- Business Checking and Business
- Interest Checking 2 per statement period

The fee for the first two domestic or international non-PNC ATM transactions made during the statement period will be reimbursed to your account at the end of the statement period. Fees in excess of two per statement period will not be reimbursed.

- Business Checking Plus, Treasury Enterprise Plan, Analysis
- Business Checking No charge

- Non Profit Checking and Premium Business Money
- Market Not reimbursed

Other Financial Institutions' ATM Surcharge Fees

There will be no reimbursement of Other Financial Institutions' ATM Surcharge Fees on any account.

Cash Services and Supplies**Over-the-Counter Cash Furnished**

- Business Checking Plus and Non-Profit
- Checking:
- \$30,000 or less No charge
- Over \$30,000 \$2.50 per \$1,000
- All other accounts \$2.50 per \$1,000

Over-the-Counter Coin Furnished

- Business Checking Plus and Non-Profit
- Checking:
- 100 rolls or less No charge
- Over 100 rolls \$0.15 per roll
- All other accounts \$0.15 per roll

Bulk Currency Furnished \$2.50 per \$1,000

Currency Straps

- Business Checking Plus and Non-Profit
- Checking No charge
- All other accounts \$2.75 per box

Currency Envelopes

- Business Checking Plus and Non-Profit
- Checking No charge
- All other accounts \$8.50 per box

Coin Wrappers No charge

- Business Checking Plus and Non-Profit
- Checking No charge
- All other accounts \$2.75 per box

Additional Features**Night Drop Bag Processing**

All-accounts\$3.00 per bag

Online Banking Statement..... No charge**Paper Statement (Check Safekeeping)***Check images are retained by PNC.*

Business Checking, Business Checking Plus

and Non Profit Checking\$2.00 per month

Analysis Business Checking, Business Interest Checking

Treasury Enterprise Plan, IOLTA, and Premium Business

Money Market.....No Charge

Paper Statement with Check Images*Paper statement with images (both front and back side) of available canceled checks or replacement checks. Canceled checks are not returned. Fee is charged monthly, even if there are no canceled checks that month.*

Analysis Business Checking, Treasury Enterprise Plan, IOLTA.....No charge

All other accounts\$3.00 per month

*See "Additional Services and Options" for other services and related charges.**PNC offers reformatted statements to customers with visual impairments at no charge. If you need such an accommodation, please contact PNC at 1-877-BUS-BNKG (1-877-287-2654).***FOOTNOTES:**

- 1 A maximum of 10 eligible accounts may be linked to a business checking account in each of the business checking, money market, business credit card and merchant services categories. Each eligible account may only be linked to one business checking account. Some accounts may not be eligible to be linked based on titling structure, product type or other constraints. Subject to credit approval.
- 2 PNC linked business credit card eligible purchases are purchases of goods or services made by you or your authorized user with an eligible linked business credit card account and includes balance transfers and convenience checks that are not subject to the cash advance rate. Eligible purchases do not include interest, fees and charges assessed to the business credit card account, cash advance transactions (including convenience checks that are subject to the cash advance rate), and purchases made at merchants with gambling or gaming merchant category codes.
- 3 A qualifying PNC Merchant Services processing deposit is an electronic deposit made by PNC Merchant Services directly into this checking account. Transfers made from one account to another or processing deposits from other merchant services sources are not eligible to meet this requirement.
- 4 Monthly average collected balance, transaction and cash deposited volumes from this account and additional accounts are aggregated for the master and beneficiary accounts to determine monthly account maintenance fee, transaction and cash deposited fee amounts.
- 5 If either the Treasury Enterprise Plan Master account or the Master Money Market account is closed, PNC may remove the Plan benefits on any remaining accounts. Accounts that remain at a zero balance for 90 days or more may be closed by PNC.
- 6 Federal regulations prohibit you from making more than a total of 6 transfers each month to other accounts from a savings or money market account (including transfers to another account for overdraft protection) or to third parties each month by check, through point-of-sale purchase transactions with a banking card, by pre-authorized or automatic agreements, by telephone, or online. See your account agreement for more information. Other limits may apply to your account. Excessive transactions may result in changing your Business Money Market account to a Business Checking account and will be subject to the features and fees as described in the Business Checking Account and Related Charges in effect at that time.
- 7 Transaction and optional service fees may apply.
- 8 In the event PNC determines that there has been fraudulent or excessive ATM usage on the account, PNC is not obligated to reimburse any related surcharge fees, and any related reimbursements must be repaid. Surcharge fees not identified within the transaction by the originating financial institution may not be reimbursed.

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PNC Bank, National Association. Member FDIC



Business Checking Accounts and Related Charges Additional Services and Options



Effective January 1, 2020

All Markets. All prices are subject to change. Products, services and prices may vary by market.

Electronic Banking Services

PNC Bank Online Banking.....	No charge ¹
Bill Pay for Business.....	No charge ¹
Cash Flow Insight SM	
Business Checking Plus	No charge ²
All other checking	\$10.00 ²
QuickBooks® (per relationship)	\$15.00 per month
There is no additional charge for using bill pay services within QuickBooks.	
Quicken® (per relationship)	\$2.00 per month
There is no additional charge for using bill pay services within Quicken.	

Commonly Used Services

ACH Addenda Record Received/Originated ..	\$0.02 each
Audit Confirmations	
Automated Confirmation.....	\$20.00 each
Manual Confirmation.....	\$30.00 each
Banking Card Services	
Debit Card Cash Advance Fee	
At a PNC Bank branch.....	\$3.00 each
At other institutions that accept Visa.....	\$5.00 each
International Purchases Fee.....	3% of amount
Card Replacement Fee.....	\$7.50 each
Expedited Card Delivery Fee.....	\$25.00
Cashier's Check.....	\$15.00
Collection Fee.....	\$32.50 each
Counter Check ³	\$1.50 each
Credit Inquiries ³	\$30.00 each
Credit Investigations.....	\$40.00 each
Deposit Correction Fee.....	\$6.00 each
Early Account Closure Fee.....	\$25.00
Fee assessed if the account is closed within 180 days of opening	
Legal Process Charge.....	\$100.00
Fee if funds from the account are frozen or seized under orders. PNC's actual attorney fees and court costs, when applicable, are added.	
Night Drop Bag Processing Fee	
All accounts.....	\$3.00 per bag

Non-Client/PNC and Non-PNC Checks

Cashed.....	\$10.00 each
Fee applies to business customers that elect to pay this fee on behalf of non-client payees. A PNC Check Cashing Agreement is required.	

Non-Client Check Cashing Fee

This fee will be charged to the payee when cashing a check if the payee does not have a PNC Bank checking, savings, money market, certificate of deposit account (CD) or retirement money market or CD. Customers with a PNC consumer checking, savings, money market, certificate of deposit (CD) or retirement money market or CD account are not charged this fee.

For check amounts of \$25 or less.....	No charge
For check amounts greater than \$25... 2% of the check amount	(\$2.00 minimum)

Overdraft Services

Overdraft Item and Returned Item Fee.....	\$36.00 per item
An Overdraft Item fee is charged when the item is paid.	
A Returned Item (also known as Non-Sufficient Funds or NSF) fee is charged when the item is returned unpaid.	

Maximum Number of Overdraft and

Returned Item Fees.....	4 per day
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Overdraft Balance Threshold.....	\$5.00
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If the account is overdrawn by \$5.00 or less after all transactions are posted for the day, any overdraft item fees are automatically refunded.

Continuous Overdraft Fee.....	\$7.00 per day
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Fee assessed each day the account remains overdrawn for 5 or more consecutive calendar days, up to a maximum of \$98.00. This fee is in addition to any other overdraft fees assessed.

Overdraft Protection Set-Up Fee

All accounts.....	No charge
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Overdraft Protection Transfer Fee.....	No charge
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Fee for the transfer of funds from a checking, money market,⁴ credit card or line of credit to cover an overdraft

PNC Express Funds.....	2% of the check amount over \$100
	\$2.00 fee for each check amount from \$25 to \$100

PNC Express Funds provides an option for immediate availability on approved checks deposited through a PNC ATM or Mobile Banking, subject to cut off times. (For more information about cut off times, please review our Funds Availability Policy for Business Accounts.) PNC Express Funds is not eligible for check amounts less than \$25.

Remote Deposit Services

See remote deposit service agreement

Return Item Services

Return of Deposited/Cashed Items.....	\$15.00 each
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Redeposited Items

Business Checking Plus and Non-Profit Checking.....	No charge
All other checking.....	\$5.00

Other Services

Customer Buy Back.....	\$5.00 each
Extra Advice.....	\$3.00 each
Maker Information.....	\$0.30 each
Phone Call Required.....	\$6.00 each
Photocopies.....	\$4.00 each
Special Fax.....	\$4.50 each
Special Notice.....	\$1.00 each
Store Number Information.....	\$0.30 each

Stop Payment

Checks, electronic transfers, preauthorized debits and recurring preauthorized payments through Visa® Debit Card ⁴	\$33.00
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Statement Options

Online, Paper or Check Image Statements

For pricing on these statement options, please refer to the fee schedule appropriate to your specific product.

PNC offers reformatted statements to customers with visual impairments at no charge. If you need such an accommodation, please contact PNC at 1-877-BUS-BNKG (1-877-287-2654).

Dual Statement Delivery.....	\$3.00 per month
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Fee for both online and paper statements

ATM Statements (available at select ATMs)

Mini Statement at PNC Bank ATMs

Business Checking, Business Checking Plus and Non-Profit Checking.....	\$1.50 each
All other accounts.....	No charge

Statements at Non-PNC Bank ATMs

Business Checking, Business Checking Plus and Non-Profit Checking.....	\$2.50 each
All other accounts.....	No charge
Printed Analysis Statement	\$2.00 per month

Applicable only to Analysis Business Checking and Treasury Enterprise Plan. Statement can be viewed online via PINACLE or PINACLE Express at no charge.

Additional Statement Options

Interim (snapshot) or Request Statement...	\$10.00 each
Additional Cutoff Statement.....	\$10.00 each
Additional Checking Statement Copy.....	\$10.00 each

Image, Photocopy and Research Services**Self-service Requests through Online Banking**

View, print and save digital images from your current and 2 most recent statement cycles. Currently, deposits made at ATMs are not imaged for online viewing, but you may request copies of these items to be mailed or faxed to you. Note that any fee is charged per view, so be sure to save or print the item, if needed.

For checks, substitute checks, deposit tickets and Deposit Ticket Detail Lists.....	No charge
For items not immediately available within Online Banking.....	\$1.00 per item
<i>No charge for the first 3 items per statement period with Paper Statements</i>	
For items within a Deposit Ticket Detail List...	\$3.00 per item

Self-service Requests through Online Banking to Mail or Fax Items.....

\$5.00 per item

Self-service Requests by Automated Telephone to Mail or Fax Copies of Paid Checks.....

\$2.00 per item

No charge for the first 3 items per statement period with Paper Statements

Staff-Assisted Requests.....

\$5.00 per item

Fee for assistance from a Branch or Telephone Customer Service Representative to mail, fax or hand copies to you

Photocopy Requests

Statement	\$10.00 per item
Deposit.....	\$8.00 per item
Check.....	\$5.00 per item

Photocopy Reconstruction

Statement per event.....	\$10.00
Statement per item.....	\$2.25
Deposit per event.....	\$7.50
Deposit per item.....	\$2.25

Wire Transfers**Branch Initiated****Outgoing**

Book Transfer.....	\$70.00 each
Domestic.....	\$90.00 each
International	
Same Currency.....	\$125.00 each
Cross Currency.....	\$110.00 each

Incoming

Book Transfer.....	\$5.00 each
Fed Wire.....	\$13.00 each
International.....	\$20.00 each

Wire Investigations.....

\$35.00 each

Wire Transfer Manual Repair.....

\$17.00 each

Wire Copies.....

\$20.00 each

Mail Advice.....

\$12.00 each

Electronic Advice

\$3.25 each

Client Requested Canceled Wire.....

\$15.00 each

Other International Services**Collections (\$100 USD minimum amount).....**

\$25.00 per item

Incidental costs for postage, insurance, delivery charges, correspondent bank charges and exceptional expenses, if applicable, and any other costs imposed on PNC are added

International Deposited Item**Same Currency International Cash Letter Item Deposited**

U.S. currency drawn on a foreign bank..... \$30.00

Cross Currency International Cash Letter Item Deposited

Foreign currency drawn on a foreign bank..... \$30.00

Returned International Item.....

\$20.00

FOOTNOTES:

- 1 There may be fees for certain optional services available through PNC Online Banking and Bill Pay.
- 2 There may be additional fees for optional services available with Cash Flow Insight.
- 3 This fee will be directly charged to your account. An earnings credit cannot be used to offset this charge.
- 4 Federal regulations prohibit you from making more than a total of 6 transfers each month to other accounts from a savings or money market account (including transfers to another account for overdraft protection) or to third parties each month by check, through point-of-sale purchase transactions with a banking card, by pre-authorized or automatic agreements, by telephone, or online. See your account agreement for more information. Other limits may apply to your account. Excessive transactions may result in changing your Business Money Market account to a Business Checking account and will be subject to the features and fees as described in the Business Checking Account and Related Charges in effect at that time.

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EXHIBIT 2

200-46-45

Return Date: No return date scheduled
Hearing Date: 5/27/2020 10:00 AM - 10:00 AM
Courtroom Number: 2405
Location: District 1 Court
Cook County, IL

FILED
1/28/2020 12:14 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH01060

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MICHAEL KOMORSKI, individually
and on behalf of similarly situated
individuals,

Plaintiff,

v.

THE PNC FINANCIAL SERVICES
GROUP, INC., a Pennsylvania
corporation,

Defendant.

No. 2020-CH-01060 8249976

Hon. Eve M. Reilly

Cal. 7

NOTICE OF MOTION

To:

PNC Financial Services Group, Inc.
c/o Demchak William
One PNC Plaza
Tax Dept.
249 5th Ave.
Pittsburgh, PA 15222-2707

RECEIVED
FEB 08 2020
LEGAL DEPARTMENT
PITTSBURGH

On May 27, 2020 at 10:00 a.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable Eve M. Reilly or any Judge sitting in that Judge's stead, in courtroom 2405, located at the Richard J. Daley Center, 50 W. Washington St., Chicago, Illinois 60602, and present *Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery.*

Name McGuire Law, P.C.
Address 55 W. Wacker Drive, 9th Floor
Telephone (312) 893-7002

Attorney for
City
Firm ID.

Plaintiff
Chicago, IL 60601
56618

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on or before January 29, 2020 before 5:00 p.m. a copy of Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery was sent to Defendant's Agent by way of first class mail by depositing the same in a United States Mailbox.

/s/ Eugene Y. Turin
Eugene Y. Turin, Esq.

FILED DATE: 1/28/2020 12:14 PM 2020CH01060

Return Date: No return date scheduled
Hearing Date: 5/27/2020 10:00 AM - 10:00 AM
Courtroom Number: 2405
Location: District 1 Court
Cook County, IL

FILED
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MICHAEL KOMORSKI, individually)		
and on behalf of similarly situated)	No. 2020-CH-01060	8249976
individuals,)		
)		
<i>Plaintiff,</i>)	Hon. Eve M. Reilly	
)		
v.)		
)	Cal. 7	
THE PNC FINANCIAL SERVICES)		
GROUP, INC., a Pennsylvania)		
corporation,)		
)		
<i>Defendant.</i>)		

**PLAINTIFF'S MOTION FOR CLASS CERTIFICATION OR, ALTERNATIVELY,
FOR A DEFERRED CLASS CERTIFICATION RULING PENDING DISCOVERY**

Plaintiff Michael Komorski, by and through his undersigned counsel, pursuant to 735 ILCS 5/2-801, moves for entry of an order certifying the Classes and Subclasses proposed below, appointing Plaintiff as Class Representative, and appointing Plaintiff's attorneys as Class Counsel. Alternatively, Plaintiff requests, to the extent the Court determines further evidence is necessary to prove any element of 735 ILCS 5/2-801, that the Court defer consideration of this Motion pending a reasonable period to complete discovery. *See, e.g., Ballard RN Center, Inc. v. Kohll's Pharmacy & Homecare, Inc.*, 2015 IL 118644, at ¶¶ 42–43 (citing *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896–97 (7th Cir. 2011)). In support of his Motion, Plaintiff submits the following Memorandum of Law.

Dated: January 28, 2020

Respectfully Submitted,

MICHAEL KOMORSKI, individually and on
behalf of classes of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

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Eugene Y. Turin
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Attorneys for Plaintiff and the Putative Classes

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR CLASS CERTIFICATION OR, ALTERNATIEY, FOR
A DEFERRED CLASS CERTIFICATION RULING PENDING DISCOVERY**

This Court should certify a national class of all PNC checking account holders who were charged unauthorized overdraft fees ("OD Fees") on transactions for which there were sufficient funds available (the "Positive Balance Class"); all PNC checking account holders who have incurred one or more continuous overdraft fees ("COD Fee") as a result of OD Fees on transactions for which there were sufficient funds available (the "COD Fee Class"); and all PNC checking account holders who were charged OD Fees on transactions of less than \$5 after all the transactions are posted for the day (the "\$5 Minimum Transaction Subclass"), as well as Illinois subclasses of each of these nationwide classes.

Defendant, one of the largest commercial banks in the United States, with consolidated assets of over \$392 billion, has violated Illinois law through its routine practice of (a) assessing OD Fees on transactions that did not overdraw checking account available balances; and (b) abusing its discretion under the contract to repeatedly, routinely, and automatically authorize overdraft transactions even where it knew or should have known that a continued overdraft will have devastating effects. After Plaintiff learned of Defendant's wrongful conduct, he brought suit on behalf of classes and subclasses of similarly situated individuals to put a stop to Defendant's practice of assessing and collecting improper and excessive overdraft fees arising from a practice that breaches the Bank's contracts and/or is deceptive and designed to unfairly increase the Bank's fee revenue, and to obtain redress for all persons injured by its conduct.

Plaintiff alleges that Defendant's misconduct violates the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 502/1 *et seq.* ("ICFA"), as well as Breach of Contract, and Breach of the Covenant of Good Faith and Fair Dealing.

I. FACTUAL BACKGROUND

A. The Underlying Misconduct.

Through the imposition of OD fees, PNC makes several hundred million dollars a year. These fees are by definition often assessed on consumers struggling to make ends meet with minimal funds in their accounts. (Compl., ¶ 2.) Unfortunately, PNC undertakes to maximize OD Fees through a deceptive, unfair, and unconscionable assessment practices which also violate PNC's accountholder contracts – specifically, the promise to charge OD Fees only on transactions which actually overdraw an account. (Compl., ¶ 4.) Plaintiff Komorski presents a good example of PNC's crushing and punitive OD Fee policies. As happened to Plaintiff on numerous occasions, PNC charges OD Fees even when the transaction has not overdrawn an account. (Compl., ¶ 6.) For example, Plaintiff was charged two OD Fees on December 10, 2019. But, according to the monthly account statement prepared by PNC, Plaintiff's account balance was never negative for those transactions. By definition, there were always funds to "pay" that transaction – yet PNC assessed an OD Fee on it anyway. (Compl., ¶¶ 23–25.) PNC is not authorized by contract to charge OD Fees on transactions that have not overdrawn an account, but it has done so and continues do so. (Compl., ¶¶ 21, 25.) These huge cumulative fees are comprised of PNC's \$36 Overdraft Fee, which is the initial charge on supposed insufficient funds transactions, and a \$7 Continuous OD Fee if Plaintiff does not bring his account into a positive balance after paying the Bank's fees along with any transactions "covered" by the Bank. (Compl., ¶ 8.) Second, as happened to Plaintiff, PNC also charged OD fees on transactions of less than \$5 after all the transactions are posted for the day as a direct result of Defendant assessing an unauthorized OD Fee. This is another violation of the Bank's contractual promise that there is a \$5 threshold for which consumers will not be charged OD Fees. (Compl., ¶¶ 9, 32.) Defendant charged unlawful overdraft fees on thousands of people

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nationwide and within the state of Illinois. (Compl., ¶ 44.). On behalf of himself and all others similarly situated throughout the United States, Plaintiff seeks redress for damages and other relief arising from PNC's routine practice of (a) assessing OD Fees and subsequent COD Fees on transactions that did not overdraw checking account available balances; (b) abusing its discretion under the contract to repeatedly, routinely, and automatically authorize overdraft transactions; and (c) assessing OD Fees on transactions under \$5.

B. The Proposed Classes

Plaintiff brings this action on behalf of himself and similarly situated individuals pursuant to 735 ILCS § 5/2-801. Plaintiff seeks to represent the following Classes and Subclasses defined as follows:

The Positive Balance Class: All PNC checking account holders who, within the applicable statute of limitations, were charged OD Fees on transactions for which there were sufficient funds available.

The COD Fee Class: All PNC checking account holders who, within the applicable statute of limitations, have incurred one or more COD Fees as a result of OD Fees on transactions for which there were sufficient funds available.

The \$5 Minimum Transaction Subclass: All PNC checking account holders who, within the applicable statute of limitations, were charged OD Fees on transactions of less than \$5 after all the transactions are posted for the day.

The Positive Balance Illinois Subclass: All PNC checking account holders within the state of Illinois who, within the applicable statute of limitations, were charged OD Fees on transactions for which there were sufficient funds available.

The COD Fee Illinois Subclass: All PNC checking account holders within the state of Illinois who, within the applicable statute of limitations, have incurred one or more COD Fees as a result of OD Fees on transactions for which there were sufficient funds available.

The \$5 Minimum Transaction Illinois Subclass: All PNC checking account holders within the state of Illinois who, within the applicable statute of limitations, were charged OD Fees on transactions of less than \$5 after all the transactions are posted for the day.

(Compl. ¶ 42.) As explained below, the proposed Classes and Subclasses satisfy each of the four

requirements for certification under Section 2-801 of the Illinois Code of Civil Procedure—numerosity, commonality, adequacy of representation, and fair and efficient adjudication. A class action is not just appropriate here, it is also the only way that the members of the putative Classes and Subclasses can obtain appropriate redress for Defendant’s unlawful conduct.

III. ARGUMENT

A. Standards for Class Certification

To obtain class certification, it is not necessary for a plaintiff to establish that he will prevail on the merits of the action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974) (“[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” (internal quotation marks and citation omitted)). As such, in determining whether to certify a proposed class, the Court should accept the allegations of the complaint as true. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 53 (1st Dist. 2007).

To proceed with a class action, the movant must satisfy the “prerequisites for the maintenance of a class action” set forth in Section 2-801 of the Illinois Code of Civil Procedure, which provides:

An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
- (3) The representative parties will fairly and adequately protect the interest of the class.
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801. As demonstrated below, each prerequisite is established for the Classes and

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Subclasses, and the Court should therefore certify the proposed Classes and Subclasses.

Section 2-801 is modeled after Rule 23 of the Federal Rules of Civil Procedure and “federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.” *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (Ill. 2005). Circuit courts have broad discretion in determining whether a proposed class meets the requirement for class certification and ought to err in favor of maintaining class certification. *Ramirez*, 378 Ill. App. 3d at 53. While a court may rule on class certification without requiring further discovery, *see* Manual for Complex Litigation (Fourth) § 21.14, at 255 (2004), courts have found that discovery is helpful prior to addressing a motion for class certification. *See, e.g., Ballard RN Center, Inc. v. Kohll’s Pharmacy & Homecare, Inc.*, 2015 IL 118644, at ¶ 42 (“If the parties have yet to fully develop the facts needed for certification, then they can also ask the district court to delay its ruling to provide time for additional discovery or investigation.”) (quoting *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011)).

All the prerequisites for class certification are satisfied here, even though Plaintiff has not yet had an opportunity to engage in and complete discovery. However, in the interests of establishing a more fully developed record before ruling on class certification issues, the Court should defer ruling on this Motion pending the completion of discovery and submission of supplemental briefing.

B. The Numerosity Requirement is Satisfied

The first step in certifying a class is a showing that “the class is so numerous that joinder of all members is impracticable.” 735 ILCS 5/2-801(1). This requirement is met when “join[ing] such a large number of plaintiffs in a single suit would render the suit unmanageable and, in contrast, multiple separate claims would be an imposition on the litigants and the courts.” *Gordon*

v. Boden, 224 Ill. App. 3d 195, 200 (1st Dist. 1991) (citing *Steinberg v. Chicago Med. Sch.*, 69 Ill.2d 320, 337 (Ill. 1977)). To satisfy this requirement a plaintiff need not demonstrate the exact number of class members but, must offer a good faith estimate as to the size of the class. *Smith v. Nike Retail Servs., Inc.*, 234 F.R.D. 648, 659 (N.D. Ill. 2006).

Plaintiff alleges that there are at least thousands of members of the Classes and Subclasses. (Complaint at ¶ 44.) Because definitive evidence of numerosity can only come from the records of Defendant and its agents, it is proper to rely upon the allegations of the Complaint in certifying the Class. *See* 2 A. Conte & H. Newberg, *Newberg on Class Actions* § 7.20, at 66 (stating that where numerosity information is in the sole possession of the party opposing the class, courts generally rely on the complaint as prima facie evidence or defer ruling).

Additionally, the members of the putative Classes and Subclasses can be easily and objectively determined from Defendant's records. Furthermore, it would be completely impracticable to join the claims of the members of the Classes and Subclasses, because they are disbursed throughout the nation and throughout Illinois, and because absent a class action, few members could afford to bring an individual lawsuit over the amounts at issue in this case, since each individual member's claim is relatively small. *See Gordon*, 224 Ill. App. 3d at 200. Accordingly, the first prerequisite for class certification is met.

C. Common Questions of Law and Fact Predominate

The second requirement of Section 2-801(2) is met where there are "questions of fact or law common to the class" and those questions "predominate over any questions affecting only individual members." 735 ILCS 5/2-801(2). Such common questions of law or fact exist when the members of the proposed class have been aggrieved by the same or similar misconduct. *See Miner v. Gillette Co.*, 87 Ill.2d 7, 19 (Ill. 1981); *Steinberg*, 69 Ill.2d at 342. These common questions

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must also predominate over any issues affecting individual class members. *See O-Kay Shoes, Inc. v. Rosewell*, 129 Ill. App. 3d 405, 408 (1st Dist. 1984).

Here, the claims of the members of the Classes and Subclasses arise out of the same activity by Defendant, are based on the same legal theory, and implicate, among others, the following common issues: whether Defendant imposed OD Fees on debit card transactions when those transactions would not have overdrawn the account; whether Defendant's imposition of overdraft fees on transactions that did not overdraw accounts breached its contract with consumers; whether Defendant's imposition of overdraft fees that did not overdraw accounts result in additional invalid COD Fees; whether Defendant's imposition of overdraft fees that did not overdraw accounts result in additional invalid OD Fees on transactions of less than \$5; whether Defendant developed and engaged in an unlawful practice that mischaracterized or concealed its true overdraft fee practices; and whether Plaintiff and the other members of the Classes and Subclasses are entitled to damages and injunctive relief. (Compl. ¶ 46).

As alleged, and as will be shown through obtainable evidence, Defendant engaged in a common course of conduct with regards to imposing unauthorized OD Fees on debit card transactions when those transactions would settle into a positive balance, violating PNC's accountholder contracts, abusing its contractual discretion to extract OD Fees on transactions that no reasonable consumer would believe could cause OD Fees, and by extracting excessive and unconscionable OD Fees. Any potential individualized issues remaining after common issues are decided would be *de minimis*. Accordingly, common issues of fact and law predominate over any individual issues, and Plaintiff has satisfied this hurdle to certification.

D. Adequate Representation

The third prong of Section 2-801 requires that "[t]he representative parties will fairly and

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adequately protect the interest of the class.” 735 ILCS 5/2-801(3). The class representative’s interests must be generally aligned with those of the class members, and class counsel must be “qualified, experienced and generally able to conduct the proposed litigation.” *See Miner*, 87 Ill.2d at 14; *see also Eshaghi v. Hanley Dawson Cadillac Co., Inc.*, 214 Ill. App. 3d 995, 1000 (1st Dist. 1991). The purpose of this adequacy of representation requirement is “to insure that all Class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim.” *Purcell & Wardrobe Chtd. v. Hertz Corp.*, 175 Ill. App. 3d 1069, 1078 (1st Dist. 1988).

In this case, Plaintiff has the exact same interest as the members of the proposed Classes and Subclasses. Plaintiff has alleged that, like the other members of the Classes and Subclasses, he was subjected to Defendant’s unlawful collection of OD Fees. Plaintiff’s pursuit of this matter against Defendant demonstrates that he will be a zealous advocate for the Classes. Further, proposed class counsel has regularly engaged in major complex and class action litigation in state and federal courts and have been appointed as class counsel in several complex consumer class actions. (*See Declaration of Eugene Turin, attached hereto as Exhibit A*). Accordingly, the proposed class representative and proposed class counsel will adequately protect the interests of the members of the Classes, thus satisfying Section 2-801(3).

E. Fair and Efficient Adjudication of the Controversy

The final requirement for class certification under 5/2-801 is met where “the class action is an appropriate method for the fair and efficient adjudication of the controversy.” 735 ILCS 5/2-801(4). “In applying this prerequisite, a court considers whether a class action: (1) can best secure the economies of time, effort and expense, and promote uniformity; or (2) accomplish the other ends of equity and justice that class actions seek to obtain.” *Gordon*, 224 Ill. App. 3d at 203. In

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practice, a “holding that the first three prerequisites of section 2-801 are established makes it evident that the fourth requirement is fulfilled.” *Gordon*, 224 Ill. App. 3d at 204; *Purcell & Wardrobe Chtd.*, 175 Ill. App. 3d at 1079 (“The predominance of common issues [may] make a class action . . . a fair and efficient method to resolve the dispute.”). Because numerosity, commonality and predominance, and adequacy of representation have been satisfied in the instant case, it is “evident” that the appropriateness requirement is met as well.

Other considerations further support certification in this case. A “controlling factor in many cases is that the class action is the only practical means for class members to receive redress.” *Gordon*, 586 N.E.2d at 467; *Eshaghi*, 574 N.E.2d at 766 (“In a large and impersonal society, class actions are often the last barricade of...protection.”). A class action is superior to multiple individual actions “where the costs of litigation are high, the likely recovery is limited” and individuals are unlikely to prosecute individual claims absent the cost-sharing efficiencies of a class action. *Maxwell*, 2004 WL 719278, at *6. This is especially true in cases involving the collection of overdraft fees, which can involve significant injury to the those effected, but result in many small, individual claims. Here, absent a class action, most members of the Classes and Subclasses would find the cost of litigating their claims to be prohibitive, given that Defendant’s OD Fees are only \$36 per transaction, and multiple individual actions would be judicially inefficient. *Id.*

Certification of the proposed Classes and Subclasses is necessary to ensure that Defendant’s conduct becomes compliant with Illinois law, including the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1, *et seq.*, along with state and nationwide common law, to ensure that the Classes and Subclasses’ members’ rights are sufficiently protected, and to compensate those individuals who have had their statutorily and common law protected rights

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violated. Were this case not to proceed on a class-wide basis, it is unlikely that any significant number of members of the Classes and Subclasses would be able to obtain redress, or that Defendant would willingly implement the relief sought by Plaintiff and the Classes and Subclasses. Thus, proceeding as a class action here is an appropriate method to fairly and efficiently adjudicate the controversy.

IV. CONCLUSION

For the foregoing reasons, the requirements of 735 ILCS 5/2-801 are satisfied. Plaintiff respectfully request that the Court enter an Order certifying the proposed Classes and Subclasses, appointing Plaintiff as Class Representative, appointing McGuire Law, P.C. as Class Counsel, and awarding such additional relief as the Court deems reasonable. Alternatively, the Court should defer ruling on this Motion pending the completion of appropriate discovery and supplemental briefing.

Dated: January 28, 2020

Respectfully Submitted,

MICHAEL KOMORSKI, individually and on
behalf of classes of similarly situated individuals

By: /s/ Eugene Y. Turin
One of Plaintiff's Attorneys

Eugene Y. Turin
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Attorneys for Plaintiff and the Putative Classes

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Exhibit A

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MICHAEL KOMORSKI, individually)	
and on behalf of similarly situated)	
individuals,)	No. 2020-CH-01060
)	
<i>Plaintiff,</i>)	Hon. Eve M. Reilly
)	
v.)	
)	Cal. 7
THE PNC FINANCIAL SERVICES)	
GROUP, INC., a Pennsylvania)	
corporation,)	
)	
<u><i>Defendant.</i></u>)	

DECLARATION OF EUGENE Y. TURIN

I, Eugene Turin, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am an adult over the age of 18 and a resident of the State of Illinois.
2. I am fully competent to make this Declaration and I do so in support of Plaintiff's Motion for Class Certification or, Alternatively, for a Deferred Class Certification Ruling Pending Discovery.
3. I am an associate of the law firm McGuire Law, P.C. I am licensed to practice law in the State of Illinois, and I am one of the attorneys representing the Plaintiff in this matter.
4. McGuire Law, P.C. is a litigation firm based in Chicago, Illinois that focuses on class action litigation, representing clients in both state and federal trial and appellate courts throughout the country.
5. The attorneys of McGuire Law, P.C. have regularly engaged in complex litigation on behalf of consumers and have extensive experience prosecuting class action lawsuits similar in

size and complexity to the instant case. Attorneys at my firm have served as class counsel in numerous complex consumer class actions. *See, e.g., McFerren et al., v. AT&T Mobility, LLC* (Sup. Ct. Fulton County, Ga. 2008); *Gray et al. v. Mobile Messenger Americas, Inc. et al.* (S.D. Fla. 2008); *Gresham et al. v. Keppler & Associates, LLC et al.* (Sup. Ct. Los Angeles County, Cal. 2008); *Sims et al. v. Cellco Partnership et al.* (N.D. Cal. 2009); *Van Dyke et al. v. Media Breakaway, LLC et al.* (S.D. Fla. 2009); *Paluzzi, et al. v. mBlox, Inc., et al.* (Cir. Ct. Cook County, Ill. 2009); *Valdez et al. v. Sprint Nextel Corporation* (N.D. Cal. 2009); *Ryan et al. v. Snackable Media, LLC* (Cir. Ct. Cook County, Ill. 2011); *Parone et al. v. m-Qube, Inc. et al.* (Cir. Ct. Cook County, Ill. 2010); *Williams et al. v. Motricity, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Walker et al. v. OpenMarket, Inc. et al.* (Cir. Ct. Cook County, Ill. 2011); *Schulken et al. v. Washington Mutual Bank, et al.* (N.D. Cal. 2011); *In re Citibank HELOC Reduction Litigation* (N.D. Cal 2012); *Rojas v. Career Education Corp.* (N.D. Ill. 2012); *Murray et al. v. Bill Me Later, Inc.* (N.D. Ill. 2014); *Gomez et al v. Campbell-Ewald Co.* (C.D. Cal. 2014); *Manouchehri, et al. v. Styles for Less, Inc., et al.* (S.D. Cal. 2016); *Valladares et al. v. Blackboard, Inc. et al.* (Cir. Ct. Cook County, Ill. 2016); *Hooker et al v. Sirius XM Radio, Inc.* (E.D. Va. 2017); *Flahive et al v. Inventurus Knowledge Solutions, Inc.* (Cir. Ct. Cook County, Ill. 2017); *Serrano et al. v. A&M (2015) LLC* (N.D. Ill. 2017); *Vergara et. al. v. Uber Technologies, Inc.* (N.D. Ill. 2018); *Zepeda v. International Hotels Group, Inc. et. al.* (Cir. Ct. Cook County, Ill 2018); *Kovach et al v. Compass Bank* (Cir. Ct. Jefferson County, AL 2018); *Svagdis v. Alro Steel Corp.* (Cir. Ct. Cook County, Ill. 2018); *Zhirovetskiy v. Zayo Group, LLC* (Cir. Ct. Cook County, Ill. 2019); *McGee v. LSC Communications, Inc. et al.* (Cir. Ct. Cook County, Ill. 2019); *Prather et al. v. Wells Fargo Bank, N.A.* (N.D. Ill. 2019).

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6. I received my B.A. from the University of Loyola and graduated from the Loyola University Chicago School of Law. In addition to my class action experience, I have extensive experience in complex commercial litigation and have regularly litigated cases in state and federal trial and appellate courts across the nation.

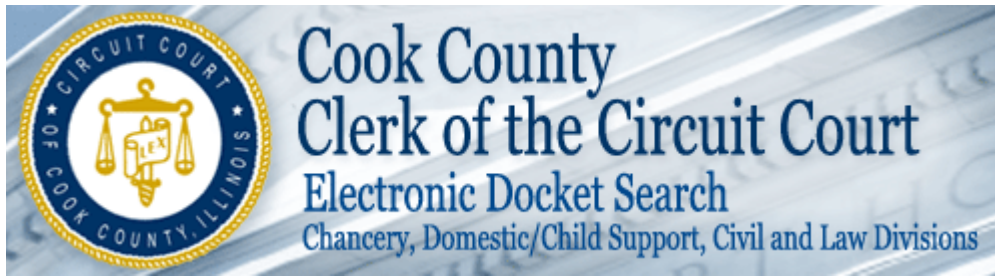
7. McGuire Law, P.C. has diligently investigated the facts and claims in this matter and will continue to diligently investigate and prosecute this matter. McGuire Law, P.C. has also dedicated substantial resources to this matter and will continue to do so. McGuire Law, P.C. has the financial resources necessary to fully prosecute this action through trial and to provide the necessary and appropriate notice to the class members should this proposed class be certified.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2020 in Chicago, IL.

/s/ Eugene Y. Turin
One of Plaintiff's Attorneys

EXHIBIT 3



Case Information Summary for Case Number
2020-CH-01060

Filing Date: 01/28/2020
Division: Chancery Division
Ad Damnum: \$0.00

Case Type: CLASS ACTION
District: First Municipal
Calendar: 07

Party Information

Plaintiff(s)

KOMOROSKI MICHAEL

Attorney(s)

MCGUIRE LAW P C
55 W WACKER 9TH FL
CHICAGO IL, 60601
(312) 893-7002

Defendant(s)

THE PNC FINANCIAL
SERVICE

Defendant Date of Service

Attorney(s)

Case Activity

Activity Date: 01/28/2020

Participant: KOMOROSKI MICHAEL

CLASS ACTION COMPLAINT FILED

Court Fee: 388.00

Attorney: MCGUIRE LAW P C

Activity Date: 01/28/2020

Participant: KOMOROSKI MICHAEL

SUMMONS ISSUED AND RETURNABLE

Attorney: MCGUIRE LAW P C

Activity Date: 01/28/2020

Participant: KOMOROSKI MICHAEL

NOTICE OF MOTION FILED

Attorney: MCGUIRE LAW P C

Activity Date: 01/28/2020

Participant: KOMOROSKI MICHAEL

MOTION FILED

Attorney: MCGUIRE LAW P C

Activity Date: 01/28/2020

Participant: KOMOROSKI MICHAEL

CASE SET ON CASE MANAGEMENT CALL

Date: 05/27/2020

Court Time: 1000

Court Room: 2405

Judge: REILLY, EVE M.

Attorney: MCGUIRE LAW P C

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Please note: Neither the Circuit Court of Cook County nor the Clerk of the Circuit Court of Cook County warrants the accuracy, completeness, or the currency of this data. This data is not an official record of the Court or the Clerk and may not be represented as an official court record.

If data does not appear in a specific field, we likely do not have the responsive data in our master database.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [PNC Bank Hit with Class Action Over 'Improper' Overdraft Fees](#)
