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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ROY SALCEDO, on behalf of himself
and all others similarly situated,

16
17 Plaintiff,

18 vs.

19 AXOS BANK,

20 Defendant.

CLASS ACTION COMPLAINT

CASE NO. '21CV1651 AJB KSC

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CLASS ACTION COMPLAINT

Plaintiff Roy Salcedo (“Plaintiff”), individually and on behalf of all persons similarly situated, for complaint against Defendant Axos Bank (“Axos”), alleges as follows:

INTRODUCTION

1. All allegations herein are based upon information and belief except those allegations which pertain to Plaintiff or his counsel. Allegations pertaining to Plaintiff, or his counsel are based upon, inter alia, Plaintiff’s or his counsel’s personal knowledge, as well as Plaintiff’s or his counsel’s own investigation. Furthermore, each allegation alleged herein either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for additional investigation or discovery.

2. Axos misleadingly and deceptively misrepresents the fee practices challenged herein in its publicly-available marketing materials, including its own account contracts. Axos also omits material facts pertaining to each of those practices in its publicly-available marketing materials, including its account contracts.

3. Research shows that fees are the most important factor influencing consumers’ selection of a new banking provider. See Ron Shevlin, “How Consumers Choose a Bank: A Tale of Two Surveys.” Insight Vault, Cornerstone Advisors, 23 Aug. 2018, <https://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/> (summarizing two consumer surveys that revealed that the most important factor influencing consumers’ selection of a new banking provider is the amount of fees charged).

4. Axos customers have been injured by Axos’ improper practices to the tune of millions of dollars bilked from their accounts in clear violation of their agreements with Axos.

5. To this day, Axos continues to deceive the general public regarding its fee practices challenged herein. Axos’s account contracts and marketing materials are publicly available online and in Axos branches to all current and prospective

1 accountholders. The general public relies on representations in these documents to
2 make important financial decisions regarding which financial institution they would
3 open a checking account with. These unsuspecting consumers would have no way of
4 knowing about the fee practices challenged herein that Axos assesses on its customers
5 prior to establishing a banking relationship with Axos. Consumers who have already
6 opened Axos accounts also rely on the misrepresentations and omissions in the
7 publicly-available account documents when making every day financial transactions.

8 6. The Pew Charitable Trusts has emphasized the importance of transparent
9 checking account fee disclosures for both comparison shopping for checking accounts
10 and for effective fee avoidance:

11 Bank accounts are an essential financial product, used by 9 in 10
12 American households, and need to be safe and transparent. Account
13 agreements and fee schedules provide customers with account costs,
14 terms, and conditions. Among the largest U.S. banks, however, the median
15 length of checking account disclosure documents is 40 pages, and the
information is presented in varied formats with inconsistent wording,
making it difficult for consumers to easily find the information they need
to comparison shop, avoid overdraft and other fees, and manage their
money.

16 The Pew Trusts, “The Benefits of Uniform Checking Account Disclosures.”

17 7. Members of the public considering opening a checking account have the
18 right to accurate information regarding the checking accounts they are considering.
19 Reasonable consumers would not agree to open Axos checking accounts if they were
20 informed, for example, that they could be assessed the account fees challenged herein.

21 8. On behalf of himself and the Classes (defined below), Plaintiff seeks
22 damages, restitution, and injunctive relief on behalf of the general public for Axos’s
23 breach of contract and the covenant of good faith and fair dealing and violations of
24 California’s consumer protection laws.

25 9. Axos wrongfully charged Plaintiff and the class members fees related to
26 their checking accounts due to Axos’s policy and practice of maximizing the account
27 fees it imposes on customers. The conduct has the overwhelming common denominator
28 of breaching its customers’ contracts and violating laws so as to maximize Axos’s fee

1 income at the expense of its customers. Specifically, Axos assesses an overdraft fee
2 (“OD Fee”) on debit card transactions when by Axos’s own calculations there was
3 enough available money in the checking account to cover the transaction at issue when
4 authorized and the money was specifically held for that transaction but was assessed
5 an OD Fee anyway.

6 10. Additionally, Axos unlawfully assesses two or more fees (“Multiple
7 Fees”), including OD Fees and non-sufficient funds fees (“NSF Fees”), on a single
8 Automated Clearing House (“ACH”) transaction or check. In Axos’s sole and
9 undisclosed view, each time Axos processes an ACH transaction or check for payment
10 after having been rejected for insufficient funds, it becomes a new, unique item or
11 transaction that is subject to another fee. But Axos’s contract never even hints that this
12 counterintuitive result could be possible.

13 11. The charging of such OD Fees and NSF Fees breaches Axos contracts
14 with its customers, which includes Plaintiff and the members of the Classes.

15 12. Though it first opened for business in 2000 and touts itself as leading the
16 way in digital banking, Axos implemented OD Fee and NSF Fee policies that are no
17 different than other financial institutions have used to generate billions in accounts fees
18 to maximize profits.

19 **JURISDICTION AND VENUE**

20 13. This Court has original jurisdiction of this action under the Class Action
21 Fairness Act of 2005. Pursuant to 28 U.S.C. §§1332(d)(2) and (6), this Court has
22 original jurisdiction because the aggregate claims of the putative class members exceed
23 \$5 million, exclusive of interest and costs, and at least one of the members of the
24 proposed classes is a citizen of a different state than Defendant.

25 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Axos
26 is subject to personal jurisdiction here and regularly conducts business in the Southern
27 District of California, and because a substantial part of the events or omissions giving
28 rise to the claims asserted herein occurred in this district.

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PARTIES

15. Plaintiff is a citizen of the State of Iowa. At all times relevant, Plaintiff was a customer and accountholder at Axos.

16. Axos is primarily a national online bank with its headquarters and principal place of business located in San Diego, California. It has brick and mortar branches in California, Nevada, and Ohio. Among other things, Axos is engaged in the business of providing retail banking services, including Plaintiff and members of the putative classes, which includes the issuance of debit cards for use by its customers in conjunction with their checking accounts. Axos conducts business, throughout the State of California and the United States.

FACTUAL BACKGROUND

A. Axos Assesses OD Fees on Accounts That Were Not Actually Overdrawn

17. Axos offers checking account services. One of the features of a Axos checking account is a debit card, which can be used for a variety of transactions including the purchasing of goods and services. In addition to receiving a debit card, other features of a Axos checking account include the ability to write checks; withdraw money from ATMs; schedule Automated Clearing House (ACH) transactions (certain recurring payments); and other types of transactions that debit from a checking account.

18. In connection with its processing of debit transactions (debit card, ATM, check, ACH, and other similar transactions), Axos assesses OD Fees to customer accounts when it claims to have determined that a customer’s account has been overdrawn. As alleged further below, these fees were not at all permitted to be charged by any Axos contract during the class period and as such breached the contracts and the implied covenant of good faith and fair dealing.

19. OD Fees constitute the primary fee generators for banks and credit unions. According to a banking industry market research company, Moebs Services, in 2018 alone, banks generated an estimated \$34.5 billion from OD Fees.

20. Since 2000, the average dollar amount of a checking account transaction

1 has become much lower because customers, and especially younger customers, use
2 debit cards instead of cash or credit cards for everyday purchases. In 2016, the number
3 of terminals that accept debit cards in the United States had increased by approximately
4 1.4 million compared to 2011.¹ That has translated to the average dollar amount of
5 overdraft transactions being lower than in 2000. However, while the average overdraft
6 transaction is substantially lower and provides much less risk and exposure to the bank,
7 the average cost of OD Fees per transaction has gone up.

8 21. The high cost of an OD Fee is usually unfairly punitive. In a 2012 study,
9 more than 90% of customers who were assessed OD Fees overdrew their account by
10 mistake. (May 2012 Pew Charitable Trust report entitled “Overdraft America:
11 Confusion and Concerns about Bank Practices”, at p. 4). More than 60% of the
12 transactions that resulted in a large OD Fee were for less than \$50. (June 2014 Pew
13 Charitable Trust report entitled “Overdrawn”, at p. 8). More than 50% of those who
14 were assessed OD Fees do not recall opting into an overdraft program (*Id.* at p. 5), and
15 more than two-thirds of customers would have preferred the financial institution
16 decline their transaction rather than paying the transaction into overdraft and charging
17 a very large fee (*Id.* at p. 10).

18 22. Unfortunately, the customers who are assessed these fees are the most
19 vulnerable customers. Younger, lower-income, and non-white account holders are
20 among those who were more likely to be assessed OD Fees. (*Id.* at p. 1). A 25-year-old
21 is 133% more likely to pay an overdraft penalty fee than a 65-year-old. (*Id.* at p. 3).
22 More than 50% of the customers assessed OD Fees earned under \$40,000 per year. (*Id.*
23 at p. 4). Non-whites are 83% more likely to pay an OD Fee than whites. (*Id.* at p. 3).

24 23. As a result of banks and credit unions taking advantage of millions of
25 customers through the unfair practice of charging OD Fees through methodologies that
26

27 ¹ Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch, Mar. 23,
28 2016, <http://www.marketwatch.com/story/more-people-are-using-debit-cards-to-buy-a-pack-of-gum-2016-03-23> (last visited Sept. 17, 2021).

1 maximize the possible number of expensive OD Fees to be charged, there has been a
2 substantial amount of litigation for more than a decade. The rulings of these cases have
3 predominantly fallen in favor of consumers, forcing the banks and credit unions to
4 repay their customers significant amounts of wrongfully collected OD Fees.

5 24. An accounting gimmick used by some financial institutions, which on
6 information and belief financial institutions including Axos may use, is an “authorize
7 positive – purportedly settle negative” (“APPSN”) method of calculation. It works as
8 follows. At the moment debit card transactions are swiped and authorized on an account
9 with positive funds to cover the transaction, Axos immediately reduces customers’
10 checking accounts for the amount of the purchase, sets aside funds in a checking
11 account to cover that transaction, and as a result, the customer’s displayed “available
12 balance” reflects that subtracted amount. As a result, customers’ accounts will always
13 have sufficient available funds available to cover these transactions.

14 25. However, Axos still assesses \$25 OD Fees on these transactions and
15 misrepresents its practices in its Account Agreement. Despite putting aside sufficient
16 available funds for debit card transactions at the time those transactions are authorized,
17 Axos later assesses OD Fees on those same transactions when they purportedly settle
18 days later into a negative balance. These types of transactions are “APPSN
19 Transactions.”

20 26. Axos maintains a running account balance in real time, tracking funds
21 consumers have for immediate use. This running account balance is adjusted, in real-
22 time, to account for debit card transactions at the precise instance they are made. When
23 a customer makes a purchase with a debit card, Axos subtracts the dollar amount of the
24 transaction from the customer’s available balance and places such funds on a hold.
25 Such funds are not available for any other use by the accountholder, and such funds are
26 specifically associated with a given authorized debit card transaction.

27 27. That means when any *subsequent*, intervening transactions are initiated
28 on a checking account, they are compared against an account balance that has already

1 been reduced to account for any earlier debit card transactions. Accordingly, many
2 subsequent transactions incur OD Fees due to the unavailability of the funds
3 sequestered for those debit card transactions.

4 28. Still, despite keeping those held funds off-limits for other transactions,
5 Axos improperly charges OD Fees on those APPSN Transactions, although the APPSN
6 Transactions *always* have sufficient available funds to be covered.

7 29. The Consumer Financial Protection Bureau in its Consumer Financial
8 Protection Bureau, Winter 2015 “Supervisory Highlights” has expressed concern with
9 this very issue, calling the practice “unfair” and/or “deceptive” when:

10 A financial institution authorized an electronic transaction, which reduced
11 a customer’s available balance but did not result in an overdraft at the time
12 of authorization; settlement of a subsequent unrelated transaction that
13 further lowered the customer’s available balance and pushed the account
14 into overdraft status; and when the original electronic transaction was later
15 presented for settlement, because of the intervening transaction and
16 overdraft fee, the electronic transaction also posted as an overdraft and an
17 additional overdraft fee was charged. Because such fees caused harm to
18 consumers, one or more supervised entities were found to have acted
19 unfairly when they charged fees in the manner described above. Consumers
20 likely had no reason to anticipate this practice, which was not
21 appropriately disclosed. They therefore could not reasonably avoid
22 incurring the overdraft fees charged. Consistent with the deception
23 findings summarized above, examiners found that the failure to properly
24 disclose the practice of charging overdraft fees in these circumstances was
25 deceptive. At one or more institutions, examiners found deceptive
26 practices relating to the disclosure of overdraft processing logic for
27 electronic transactions. Examiners noted that these disclosures created a
28 misimpression that the institutions would not charge an overdraft fee with
respect to an electronic transaction if the authorization of the transaction
did not push the customer’s available balance into overdraft status. But
the institutions assessed overdraft fees for electronic transactions in a
manner inconsistent with the overall net impression created by the
disclosures. Examiners therefore concluded that the disclosures were
misleading or likely to mislead, and because such misimpressions could
be material to a reasonable consumer’s decision-making and actions,
examiners found the practice to be deceptive. Furthermore, because
consumers were substantially injured or likely to be so injured by
overdraft fees assessed contrary to the overall net impression created by
the disclosures (in a manner not outweighed by countervailing benefits to
consumers or competition), and because consumers could not reasonably
avoid the fees (given the misimpressions created by the disclosures), the
practice of assessing fees under these circumstances was found to be
unfair.

30. There is no justification for these practices, other than to maximize Axos’s

1 OD Fee revenue. APPSN Transactions only exist because intervening checking
2 account transactions supposedly reduce an account balance. Axos is free to protect its
3 interests and either reject those intervening transactions or charge OD Fees on those
4 intervening transactions—and it does the latter to the tune of millions of dollars each
5 year. But Axos was not content with these millions in OD Fees. Instead, it sought
6 millions *more* in OD Fees on these APPSN Transactions.

7 31. Besides being deceptive, unfair, and unconscionable, these practices
8 breach contract promises made in Axos’s adhesion contracts—contracts which
9 fundamentally misconstrue and mislead consumers about the true nature of Axos’s
10 processes and practices. These practices also exploit contractual discretion to gouge
11 consumers in violation of the implied covenant of good faith and fair dealing. In short,
12 Axos is not authorized by contract to charge OD Fees on APPSN Transactions, but it
13 has done so.

14 **i. Mechanics of a Debit Card Transaction**

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

20 33. At this step, if the transaction is approved, Axos immediately reduces the
21 funds in a customer’s account and sequesters funds in the amount of the transaction but
22 does not yet transfer the funds to the merchant.

23 34. Indeed, the entire purpose of the immediate debit and hold of positive
24 funds is to ensure that there are enough funds in the account to pay the transaction when
25 it settles, as discussed in the Federal Register notice announcing revisions to certain
26 provisions of the Truth in Lending Act regulations: “When a consumer uses a debit
27 card to make a purchase, a hold may be placed on funds in the consumer’s account to
28 ensure that the consumer has sufficient funds in the account when the transaction is

1 presented for settlement. This is commonly referred to as a ‘debit hold.’ During the
2 time the debit hold remains in place, which may be up to three days after authorization,
3 those funds may be unavailable for the consumer’s use for other transactions.” Federal
4 Reserve Board, Office of Thrift Supervision, and National Credit Union
5 Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498-01 (Jan. 25, 2009).

6 35. Sometime thereafter, the funds are actually transferred from the
7 customer’s account to the merchant’s account. Axos decides whether to “pay” debit
8 card transactions at authorization. If it decides to pay, after that, Axos is obligated to
9 pay the transaction no matter what. For debit card transactions, that moment of decision
10 can only occur at the point of sale, at the instant the transaction is authorized or
11 declined. It is at that point—and only that point—when Axos may choose to either pay
12 the transaction or decline it. When the time comes to actually settle the transaction, it
13 is too late—the bank has no discretion and must pay the charge. This “must pay” rule
14 applies industry wide and requires that, once a financial institution authorizes a debit
15 card transaction, it “must pay” it when the merchant later makes a demand, regardless
16 of other account activity. See Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046
17 (Nov. 17, 2009). Notably, there is no change—*no impact whatsoever*—to the available
18 funds in an account when this step occurs.

19 **ii. Axos’s Account Agreement**

20 36. Plaintiff has an Axos checking account, which during the class period was
21 covered by the Personal Deposit Account Agreement and Schedule of Fees (“Account
22 Agreement”), attached as *Exhibit A*. The Account Agreement, a contract of adhesion
23 that applies to all Axos checking accountholders, does not allow Axos to charge OD
24 Fees for transactions submitted to APPSN calculations.

25 37. The Account Agreement states that transactions are only overdraft
26 transactions when they are authorized into a negative account balance. Thus, for
27 APPSN Transactions, which are immediately deducted from a positive account balance
28 and held aside for payment of that same transaction, there are always funds to cover

1 those transactions—those that were held aside and sequestered at the time of
2 authorization. Yet Axos assesses OD Fees on them anyway.

3 38. In fact, Axos actually authorizes transactions on positive funds, sets those
4 funds aside on hold, then fails to use those same funds to settle those same transactions.
5 Instead, it uses the secret posting process alleged herein. Axos assesses OD Fees even
6 when sufficient funds exist to cover transactions that are “authorized and paid” into a
7 positive balance. No express language in any document states that Axos may impose
8 OD Fees on any APPSN Transactions.

9 39. The Account Agreement misconstrues Axos’s true debit card processing
10 and overdraft practices. First, and most fundamentally, Axos charges OD Fees on debit
11 card transactions for which there are sufficient funds available to use to cover the
12 transactions.

13 40. Axos assesses OD Fees on APPSN Transactions that *do* have sufficient
14 funds available to cover them throughout their lifecycle. Axos’s practice of charging
15 OD Fees even when sufficient available funds exist to cover a transaction violates a
16 contractual promise not to do so. This discrepancy between Axos’s actual practice and
17 the contract causes consumers like Plaintiff to incur more OD Fees than they should.

18 41. Sufficient funds for APPSN Transactions are actually debited from the
19 account immediately, consistent with standard industry practice. These withdrawals
20 take place upon initiation and thus they cannot be re-debited later. But that is what
21 Axos does when it re-debits the account during a secret batching posting process.

22 42. In reality, Axos’s actual practice is to attempt the same debit card
23 transaction twice to determine if the transaction overdraws an account—both at the
24 time a transaction is authorized and later at the time of settlement. At the time of
25 settlement, however, an available balance *does not change at all* for these transactions
26 previously authorized into available funds. As such, Axos cannot then charge an OD
27 Fee on such a transaction because the available balance has not been rendered
28 insufficient due to the pseudo-event of settlement.

1 43. Something more is going on: at the moment a debit card transaction is
2 getting ready to settle, Axos does something new and unexpected, during the middle
3 of the night, during its nightly batch posting process. Specifically, Axos releases the
4 hold placed on funds for the transaction for a split second, putting money back into the
5 account, and then re-debits the same transaction a second time.

6 44. This secret step allows it to charge OD Fees on transactions that never
7 should have been subject to them—debit card transactions that were authorized into
8 sufficient funds, and for which Axos specifically set aside money to pay them. This
9 discrepancy between Axos’s actual practices and the contract causes accountholders to
10 incur more OD Fees than they should. In sum, there is a huge gap between Axos’s
11 practices as described in the Account Agreement and Axos’s practices in reality.

12 45. The assessment of OD Fees on APPSN Transactions is fundamentally
13 inconsistent with immediate withdrawal of funds for debit card transactions. That is
14 because if funds are immediately debited, they cannot be depleted by intervening
15 transactions (and it is that subsequent depletion that is the necessary condition of
16 APPSN Transactions). If funds are immediately debited, they are necessarily applied
17 to the debit card transactions for which they are debited.

18 46. Axos was and is aware that this is precisely how its customers reasonably
19 understand debit card transactions to work. Axos knows that many consumers prefer
20 debit cards for these very reasons. Consumer research indicates that consumers prefer
21 debit cards as a budgeting device because they do not allow debt like credit cards do.

22 47. On information and belief, although access to Axos’s database will be
23 sought by Plaintiff to confirm, Plaintiff was charged such inappropriate OD Fees due
24 to the APPSN calculation.

25 48. For example, on May 1, 2019, Plaintiff was charged a \$25 OD Fee, what
26 Axos calls a “NSF Item Fee,” for a point-of-sale debit card transaction that was
27 authorized prior to this day on a sufficient available balance.

28 49. Axos had no authority to use an APPSN calculation to assess OD Fees in

1 its Account Agreement with its customers during the class period, and such practices
2 breach its contracts with its customers. These practices exploit any contractual
3 discretion Axos may have in its contracts with its customers in an unreasonable way
4 that adds to Axos’s profits and harms its customers. Axos does not describe this APPSN
5 procedure in its contracts. Instead, the Account Agreement describes those funds in the
6 available balance for authorized debits will be held and sequestered until posting, and
7 that subsequent debits will not be authorized on those sequestered funds:

8 **Available Balance**

9 *Available Balance is the amount of funds available for withdrawal and*
10 *authorizing transactions. Your Available Balance may be different*
11 *than your ledger Balance or Collected Balance. The Available Balance*
12 *is reduced by 1) the amount of pending transactions, such as a point-*
13 *of-sale transaction; 2) funds on hold in accordance with our funds*
14 *availability policy; 3) our receipt of notice that a transaction will be*
15 *presented or returned; 4) our receipt of legal process relating to your*
16 *account; or 5) your use of your account as a security for a loan.*

17 Ex. A at 8 (emphasis added).

18 50. When Axos authorizes debit card transactions on positive available funds
19 and places a hold for the amount of the transaction, not allowing it to be used for
20 anything else, it then violates the Account Agreement terms when it later charges OD
21 Fees on such debit card transactions.

22 51. The Account Agreement further states as to OD Fees:

23 **Overdrafts and Nonsufficient Funds**

24 When we determine that you do not have enough available funds in
25 your account to cover an Item (including an ATM or Debit Card
26 transaction), then we consider the Item an insufficient funds item. If
27 you have enrolled in our optional Overdraft Line of Credit Program and
28 have enough funds in the linked account under the Overdraft Line plan,
we transfer funds to cover the item. You may also establish a link from
your checking account to a savings account or money market account
to cover the shortfall in your checking account. *Otherwise, without
notice to you, we either authorize or pay the insufficient item and
overdraw your account (an overdraft item) or we decline or return the
insufficient item without payment (a returned item).* All types of Items,
including Bank fees, may overdraw your account.

*We pay overdrafts at our discretion, which means we do not guarantee
that we will always, or ever, authorize and pay them. If we authorize or
pay an item and create an overdraft, you must pay back any overdraft
immediately. Each Owner will be jointly and severally liable to pay
back any overdraft created by any account Owner, even if the Owner*

1 did not write the check, initiate the transaction, benefit from it or make
2 any deposits to the account. If we overdraw your account to pay items
3 on one or more occasions, we are not obligated to continue to paying
4 future insufficient funds items. We may also close your account due to
overdraft activity. See Closing an Account. You agree that we may
apply deposits (including, but not limited to, Social Security and similar
benefits) to overdrafts without notice to or consent from you, unless the
law states otherwise.

5 Ex. A at 24 (emphasis added).

6 52. The EFT Agreement, a disclosure that is part of the Account Agreement,
7 further supports Axos’s promise not to charge OD Fees on APPSN Transactions,
8 stating:

9 **Preauthorization Payments Holds**

10 When you use your Card at a point of sale location or when you use the
11 Visa or other network enhancement feature of the Cards to obtain goods
12 or services or to obtain cash, the merchant may attempt to obtain
13 preauthorization from us for the transaction. *When the preauthorization
14 is approved by us, we immediately debit the preauthorized amount from
15 your designated Account.* The amount you actually approved or signed
16 for may vary in some cases from the amount of the actual purchase,
17 depending on the merchant's request. If the preauthorization request
18 varies from the amount of the actual transaction, payment of the
transaction (which usually occurs within two to five days) will adjust
the amount previously deducted from your designated Account. This
process may affect the availability of funds from your designated
Account to pay checks or for other electronic fund transfers. Since all
transactions are immediately posted to your designated Account, please
check your current balance on the Website. We will not be responsible
for damages for wrongful dishonor if any items are not paid because
the amount requested by the merchant was different from the actual
amount you approved.

19 Ex. A at 27 (emphasis added).

20 53. When Axos pays overdrafts, including ones that are APPSN Transactions,
21 it charges a \$25 OD Fee as specified in the Fee Schedule:

22 Non-sufficient/uncollected funds- Paid or Returned Item
23 (includes checks, ACH and bill payments), per item \$25.00

24 Ex. A at 35.

25 54. Given the settlement (a/k/a posting) process for APPSN Transactions and
26 the fact that a fee in such circumstances is counterintuitive to accountholders, some
27 financial institutions other than Axos that charge OD Fees on APPSN Transactions
28

1 expressly represent in the contract that those transactions can incur OD Fees as well as
2 explain and show examples of how such fees occur.

3 55. For example, Bank of America’s deposit agreement states:

4 Debit card transactions and related authorization holds may impact
5 your available balance. It is important to know that your available funds
6 may change between the time you authorize a transaction and when the
7 transaction is paid. . . . **The amount being held is not applied to the
8 debit card transaction. . . . If other account activity has caused the
9 funds available in your account to drop below zero before the debit
10 card transaction is paid, you may no longer have sufficient funds to
11 pay the merchant. . . .**

9 Here is an example of how that may happen: On Monday we authorize
10 a debit card transaction because you have enough available funds at the
11 time. A hold is then placed on your funds until the merchant presents
12 the transaction for payment. On Tuesday we process and post another
13 transaction (such as a check you wrote) that reduces your available
14 funds below zero. If the merchant presents the original debit card
15 transaction for payment on Wednesday, and your available funds are
16 now below the amount needed to pay the transactions, the debit card
17 transaction will overdraw your account and you may incur an overdraft
18 fee.

14 <https://bit.ly/3g6IyEW> (emphasis added) (last visited Sept. 20, 2021).

15 56. As another example, Canvas Credit Union states:

16 Available balance **at the time transactions are posted (not when they
17 are authorized)** may be used to determine when your account is
18 overdrawn. The following example illustrates how this works:

18 Assume your actual and available balance are both \$100, and you swipe
19 your debit card at a restaurant for \$60. As a result, your available
20 balance will be reduced by \$60 so your available balance is only \$40.
21 Your actual balance is still \$100. Before the restaurant charge is sent to
22 us for posting, a check that you wrote for \$50 clears. Because you have
23 only \$40 available. . . . your account will be overdrawn by \$10, even
24 though your actual balance was \$100 before the check posted. . . Also,
25 when the \$60 restaurant charge is presented to the Canvas and posted
26 to your account, you will not have enough money in your available
27 balance because of the intervening check, and you will be charged a fee
28 for that transaction as well, even though your available balance was
positive when it was authorized.

25 <https://bit.ly/2FoxAOv> (emphases in original) (last visited Sept. 20, 2021).

26 57. Capital One’s deposit agreement similarly states:

27 Other intervening transactions that occur while authorized debit card
28 transactions are pending may create overdrafts on your account. Here
is an example of how that could happen:

1 You're enrolled in our optional overdraft service. Your account balance
2 is \$100.00. On Monday, you go to the store and use your debit card to
3 make a purchase for \$80.00. We authorize the transaction; however, the
4 merchant doesn't send us the transaction for payment and posting to
5 your account on that day. On Tuesday, you withdraw \$30.00 from an
6 ATM, reducing your account balance to \$70. **On Wednesday, the
7 merchant requests payment for the \$80.00 transaction authorized
8 on Monday, and you're charged a fee because the balance in your
9 account is insufficient to pay the transaction at that time.**

10 <https://capital.one/312vrjW> (emphasis added) (last visited Sept. 20, 2021).

11 58. Axos provided no such disclosure at the time of the operative transactions,
12 and in so doing, promised not to charge OD Fees on APPSN Transactions and
13 otherwise misrepresented its true practices to its accountholders.

14 59. Plaintiff and the class members have performed all conditions, covenants,
15 and promises required by each of them in accordance with the terms and conditions of
16 the contracts. Plaintiff did not and could not have, exercising reasonable diligence,
17 discovered both that he had been injured and the actual cause of that injury until he met
18 with his attorneys in or about 2021. While Plaintiff understands that he was assessed
19 fees, he did not understand the cause of those fees until then, because Axos hid its
20 actual practice from its customers by describing a different practice in its contracts.

21 60. Plaintiff and the class members were harmed by these practices when they
22 were assessed such fees when they should not have been. A complete evaluation of
23 Axos's records is necessary to determine the full extent of Plaintiff's harms from these
24 practices.

25 **B. Axos Charges Multiple Fees on the Same Item**

26 61. As alleged more fully herein, the second unlawful fee assessment practice
27 that Axos has for years implement is the charging of Multiple Fees.

28 62. Axos Account Agreement allow it to take certain steps when an
acountholder attempts a transaction but does not have sufficient funds to cover it.
Specifically, Axos may: (a) authorize the transaction and charge a single OD Fee; or
(b) reject the transaction and charge a single NSF Fee.

63. In contrast to its Account Agreement, however, Axos regularly assesses

1 Multiple Fees on the same item or transaction.

2 64. This abusive practice is not universal in the financial services industry.
3 Indeed, major banks like Chase—the largest consumer bank in the country—do not
4 undertake the practice of charging more than one fee on the same item when it is
5 reprocessed. Instead, Chase charges one fee, even if a transaction is reprocessed for
6 payment multiple times.

7 65. Axos never disclosed this practice. To the contrary, Axos indicated it will
8 only charge a single fee on an item or per transaction.

9 **i. Plaintiff's Experience**

10 66. As an example, on February 1, 2019, Plaintiff attempted to make a
11 payment to LOAN REPAR TIAA, via ACH transaction.

12 67. Axos rejected payment of that item due to insufficient funds and charged
13 Plaintiff a \$25 NSF Fee.

14 68. Unbeknownst to Plaintiff and without his request to Axos to retry the
15 transaction, six days later, on February 7, 2019, Axos processed the same item again,
16 and again rejected the item and again charged Plaintiff a \$25.00 NSF Fee.

17 69. In sum, Axos charged Plaintiff \$50.00 in fees to process a single payment.

18 70. Plaintiff understood the above transactions to each be a single transaction,
19 an understanding consistent with what is laid out in Axos's Account Agreement,
20 capable at most of receiving a single NSF Fee (if Axos returned it) or single OD Fee
21 (if Axos paid it).

22 **ii. The Imposition of Multiple Fees on a Single Transaction Violates**
23 **Axos's Express Promises and Representations**

24 71. Again, the Account Agreement provide the general terms of Plaintiff's
25 and the class members' relationship with Axos and makes explicit promises and
26 representations regarding how transactions will be processed, as well as when NSF
27 Fees and OD Fees may be assessed.

28 72. The Account Agreement contained explicit terms indicating that OD Fees

1 and NSF Fees will only be assessed once per item, when in fact Axos regularly charges
2 Multiple Fees per item even though a customer only requested the payment or transfer
3 once:

4 **Overdrafts**

5 If any Item or other debit presented to us will overdraw the available
6 account balance, including any balance in an overdraft protection account
7 (“ODP Account”) we have established for you, *we will charge you a fee,
8 whether we pay the Item or dishonor it.*

9 Ex. A at p.10 (emphasis added).

10 73. The Account Agreement additionally promises:

11 When we determine that you do not have enough available funds in
12 your account to cover an Item (including an ATM or Debit Card
13 transaction), then we consider the Item an insufficient funds item. . . .
14 *[W]ithout notice to you, we either authorize or pay the insufficient item
15 and overdraw your account (an overdraft item) or we decline or return
16 the insufficient item without payment (a returned item).* All types of
17 Items, including Bank fees, may overdraw your account.

18 Ex. A at 24 (emphasis added).

19 74. Axos’s Account Agreement indicates that a singular fee can be assessed
20 on checks, ACH debits, and electronic payments, and clearly states that only a singular
21 charge or fee can be assessed, either an NSF Fee or OD Fee, per item or transaction
22 that is returned due to insufficient funds.

23 75. The same check, ACH debit, debit card transaction or ATM withdrawal
24 on an account cannot conceivably become a new one each time it is rejected for
25 payment then reprocessed, especially when—as here—Plaintiff took no action to
26 resubmit them.

27 76. The Fee Schedule reinforces this commonsense understanding:

28 Non-sufficient/uncollected funds- Paid or Returned Item
(includes checks, ACH and bill payments), **per item** \$25.00

Ex. A at 35 (emphasis added).

77. Based on the above, an accountholder would expect to be charged either
an NSF Fee or an OD Fee, but certainly not both, and absolutely not Multiple Fees.

78. There is zero indication anywhere that the same item is eligible to incur

1 Multiple Fees.

2 79. Even if Axos reprocesses an instruction for payment, it is still the same
3 item. Axos's reprocessing is simply another attempt to effectuate an accountholder's
4 original order or instruction.

5 80. The provisions referenced above never discuss a circumstance where
6 Axos may assess Multiple Fees for a single check or ACH transaction that was returned
7 for insufficient funds and later reprocessed one or more times and returned again.

8 81. In sum, Axos promises that one fee will be assessed per electronic
9 payment or check, and these terms must mean all iterations of the same instruction for
10 payment. As such, Axos breached the contract when it charged more than one fee per
11 item.

12 82. Taken together, the representations and omissions identified above
13 convey to customers that all submissions for payment of the same transaction will be
14 treated as the same item, which Axos will either authorize (resulting in an overdraft
15 item) or reject (resulting in a returned item) when it decides there are insufficient funds
16 in the account. Nowhere does Axos disclose that it will treat each reprocessing of a
17 check or ACH payment as a separate item, subject to additional fees, nor do Axos
18 customers ever agree to such fees.

19 83. Customers reasonably understand, based on the language of the Account
20 Agreement, that Axos's reprocessing of checks or ACH payments are simply additional
21 attempts to complete the original order or instruction for payment, and as such, will not
22 trigger fees. In other words, it is always the same item.

23 84. Banks and credit unions like Axos that employ this abusive practice know
24 how to plainly and clearly disclose it. Indeed, other banks and credit unions that do
25 engage in this abusive practice disclose it expressly to their accountholders—
26 something Axos never did.

27 85. For example, First Citizens Bank, a major institution in the Carolinas,
28 engages in the same abusive practice as Axos, but at least expressly states:

1 Because we may charge a service fee for an NSF item each time it is
2 presented, **we may charge you more than one service fee for any given**
3 **item.** All fees are charged during evening posting. When we charge a fee
4 for NSF items, the charge reduces the available balance in your account
5 and may put your account into (or further into) overdraft.

6 (emphasis added).

7 86. First Hawaiian Bank engages in the same abusive practices as Defendant,
8 but at least currently discloses it in its online banking agreement, in all capital letters,
9 as follows:

10 YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO
11 SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT
12 **MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT**
13 **OF A RETURNED ITEM AND RESUBMISSION.**

14 (emphasis added).

15 87. Central Pacific Bank, a leading bank in Hawai'i, states in its Fee Schedule
16 under the "MULTIPLE NSF FEES" subsection:

17 "Items and transactions (such as, for example, checks and electronic
18 transactions/payments) returned unpaid due to insufficient/non-
19 sufficient ("NSF") funds in your account, **may be resubmitted one or**
20 **more times for payment, and a \$32 fee will be imposed on you each**
21 **time an item and transaction resubmitted for payment is returned**
22 **due to insufficient/nonsufficient funds."**

23 <https://tinyurl.com/4m6aaxky> (emphasis added) (last visited Sept. 17, 2021).

24 88. Air Academy Federal Credit Union contracts for its NSF fee as: "\$32.00
25 **per presentment.**" <https://www.aafcu.com/fees.html> (emphasis added) (last visited
26 Sept. 17, 2021).

27 89. Community Bank, N.A. unambiguously contracts on this issue:

28 **You may be charged more than one Overdraft or NSF Fee if a**
merchant submits a single transaction multiple times after it has
been rejected or returned.

<https://tinyurl.com/4juy277p> (emphasis added) (last visited Sept. 17, 2021).

90. Delta Community Credit Union contracts unambiguously as follows: "\$35
per presentment." <https://www.deltacommunitycu.com/home/fees.aspx> (emphasis
added) (last visited Sept. 17, 2021).

91. Further, in its Account Contract, Delta unambiguously states as follows:

1 The Bank reserves the right to charge you an overdraft/insufficient
2 funds fee if you write a check or initiate an electronic transaction that,
3 if posted, would overdraw your Checking Account. **Note that you may
4 be charged an NSF fee each time a check or ACH is presented to
5 us, even if it was previously submitted and rejected.**

6 <https://tinyurl.com/etur74we> (emphasis added) (last visited Sept. 17, 2021).

7 92. USE Credit Union contracts as follows:

8 “Overdraft/Non-sufficient Funds (NSF): Applies to checks, Bill Pay,
9 ACH, ATM/POS and other electronic debits that are paid or returned.
10 **Fees are charged per presentment, meaning the same item is
11 subject to multiple fees if presented for payment multiple times.**”

12 <https://tinyurl.com/2uf5habu> (emphasis added) (last visited Sept. 17, 2021)

13 93. First Financial Bank contracts unambiguously:

14 Merchants or payees may present an item multiple times for payment if
15 the initial or subsequent presentment is rejected due to insufficient
16 funds or other reason (representment). **Each presentment is
17 considered an item and will be charged accordingly.**”

18 <https://tinyurl.com/48m4x8n5> (emphasis added) (last visited Sept. 17, 2021).

19 94. First Northern Credit Union unambiguously contracts its NSF in its Fee
20 Schedule as follows: “\$29.00 **per each presentment and any subsequent
21 representment(s).**” <https://tinyurl.com/6rxm94ft> (emphasis added) (last visited Sept.
22 17, 2021).

23 95. Further, First Northern in its Account Contract, unambiguously
24 contracted its NSF Fee as of 2020 as follows:

25 **You further agree that we may charge a NSF fee each time an item is
26 presented for payment even if the same item is presented for
27 payment multiple times. For example, if you wrote a check to a
28 merchant who submitted the payment to us and we returned the item
(resulting in a NSF fee), the merchant may re-present the check for
payment again. If the second and any subsequent presentments are
returned unpaid, we may charge a NSF fee for each time we return
the item. You understand this means you could be charged
multiple NSF fees for one check that you wrote as that check could be
presented and returned more than once. Similarly, if you authorize a
merchant (or other individual or entity) to electronically debit your
account, such as an ACH debit, you understand there could be
multiple submissions of the electronic debit request which could
result in multiple NSF fees**

<https://tinyurl.com/328nzydc> (emphasis added) (last visited Sept. 17, 2021).

96. Glendale Federal Credit Union unambiguously contracts its NSF fee as,

1 “\$30 **per presentment.**” <https://tinyurl.com/466w96wm> (emphasis added) (last visited
2 Sept. 17, 2021).

3 97. Liberty Financial contracts its NSF fee unambiguously as: “\$27.00 **per**
4 **presentment.**” <https://liberty.financial/about/fee-schedule/> (emphasis added) (last
5 visited Sept. 17, 2021).

6 98. Members First Credit Union contracts unambiguously:
7 We reserve the right to charge an Non-Sufficient Funds Fee (NSF Fee)
8 each time a transaction is presented if your account does not have
9 sufficient funds to cover the transaction at the time of presentment and
10 we decline the transaction for that reason. **This means that a
11 transaction may incur more than one Non-Sufficient Funds Fee
12 (NSF Fee) if it is presented more than once...we reserve the right
13 to charge a Non-Sufficient Funds (NSF Fee) for both the original
14 presentment and the representment[.]**

15 <https://tinyurl.com/66vxt6cs> (emphasis added) (last visited Sept. 17, 2021).

16 99. Meriwest Credit Union unambiguously contracts its fee as: “\$35.00/item
17 **per presentment**”. <https://tinyurl.com/hs44c2hw> (emphasis added) (last visited Sept.
18 17, 2021).

19 100. Partners 1st Federal Credit Union contracts unambiguously:
20 Consequently, because **we may charge a fee for an NSF item each
21 time it is presented, we may charge you more than one fee for any
22 given item. Therefore, multiple fees may be charged to you as a
23 result of a returned item and resubmission regardless of the
24 number of times an item is submitted or resubmitted to us for
25 payment, and regardless of whether we pay the item or return,
26 reverse, or decline to pay the item.**

27 <https://tinyurl.com/77ekhebu> (emphasis added) (last visited Sept. 17, 2021)

28 101. RBC Bank unambiguously contracts:
29 “We may also charge against the Account an NSF fee for each item
30 returned or rejected, **including for multiple returns or rejections of
31 the same item.**”

32 <https://tinyurl.com/y3k56uvm> (emphasis added) (last visited Sept. 17, 2021).

33 102. Regions Bank contracts unambiguously:
34 If an item is presented for payment on your account at a time when there
35 is an insufficient balance of available funds in your account to pay the
36 item in full, you agree to pay us our charge for items drawn against
37 insufficient or unavailable funds, whether or not we pay the item. **If**

1 any item is presented again after having previously been returned
2 unpaid by us, you agree to pay this charge for each time the item is
3 presented for payment and the balance of available funds in your
4 account is insufficient to pay the item.

5 <https://tinyurl.com/82s96x6v> (emphasis added) (last visited Sept. 17, 2021).

6 103. Tyndall Credit Union Bank contracts its NSF fee as: “\$20.00 **per**
7 **presentment** (maximum 5 per day).” <https://tinyurl.com/sd8kssk3> (emphasis added)
8 (last visited Sept. 17, 2021).

9 104. Axos provided no such disclosure at the time of the operative transactions,
10 and in so doing, deceived its accountholders about its true practices.

11 **CLASS ALLEGATIONS**

12 105. Plaintiff brings this action on behalf of himself, and all others similarly
13 situated pursuant to Federal Rule of Civil Procedure 23. This action satisfies the
14 numerosity, commonality, typicality, adequacy, predominance, and superiority
15 requirements of Rule 23.

16 106. The proposed “Classes” are defined as:

17 All Axos checking account holders who, during the applicable statute
18 of limitations, were charged OD Fees on transactions that were
19 authorized into a positive available balance (the “APPSN Class”).

20 All Axos checking account holders who, during the applicable statute
21 of limitations, were charged were charged two or more fees (“Multiple
22 Fees”), including NSF Fees and OD Fees on the same item (the
23 “Multiple Fee Class”).

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

26 108. Excluded from the Classes are Axos, its parents, subsidiaries, affiliates,
27 officers and directors, any entity in which Axos has a controlling interest, all customers
28 who make a timely election to be excluded, governmental entities, and all judges
assigned to hear any aspect of this litigation, as well as their immediate family
members.

109. The members of the Classes are so numerous that joinder is impractical.
The Classes consist of thousands of customers, the identity of whom is within the

1 knowledge of and can be ascertained only by resort to Axos’s records.

2 110. The claims of the representative Plaintiff are typical of the claims of the
3 Classes in that the representative Plaintiff, like all class members, were charged
4 improper OD Fees on transactions that were authorized into a sufficient available
5 balance, and Multiple Fees on the same item. The representative Plaintiff, like all class
6 members, has been damaged by Axos’s misconduct in that they have been assessed
7 unfair and unconscionable overdraft charges. Furthermore, the factual basis of Axos’s
8 misconduct is common to all class members and represents a common thread of unfair
9 and unconscionable conduct resulting in injury to all members of the Classes.

10 111. There are numerous questions of law and fact common to the Classes and
11 those common questions predominate over any questions affecting only individual
12 class members.

13 112. Among the questions of law and fact common to the Classes are whether
14 Axos:

- 15 a. Imposed OD Fees on debit card transactions when those transactions were
16 authorized into sufficient available balances;
- 17 b. Imposed Multiple Fees on a single ACH debit or check;
- 18 c. Breached its contract and the covenant of good faith and fair dealing with
19 Plaintiff and other members of the Classes through its overdraft policies
20 and practices; and
- 21 d. The proper method or methods by which to measure damages.

22 113. Plaintiff’s claims are typical of the claims of other class members, in that
23 they arise out of the same wrongful overdraft policies and practices alleged herein.
24 Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests
25 of any other class member.

26 114. Plaintiff is committed to the vigorous prosecution of this action and have
27 retained competent counsel experienced in the prosecution of class actions and, in
28 particular, class actions on behalf of consumers and against financial institutions.

1 Accordingly, Plaintiff is an adequate representative and will fairly and adequately
2 protect the interests of the Classes.

3 115. A class action is superior to other available methods for the fair and
4 efficient adjudication of this controversy. Since the amount of each individual class
5 member's claim is small relative to the complexity of the litigation, and due to the
6 financial resources of Axos, no class member could afford to seek legal redress
7 individually for the claims alleged herein. Absent a class action, the class members
8 will continue to suffer losses and Axos's misconduct will proceed without remedy.

9 116. Even if class members themselves could afford such individual litigation,
10 the court system could not. Given the complex legal and factual issues involved,
11 individualized litigation would significantly increase the delay and expense to all
12 parties and to the Court. Individualized litigation would also create the potential for
13 inconsistent or contradictory rulings. By contrast, a class action presents far fewer
14 management difficulties, allows claims to be heard which might otherwise go unheard
15 because of the relative expense of bringing individual lawsuits, and provides the
16 benefits of adjudication, economies of scale and comprehensive supervision by a single
17 court.

18 **FIRST CLAIM FOR RELIEF**
19 **Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**
20 **(On Behalf of the Classes)**

21 117. Plaintiff repeats paragraphs 1 through 88 above.

22 118. Plaintiff and members of the Class and Axos have contracted for bank
23 account deposit, checking, ATM, and debit card services, agreeing that California law
24 applies.

25 119. Axos misconstrued in the Account Agreement its true debit card
26 processing and overdraft practices and breached the express terms of the Account
27 Agreement.

28 120. Axos breached promises included in the Agreement.

121. No contract provision authorizes Axos to charge OD Fees on APPSN

1 Transactions, or Multiple Fees on the same item.

2 122. Therefore, Axos breached the terms of its Account Agreement by
3 charging (a) OD Fees on transactions that were authorized into a sufficient available
4 balance, but whose available balances were allegedly insufficient at the time the
5 transactions were settled, and (b) Multiple Fees on the same item.

6 123. Under California law, every contract carries with it an implied covenant
7 of good faith and fair dealing. Good faith and fair dealing, in connection with executing
8 contracts and discharging performance and other duties according to their terms, means
9 preserving the spirit – not merely the letter – of the bargain. Put differently, the parties
10 to a contract are mutually obligated to comply with the substance of their contract in
11 addition to its form. The covenant requires faithfulness to an agreed common purpose
12 and consistency with the justified expectations of the other party to a contract. Evading
13 the spirit of the bargain and abusing the power to specify terms constitute examples of
14 bad faith in the performance of contracts.

15 124. Subterfuge and evasion violate the obligation of good faith in performance
16 even when an actor believes their conduct to be justified. Bad faith may be overt or
17 may consist of inaction, and fair dealing may require more than honesty. Examples of
18 bad faith are evasion of the spirit of the bargain, willful rendering of imperfect
19 performance, abuse of a power to specify terms, and interference with or failure to
20 cooperate in the other party’s performance.

21 125. Axos has breached the covenant of good faith and fair dealing in the
22 contract through its overdraft policies and practices as alleged herein. Specifically,
23 Axos harms consumers by exercising its contractual discretion in bad faith, even
24 though that discretion is only vested in Axos, in a number of ways which no reasonable
25 consumer would anticipate. Axos exercised its contractual discretion in bad faith to (a)
26 cause APPSN Transactions to incur OD Fees by knowingly authorizing later
27 transactions that it allows to consume available funds previously sequestered for
28 APPSN Transactions; and (b) cause accountholders to incur Multiple Fees on the same

1 item.

2 126. Axos uses these contractual discretion points to extract OD Fees and NSF
3 Fees on transactions that no reasonable consumer would believe could cause such fees.

4 127. Plaintiff and members of the Classes have performed all, or substantially
5 all, of the obligations imposed on them under the contract.

6 128. Plaintiff and members of the Classes have sustained damages as a result
7 of Axos’s breach of the contract and breach of the covenant of good faith and fair
8 dealing.

9 **SECOND CAUSE OF ACTION**
10 **VIOLATION OF THE UNFAIR COMPETITION LAW**
11 **Cal. Bus. & Prof. Code § 17200, et seq.**
12 **(On behalf of the Classes)**

13 129. Plaintiff incorporates the preceding allegations by reference as if fully set
14 forth herein.

15 130. Axos’s conduct described herein violates the Unfair Competition Law (the
16 “UCL”), codified at California Business and Professions Code section 17200, *et seq.*

17 131. The UCL prohibits, and provides civil remedies for, unfair competition.
18 Its purpose is to protect both consumers and competitors by promoting fair competition
19 in commercial markets for goods and services. In service of that purpose, the
20 Legislature framed the UCL’s substantive provisions in broad, sweeping language.

21 132. By defining unfair competition to include “any unlawful, unfair or
22 fraudulent business act or practice,” the UCL permits violations of other laws to be
23 treated as unfair competition that is independently actionable and sweeps within its
24 scope acts and practices not specifically proscribed by any other law.

25 133. The UCL expressly provides for injunctive relief, and also contains
26 provisions denoting its public purpose. A claim for injunctive relief under the UCL is
27 brought by a plaintiff acting in the capacity of a private attorney general. Although the
28 private litigant controls the litigation of a UCL claim, the private litigant is entitled to
recovery compensatory damages for his own benefit, but only disgorgement of profits

1 made by the defendant through unfair or deceptive practices in violation of the statutory
2 scheme or restitution to victims of the unfair competition.

3 134. Axos's conduct violates the UCL by charging OD Fees on APPSN
4 Transactions and Multiple Fees on the same check or ACH debit.

5 135. Axos committed fraudulent business acts and practices in violation of Cal.
6 Bus. & Prof. Code § 17200, *et seq.*, in the following respect, among others:

- 7 • Axos's practice of falsely indicating in account documents that OD
8 Fees will not be charged on APPSN Transactions.
- 9 • Axos's practice of falsely indicating in account documents that only a
10 single NSF Fee or OD Fee will be charged on checks or ACH.

11 136. Specifically, Axos's conduct was not motivated by any business or
12 economic need or rationale. The harm and adverse impact of Axos's imposition of OD
13 Fees on APPSN Transactions and Multiple Fees on the same item was neither
14 outweighed nor justified by any legitimate reasons, justifications, or motives.

15 137. Plaintiff and the Classes relied on Axos's misrepresentations and
16 omissions in the publicly available account disclosures when opening and continuing
17 to use their accounts, understanding OD Fees would not be charged on APPSN
18 Transactions and Multiple Fees would not be charged on a single ACH payment or
19 check. Had he known he would be charged such fees, he would not have used his
20 account for such transactions.

21 138. The harm to Plaintiff and members of the Classes arising from Axos's
22 unfair practices relating to the imposition of OD Fees on APPSN Transactions and
23 Multiple Fees on the same item outweighs the utility, if any, of those practices.

24 139. Axos's unfair business practice relating to NSF Fees and OD Fees as
25 alleged herein are immoral, unethical, oppressive, unscrupulous, unconscionable,
26 and/or substantially injurious to Plaintiff and members of the Classes.

27 140. Axos's conduct was substantially injurious to consumers in that they have
28 been forced to pay OD Fees on APPSN Transactions and Multiple Fees on the same

1 item, which the contract with Axos does not promise.

2 141. As a result of Axos’s violations of the UCL, Plaintiff and members of the
3 Classes have paid, and/or will continue to pay NSF Fees and/or OD Fees and thereby
4 have suffered and will continue to suffer actual harm.

5 142. In addition, Axos’s conduct continues to deceive the general public.
6 Axos’s misrepresentations and omissions in its publicly available account documents
7 and marketing materials are likely to deceive current and prospective accountholders
8 making corresponding public injunctive relief necessary.

9 **PRAYER FOR RELIEF**

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

- 12 (a) Declaring Axos’s APPSN Transaction and Multiple Fees policies and
13 practices to be wrongful, unfair, and a breach of contract;
 - 14 (b) Restitution of all relevant OD Fees and NSF Fees paid to Axos by Plaintiff
15 and the Classes, as a result of the wrongs alleged herein in an amount to
16 be determined at trial;
 - 17 (c) Disgorgement of the ill-gotten gains derived by Axos from its misconduct;
 - 18 (d) Actual damages in an amount according to proof;
 - 19 (e) Statutory, punitive, and exemplary damages, as permitted by law;
 - 20 (f) Pre-judgment interest at the maximum rate permitted by applicable law;
 - 21 (g) Public injunctive relief to enjoin Axos’s practice of charging APPSN
22 Transaction OD Fees and Multiple Fees on a single ACH payment or
23 check;
 - 24 (h) Costs and disbursements assessed by Plaintiff in connection with this
25 action, including reasonable attorneys’ fees pursuant to applicable law;
26 and
 - 27 (i) Such other relief as this Court deems just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: September 20, 2021

Respectfully submitted,

/s/ Taras Kick

Taras Kick (SBN 143379)

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ROY SALCEDO, on behalf of himself and all others similarly situated.

(b) County of Residence of First Listed Plaintiff Polk County, IA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Kick Law Firm, APC
815 Moraga Drive, Los Angeles, CA 90049

DEFENDANTS

AXOS BANK

County of Residence of First Listed Defendant San Diego County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'21CV1651 AJB KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)
Brief description of cause: Breach of Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

September 20, 2021 /s/ Taras Kick

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

Banking Services Provided by:



For Nationwide[®] Customers

Personal Deposit Account Agreement and Schedule of Fees

Effective: November 16, 2018



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Agreement for Your Account

Welcome and thank you for selecting Nationwide Banking Services Powered By Axos Bank® for your banking needs. Deposit accounts held at Axos Bank are FDIC insured through Axos Bank. All deposit accounts held at Axos Bank are combined and insured under the same FDIC Certificate 35546. Deposits held at Axos Bank are not separately insured by the FDIC from other deposit accounts held at Axos Bank.

This Disclosure and Agreements (“Agreement”) explains important terms and conditions which govern your account(s) with us. This agreement governs personal Deposit Accounts identified in this Agreement at Axos Bank (the “Bank”). By opening or maintaining a checking, savings or certificate of deposit (CD) account with us, you accept and agree to be bound by the terms and conditions of this Agreement.

This Agreement is periodically revised and always available electronically for your reference at <http://www.axosbank.com/nationwide>. Please read this Agreement carefully and keep it with your banking records for future reference.

This disclosure describes the terms, services and the interest calculation with respect to the Deposit Accounts opened through the Bank's Website. This Agreement includes the following disclosures applicable to the Bank's personal deposit accounts that the Bank has provided to you (1) Account features, (2) Privacy Policy, (3) Electronic Funds Transfer Services, (4) Online Banking and Bill Payment Services (5) Funds Availability Policy, (6) Substitute Checks and Your Rights, and (7) any additional disclosures regarding your account(s) that the Bank will provide to you. Fees mentioned throughout this agreement can be found in the Schedule of Fees herein and on the Bank's website.

Account Funding

You agree to fund your account within 30 days of account opening, or we may close the account.

Changes to This Agreement

We may change this Agreement at any time. We may add new terms. We may delete or amend existing terms. We may add new accounts and services and discontinue existing accounts or services. We may convert existing accounts and services into new accounts and services. We will give you reasonable notice in writing or by any method permitted by law of an adverse change to this Agreement. However, we may make changes without prior notice unless otherwise required by law. We may, but do not have to, notify you of changes that we make for security reasons or that we believe are either beneficial or not adverse to you.

When we change this Agreement, the then-current version of this Agreement supersedes all prior versions and governs your account. If you continue to use your account or keep it open, you are deemed to accept and agree to the change and are bound by the change. If you do not agree with a change, you may close your account as provided in this Agreement.

Closing an Account

You agree to notify us of your intention to close your Deposit Account, and we reserve the right to request that your notice be in writing that affirmatively acknowledges that closing the account could affect your receipt of Financial Services. After a Deposit Account is closed, we have no obligation to accept deposits or pay any outstanding items or other debits, but we may do so at our option. You agree to hold us harmless for refusing to honor any check, item or other debit on a closed account.

For security reasons, we may close your Deposit Account and require you to open a new account if there is a change in authorized signers, there has been a forgery or fraud reported or committed involving your Deposit Account, any Deposit Account checks are lost or stolen, you have too many transfers from a Deposit Account that has transaction limitations, or you have violated any other provision of an agreement you have with us. If your account is closed mid-cycle, your accrued interest will be forfeited. If your account is at zero at the end of your statement cycle, your accrued interest will be forfeited for that cycle and your account will be closed.

The Bank reserves the right to close your account for any reason or without cause. We need not advise you of the reason for taking this action. The Bank need not give advance notice of any closure. After an account is closed, we have no obligation to accept deposits or pay any outstanding items or other debits, but we may do so at our option. If your account is closed by the Bank, it may issue a single Cashier's Check for the account balance payable to accountholder and may mail or deliver that check to the accountholder, subject to any right the Bank may have under any agreement covering the account or the Bank's right of setoff.

Compliance with Laws and Regulations

When you do business with us, you agree to all applicable laws, regulations or ordinances, and orders of governmental and governing authorities, including federal and state privacy laws and anti-money laundering laws. You agree not to use your account or services for any unlawful purpose, including unlawful internet gambling.

Financial Information

You agree to provide us accurate and complete financial and other information we request in connection with a Deposit Account or Overdraft Account and the Banking Documents. Information concerning a Deposit Account or Overdraft Account may be reported to credit reporting agencies and will be made available when requested by proper legal process.

General Use of Credit File Information

You certify as to the accuracy of the information you provide to us and authorize Axos Bank's affiliated consumer reporting agency/agencies to access your credit file to facilitate the processing of your application for Axos Bank financial products and to authenticate your identity for legal and regulatory compliance purposes. You understand that you may be asked questions based on the information in your credit file as part of this process. You also understand that Axos Bank may review your credit history and past banking relationships.

Governing Law

This Agreement is governed by federal laws and, when applicable, the laws of the State of California.

Information You Give Us

When you open an account with us, you give us information about yourself and confirm that it is correct. We enter the information into our records. We will rely on that information until you notify us of a change and we have a reasonable time to act on the new information.

Personal Information at Account Opening

Federal law, including the USA PATRIOT Act, requires all financial institutions to obtain, verify and record information that identifies each person or business that opens an account. When you apply for a personal account, we will ask for your legal name, residential address, date of birth and Social Security Number (SSN). We will require one or more forms of unexpired photo identification. We may validate the information you provide to us to ensure we have a reasonable belief of your identity. If we are not able to verify your identity to our satisfaction, we will not open your account or we may close the account if it was previously funded. When you apply for a business account, we will ask for your business name, address, and Tax Identification Number (TIN). We will also ask for your name, residential address, date of birth and social security number, which will allow us to verify your identity. We may validate the information you provide to us to ensure we have a reasonable belief of your identity and your business. If we are not able to verify your identity to our satisfaction, we will not open your account or we may close the account if it was previously funded.

Service Charges

You agree to pay the charges as shown on the Schedule of Fees herein. As these charges are incurred, we will deduct the charges directly from the Deposit Account balance. We will not be liable for dishonor of your items or other debits resulting from our deduction of any charges as authorized by the Banking Documents.

Statements

You will be able to review transactions, including images of the front and back of checks or other instruments drawn on your checking account daily through the Website. You should review your transaction history daily to protect your rights, including your right to dispute transactions that you believe are unauthorized. Daily transactions accumulate for a period of one month. You must review and verify your account transactions as if your transaction history shown on the website was a traditional periodic statement. The Bank hereby disclaims any responsibility for items and/or transactions debited from your account unless you notify us within 60 days of its posting on the Website.

Check Safekeeping. Copies of your checks and other Items paid from your Deposit Account will be held by us instead of returned to you. An image of the front and back of the checks you write and are presented for payment will be deemed to be made available to you no later than the day after the items are presented to us for payment. We will keep the image copies of the front and back for seven (7) years. We will provide copies of Items upon written or e-mail request. We will assess a fee for providing such copies. See Schedule of Fees located herein.

Bank's Duty of Care. In accordance with reasonable banking standards, most checks and other Items presented to us for payment are processed through automated processing and, except in limited circumstances and subject to such reasonable sampling procedures as we establish at our discretion, most Items are not individually examined to verify your signature or that the Item is otherwise properly payable. You agree that we act within reasonable banking standards by processing most checks and other Items through automated processing systems.

Telephone Calls: Calling, Monitoring and Recording

For our mutual protection, and to enable us to provide better service to you, we may monitor and/or tape-record any of our telephone conversations.

E- Sign Disclosure and Consent

When applying for a Deposit Account or Loan with Axos Bank™, also known as UFB Direct, you will be asked to give your consent for the Bank to provide disclosures, communications and information to you electronically rather than paper form and

agree to sign documents electronically, and we will accept your electronic signature as though it were your handwritten signature.

This eSign Disclosure and Consent (the "Consent") provides the person(s) giving his/her consent below ("you" and "your") with information relating to your electronic receipt of disclosures and notices (collectively, the "Disclosures") in connection with your loan transaction (the "Loan") pending with the Bank ("we", "us" and "our"); or your new Deposit Account. By providing your consent, you agree that we may send you any and all Disclosures (which are described below) relating to the Loan in an electronic form. We will sometimes use the words "Electronic Records" as a short way to refer to the communications and information that we may provide electronically. Before you decide whether or not you wish to give your consent to receiving Electronic Records, you should read and consider the following information.

If you agree to provide your consent, click the "I Agree" button at the bottom of the online acknowledgement. The statement contains important information that we are required by law to provide to you. You should keep a copy for your records. For your convenience, this statement is written in a "Question and Answer" format. If you have any questions about Electronic Records that are not answered, you can contact us as follows:

Send us an e-mail at customerservice@axosbank.com
Call us toll free at 1-844-773-0647 for loan questions
or 1-877-247-8002 for Deposit Account questions or write to us at:

Axos Bank
Corporate Headquarters
4350 La Jolla Village Drive, Suite 140 San Diego, CA 92122

Types of Disclosures and Notices that will be provided in Electronic Form. The Disclosures may include, without limitation, disclosures and notices under the Federal Equal Credit Opportunity Act and Federal Reserve Regulation B, the Federal Truth-in-Lending Act and Federal Reserve Regulation Z, the Federal Fair Credit Reporting Act, the Federal Electronic Fund Transfer Act and Federal Reserve Regulation E, the Federal USA PATRIOT Act of 2001 and Title V of the Federal Gramm-Leach-Bliley Act, together with all rules and regulations that implement the same, as well as all other applicable federal, state and local laws, rules, regulations and ordinances. The Disclosures also include any other information, agreements, disclosures and notices that we wish to provide you in connection with the Loan in an electronic form, even if the information, agreements, disclosures and notices are not required by these laws, rules, regulations or ordinances.

For Online Banking Services the Disclosures may include your periodic Account Statement (As part of the monthly account statement, you will receive information about your account), other periodic or special notices (such as hold notices on availability of funds, or error resolution notices if you assert your rights under the federal consumer protection laws and regulations). These include special notices that federal laws and regulations from time to time might require us to provide to you and Privacy notices and disclosures. (These notices provide you with information about our privacy practices and policies).

Your Right To Receive Paper Copies of the Disclosures. You are not required to provide your Consent in order to submit an application for the Loan. If you prefer not to provide your Consent, all of the Disclosures will be provided to you in a paper form. If you decide to provide your Consent, you should also print all disclosures and legal documents.

Your Right To Withdraw Your Consent. You have the right to withdraw your Consent at any time. You will not be charged any fees as a result of the withdrawal of your Consent. If you withdraw your Consent, any Disclosures provided to you after the effective date of the withdrawal will be provided in paper form. You may also receive paper copies of any Disclosures that were previously provided to you electronically as described in Section 8 below.

Scope of Your Consent. Your Consent applies only to your electronic receipt of Disclosures and legal documents in connection with the origination, closing and servicing of the Loan or deposit account. Your Consent does not apply to other transactions that you may wish to enter into with us.

To Withdraw your Consent all you need to do is contact us using one of the Contacts described above.

What records will you provide to me electronically? If you consent, you will receive electronic records that relate to our online banking services. These will include the following types of documents:

- Your monthly account statement, if applicable. (As part of the monthly account statement, you will receive information about your account).
- Other periodic or special notices (error resolution notices if you assert your rights under the federal consumer protection laws and regulations). These include special notices that federal laws and regulations from time to time might require us to provide to you.
- Privacy notices and disclosures. (These notices provide you with information about our privacy practices and policies).

Do I have an option to regularly receive these records in non-electronic form? After you provide your Consent, you may receive, without charge, a paper copy of any Disclosures that have been provided to you electronically by contacting us using one of the Contacts described above. The Bank's Online Banking Service has been designed and built to provide records to you in electronic form. To put it another way, the system is an electronic banking system and it does not have a paper-based alternative.

Can I get a copy of the records in non-electronic form if a special need arises? At your request, we can prepare a paper-based version of any of the electronic records you receive, for up to five years after the date it was created. If you want us to prepare a paper-based copy, you can request it by contacting us. Please refer to the Schedule of Fees herein for any costs associated with this service.

If I consent to electronic records now, and change my mind, what can I do and what are the consequences? You can change your mind, and withdraw your consent, at any time, and provide notification to us at the contact information above requesting paper statements and documents be provided to you. However, remember that the Online Banking Service does not support paper-based communications. So the consequence to you, if you withdraw your consent to electronic records, is that your access to and your ability to use the Online Banking Service will end.

Change of your designated E-Mail Address. If you change your designated e-mail address, you must notify the Bank to ensure continued delivery of electronic records.

Are there any hardware or software requirements for me to access or retain the electronic records? You will need a computer with sufficient memory to store electronic records, and with a working connection to the Internet. You will need a minimum web-browser version of Internet Explorer 8.0 (or higher version), Firefox 4.0 (or higher version), Safari 6.0 (or higher version), Chrome, with e-mail capability. Your browser will need to have a minimum of 128-bit encryption capabilities. You are responsible for configuring your system to accommodate these requirements. Finally, you will need a printer if you want to print copies of electronic records.

If we change the minimum hardware or software requirements needed to access or retain electronic records, and the change creates a material risk that you will not be able to access or retain a subsequent record, then before the change takes effect we will let you know about the change and let you know what the new requirements are.

We will notify you by e-mail, and at that time you will be allowed to choose whether you still want to give us your consent to receive communications or information by electronic records. If not, you will be allowed to withdraw your consent at that time, without any fee or charge by us.

However, if you withdraw your consent, you may not be able to access the Online Banking Services without upgraded hardware or software. Then, your ability to use the Online Banking Service could also end (as described above, under "If I consent to electronic records now, and change my mind, what can I do and what are the consequences?").

How will the electronic records be provided to me? All Disclosures are available on the Bank's Website and can be accessed by clicking on the "Disclosures" tab. Other periodic or special notices will be sent to you by e-mail, unless they contain confidential account information at which time they will be sent by secure email through the online banking service on our Website. Your monthly account statements, if applicable, contain confidential information, so they will be stored for you to access (print or review) on the online banking service on our Website, at www.axosbank.com and will be available to you, for at least 2 years following the date it is first posted.

To access your monthly statements and any notices sent by secure email, you will need to sign-in to the online banking service of the Bank's Website.

Are there other special requirements for electronic records? You must provide us with your current e-mail address, and keep it current with us at all times. Otherwise, you may not receive electronic records in a timely manner. If you download or print any confidential materials, such as your monthly statements, be sure that, you store them in a secure environment.

Privacy Policy

We recognize, respect and protect the personal privacy rights of all our customers and work diligently to safeguard your privacy. We are committed to providing the highest level of security and privacy regarding the collection and use of our customers' personal information, as well as the personal information of all consumers who visit our institution.

The following Privacy Policy explains how we use and protect the information about our customers. We ask that you read it carefully [Privacy Policy](#)

General Banking Information and Terms

Accepting Deposits

You authorize us to accept items for deposit to your deposit account if they are made payable to you. You also authorize us to deposit to your account wire transfers and other forms of credit (such as direct deposits or other automated clearinghouse entries) received for your benefit.

Account Ownership

The bank may rely solely on its records to determine the form of ownership of your account. The bank may presume that any person named in addition to you in its records for your account owns the funds in your account as a co-owner. Account ownership is non transferrable.

ACH New Account Funding

ACH Funding will be posted upon final credit from the external bank; typically 2 - 3 business days after the new account is opened.

Annual Percentage Yield (APY)

APY is the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period (366-day period in a leap year), and is expressed as a percentage.

Available Balance

Available Balance is the amount of funds available for withdrawal and authorizing transactions. Your Available Balance may be different than your ledger Balance or Collected Balance. The Available Balance is reduced by 1) the amount of pending transactions, such as a point-of-sale transaction; 2) funds on hold in accordance with our funds availability policy; 3) our receipt of notice that a transaction will be presented or returned; 4) our receipt of legal process relating to your account; or 5) your use of your account as a security for a loan.

Average Daily Balance

Average daily balance is determined by taking the end-of-day balance in the account for each day in the statement period, add those balances together, and then divide by the number of days in the statement period.

Business Days

Our Business Days are Monday through Friday, excluding federal holidays.

Cash Deposits

Please do not send cash deposits. In the event that cash deposits are received by the Bank, you agree that the Bank's determination of the amount of the deposit will be conclusive. The Bank is not liable for any deposits, including cash, lost in the mail.

Check Forms and Special Conditions

We require you to use a check printer that meets technical standards for checks that are acceptable to us and the Federal Reserve Bank System. We reserve the right to disregard any information on the check other than the drawer's signature, the payee, the amount, any magnetically-encoded information at the bottom of the check, and endorsements on the reverse side of the check unless we have previously agreed to do so in writing. For example, we will not be liable for any damages because we pay an Item which contained any conditional statement or restriction such as "Void after 90 days", "Void over \$100", "Payment in Full", or "Two Signatures Required". We will adhere to such conditional statements only if you notify us of the statements before the Item is presented and we have specifically agreed in writing to honor such conditional payment restrictions. If an Item is returned or payment is delayed as a result of any writing or marking that you or a prior endorser placed on the front or back of the Item, you will be responsible for any cost and liabilities associated with such return or delay.

Collected Balance

Collected Balance is the Ledger Balance minus the amount of any deposited checks for which we have not received provisional credit from the bank of account. Your Collected Balance may be different than your Available Balance.

Converting Checks to Electronic Debits

Some businesses convert checks that you give them into electronic debits, sometimes referred to as an electronic check. When we receive the electronic debit, we charge your account immediately after the business enters the transaction, so you may have a reduced right to stop payment and may incur an overdraft if you do not have sufficient funds in your account to cover the amount of the check at the time you write the check or authorize the transaction. Since the check is not sent to us, we do not have a copy of your check. We list these electronic debits on your account statement. If the business uses your check to initiate an electronic debit at the point of sale, the business should give you notice of the conversion and return the voided check to you. You should treat the voided check with care because someone else who obtains possession of it could use the information to initiate additional debits against your account.

Death or Incompetence

You agree to notify us promptly if any owner or authorized signor on your account dies or is declared incompetent by a court. Until we receive a notice of death or incompetency, we may act with respect to any account or service as if all owners, signers or other persons are alive and competent and we will not be liable for any actions or inactions taken on that basis. If you give us instructions regarding your account, and you or another owner of the account subsequently dies or is declared incompetent, we may act on the instructions unless we receive written notice of death or competency prior to honoring such instructions.

When we receive a notice that an owner has died or been declared incompetent, we may place a hold on your account and refuse to accept deposits or permit withdrawals. We may hold any funds in your account until we know the identity of the successor. If a deposit including salary, pension, Social Security and Supplemental Security Income (SSI) – payable to deceased owner is credited to the account after the date the deceased owner died, we may debit the account for the deposit and return it to the payer.

Demand Drafts and Remotely Created Checks

If you deposit a demand draft or remotely created check (an unsigned draft or preauthorized draft) into your account, you warrant and guarantee that the draft or remotely created check is authorized according to the terms on its face by the person(s) identified as the drawer. You agree to indemnify us from all loss, expense and liability related to a claim that such check or draft was not authorized by the persons on whose account it was drawn on

Endorsements

You authorize us to supply any missing endorsements if items are made payable to you or your order and you have not endorsed them. You warrant that all endorsements on items deposited to your account are genuine. Endorsements must be placed only in the area so designated on the back of an Item.

Facsimile Signatures

If you use any form of facsimile signature in connection with the Deposit Account, you agree to deliver a sample to us before you begin using it, and to execute and deliver agreements in a form we require. When you use a facsimile signature or other form of automated signature device in connection with the Deposit Account, you agree you shall have the sole responsibility for maintaining security of the facsimile signature or device by which it is affixed, and you shall bear the entire risk for unauthorized use thereof, whether or not you are negligent, except as may be required by law. You agree that no facsimile signature we have been authorized to honor may be considered a forgery or an unauthorized signature, and that such facsimile or automated signature shall be effective as your signature or endorsement, whether or not you have been negligent. You further agree to indemnify and hold us harmless from and against any and all loss, costs, damage, liability, or exposure (including reasonable attorneys' fees) you may suffer or incur as a result of the unlawful use, unauthorized use, or misuse by any person of any such facsimile or automated signature or the device by which it is affixed.

Foreign Items and Foreign Currency

A foreign item is a check or other item in any currency (including United States dollars) that is drawn on a bank or branch located outside of the United States. A foreign currency is any currency other than United States dollars. Some foreign items are payable in United States dollars.

"Freezing" Your Account

If we decide to close your account, we may freeze it. If we do this, we may in our discretion either accept or return deposits, checks and other items that we may receive after we freeze your account without being liable to you. If at any time we believe that your account may be subject to irregular, unauthorized, fraudulent or illegal activity, we may, in our discretion, freeze the funds in the account and in other accounts you maintain with us, without liability to you, until such time we can complete our investigation of the account and transactions. If we do freeze the funds in your account, we will provide you with a notice. We may not provide this notice to you prior to freezing the account if we believe that such notice could result in a security risk to us or the owner of the funds in the account.

Ledger Balance

Ledger Balance is the aggregate amount of funds in an account according to our records, and includes electronic credits and all cash and check deposits, even if we have not yet received credit for some or all of the deposited checks from the bank of account. Your Ledger Balance may be different than your Available Balance or Collected Balance.

Legal Process

Legal process includes a writ of attachment, execution, garnishment, tax withholding order, levy, restraining order, subpoena, warrant, injunction, government agency request for information, search warrant, forfeiture or other similar order. We may accept and comply with legal process: served in person, by mail, by facsimile transmission, or by other means. You direct us not to contest the legal process. We may, but are not required to, send a notice to you of the legal process. We do not send a notice if we believe the law prohibits us from doing so.

We may hold and turn over funds or other property to the court or creditor as directed by the legal process, subject to our right of setoff.

Limit on Number of Accounts

The Bank reserves the right to limit the number of account types per account holder or per household. The term "household" refers to all persons occupying an individual housing unit, whether a single person or two or more unrelated persons.

Overdrafts

If any Item or other debit presented to us will overdraw the available account balance, including any balance in an overdraft protection account ("ODP Account") we have established for you, we will charge you a fee, whether we pay the Item or dishonor it. You agree immediately upon notice from us to deposit funds sufficient to cover the overdraft plus applicable charges. In connection with overdrafts, our determination of the Deposit Account balance may be made at any time between presentment and our predetermined deadline, and need only be made one time. If we pay Items or permit withdrawals which overdraw the available Deposit Account balance (whether once or repeatedly), we do so at our discretion without any obligation to continue to do so.

Our Receipt of Deposits

In receiving deposits, we act only as your collecting agent and assume no responsibility beyond the exercise of ordinary care. All deposits are posted to your designated deposit account conditionally, and only if the item is payable in U.S. dollars, subject to our receipt of final payment. If final payment is not received on any item you deposited to your account or that we cashed for you, or if any direct deposit, automated clearinghouse deposit or electronic fund transfer to your account is dishonored by the issuing financial institution for any reason, you agree to pay us the amount of the dishonored deposited funds, and you authorize us to debit any deposit account with us of which you are an owner, without prior notice and at any time, for the amount of the returned item or other deposit. You also authorize us to debit your account for the amount of our returned item fee, any interest paid on the deposit, and any other fee we pay or loss we incur. We may also use any other legal remedy to recover the amount you owe us. We are not responsible for any transactions, including any transactions sent through the mail, until we actually receive and post the transaction to your account. We are not liable for the default or negligence of our duly selected agents or correspondents, nor for losses in transit.

Payable on Death (POD) Designation

You may designate to whom you wish funds in your account to be payable in the event of your death, subject to the following terms and conditions:

- Accounts held in the names of two or more persons (Account Owners) will become payable to the designated Payable on Death beneficiary or beneficiaries only upon the death of all account Owners.
- Where there is more than one beneficiary, the funds in your account will be paid equally to each of the beneficiaries.
- The share of any beneficiary who predeceases the account Owner(s) will be paid to the remaining beneficiary or beneficiaries, if there are any.
- You may change your designated beneficiary or beneficiaries at any time by submitting a request.

Payment made in accordance with provisions of your Payable on Death designation will discharge the Bank from liability for funds so paid, unless prior to payment the Bank has been served with a court order or other appropriate legal process restraining payment.

Post-Dated Checks

We agree not to pay an Item that you have postdated before the date shown on the Item only if we receive reasonable advance written notice from you before the Item is presented, and you follow the procedures for and pay the fees associated with a Stop Payment Order. Your notice to us must specify the payee, date, amount, and Item number and the fact that you have postdated it. Notices regarding postdated Items are effective only for six (6) months from the date of the Stop Payment Order, and must be renewed to continue to be effective beyond that time. You agree that we may return a postdated Item to the presenter before the date shown on the Item without liability for wrongful dishonor. We may pay or dishonor a check more than six (6) months old without prior notice to you.

Powers Of Attorney

An account owner granting a power of attorney over a Deposit Account is called the "Principal", and the person acting for the Principal is called the attorney-in-fact, or "Agent". We may refuse to accept a power of attorney for any reason, and we will require verification through direct contact with the Principal and the Principal's legal counsel. We may require the Agent to sign an affidavit stating that the power of attorney presented to us is a true copy and that the Principal continues to be alive and competent and that the relevant powers of the Agent have not been amended or terminated. The Agent is responsible to us if any information in an affidavit furnished to us is untrue or materially misleading or if the Agent exceeds the authority granted by the Principal in the power of attorney. The Agent is required to notify us in writing if the Principal or any other account owner dies or is declared incompetent. Upon death or declared incompetence of the Principal, the Agent's power of attorney ceases.

Reclassification of Deposit Accounts

Under federal law, we are required to classify our deposits a certain way for regulatory reporting purposes. The following disclosure explains a change we may make to your Account that, ultimately, has no effect on your Account. We are simply changing the way we report deposit accounts to the government. The change to your Checking Account will not affect your available balance, interest earnings, FDIC insurance, or bank statement. The Account will consist of a checking sub-account and a savings sub-account, and the Bank may periodically transfer funds between these two sub-accounts. On a sixth transfer

during a calendar month, any funds in the savings sub-account will be transferred back to the checking sub-account. If your Account is a plan on which interest is paid, your interest calculations remain the same. Otherwise, the savings sub-account will be governed by the rules governing our other savings accounts. This change will be transparent to you and will not affect your statement, any terms and conditions of your account, or any other items in your account.

Setoff

You agree that we have the right (without prior notice and when permitted by law) to set-off the funds in a Deposit Account against any amount due and payable to us by you. This right of set-off does not apply to your Deposit Account to the extent restricted or prohibited by law or contract.

Stale-Dated Checks

We may choose to pay or not to pay, or accept for deposit, any check presented more than 6 months after the date written on the check unless there is a valid stop payment order in effect. We are not responsible for any liability you may incur as a result of our decision to pay, not to pay or accept for deposit such an item.

Stop Payment Request

To place a stop payment order on a check or other Item ("Stop Payment Order"), you can use the Website after you login, or write to Customer Service, 4350 La Jolla Village Drive, Suite 140, San Diego, CA 92122. If you use the Website, you must fully complete the Stop Payment Request or the ACH Stop Payment Request Order form. If you use any other method to place the Stop Payment Order, your communication must include the exact amount of the check or other Item, the number of the check, your Deposit Account number, and the name of the payee. We cannot be responsible for the consequences of paying an Item if it is not described with reasonable certainty, or if we are not given reasonable time to place the stop payment. Our acceptance of a Stop Payment Order does not constitute a representation that the Item has not already been paid or that we have a reasonable opportunity to act upon the order. We require written or Website confirmation prior to accepting a Stop Payment Order.

Written Stop Payment Orders, and stop payments entered online, are effective for six (6) months and must be renewed by you to continue to be effective after that time. There is a charge for each Stop Payment Order request and for each renewal. You agree to hold us harmless from all liability because we refuse to pay an Item subject to your Stop Payment Order. If we re-credit your Deposit Account after paying an Item over a valid and timely Stop Payment Order, you agree to sign a statement describing the dispute you have with the payee, to transfer to us all of your rights against the payee or other holder of the Item, and to assist us in any attempt we make to recover the funds from that person.

Duration of Order. Written Stop Payment Orders, and stop payments entered online, are effective for six (6) months and must be renewed by you to continue to be effective after that time. There is a charge for each Stop Payment Order request and for each renewal.

Hold Harmless. You agree to hold us harmless from all liability because we refuse to pay an Item subject to your Stop Payment Order. If we re-credit your Deposit Account after paying an Item over a valid and timely Stop Payment Order, you agree to sign a statement describing the dispute you have with the payee, to transfer to us all of your rights against the payee or other holder of the Item, and to assist us in any attempt we make to recover the funds from that person.

Unsigned Drafts. If you voluntarily give information about your Deposit Account (such as our routing and transit number and your account number) to a person who is seeking to sell you goods or services or collect a debt, we may consider any resulting debit as authorized by you, even if you did not physically deliver a check to the person or personally sign the instrument, unless you notify us to the contrary in accordance with our rules on Stop Payment Orders. If we receive pre-notification of a transaction, we will make a reasonable attempt to notify you of the pending transaction.

Cashier's Checks, We will accept a stop payment order for a Cashier's Check only if it has been lost, stolen or destroyed. We will not issue a replacement check sooner than 90 days after the issue date of the Cashier's Check.

Substitute Checks, Indemnified Copies, Images and Image Replacement Copies

In some cases, we may receive an indemnified copy of your original check, an image replacement document (IRD), a substitute check or an image of your check, instead of the original item. We may act upon presentment of an IRD, indemnified copy, substitute check or image of your check, and pay these items against your account, just as if the original item had been presented.

Unclaimed Property – Accounts Presumed Inactive or Abandoned

We define inactive as no customer initiated activity, other than interest posting, and no contact between the customer and the Bank for a minimum period of 24 months. If your account is dormant, the Bank may hold all statements on your account, but the Bank's normal maintenance, service and other fees will continue to be assessed except where prohibited and ATM and POS access may be blocked. Each state has laws that govern when accounts are considered "abandoned" and when we are required to send a customer's funds to the state. This definition may not be consistent with the laws of your state; however, in accordance with California State law, if an account remains in an inactive status for three years, the funds are considered abandoned. We will send you a letter if it's possible that your account is at risk of being transferred to the state. Dormant accounts (if interest bearing) will continue to earn interest, and will be subject to such service charges as may be shown on the Schedule of Fees herein. We will attempt to notify owners of inactive accounts with an e-mail notice to review their account

and to communicate with us about it. We will surrender the funds in your inactive account to the state of your last known address on file at the Bank if the account remains inactive for the time period designated by that state. Accounts with a foreign address on file will be surrendered to the state of California. Once the account is turned over to the state, you may reclaim the funds by presenting adequate proof of ownership to the appropriate state. We will have no further liability to you for such funds. When the funds in your account are delivered to the state, your account is closed, and no interest accrues. We encourage you to make sure your accounts remain active so you have full use of your accounts, and avoid the potential of having your account funds transferred to the state as "abandoned or unclaimed property".

Checking and Savings Accounts - Truth in Savings Disclosure

From time to time, we may offer you or you may open a variety of deposit accounts. Each such account (the "Account") is subject to the general terms and conditions and any specific terms and conditions relating to that type of account that may be set forth in this Agreement. This disclosure describes the terms, services and the interest calculation with respect to the Deposit Accounts opened through the Bank's Website. All Checking and Savings accounts are variable accounts and these rates are subject to change without notice. This Truth in Savings disclosure refers to the Schedule of Fees herein.

Interest

If your account earns Interest, the following information applies unless otherwise specified in the description for your account type:

Rate Information:

- The interest rate and corresponding APY for savings and money market accounts are variable and are set at our discretion.
- Your interest rate and annual percentage yield may change.
- Fees may reduce earnings.
- At our discretion, we may change the interest rate on your account.
- We may change the interest rate on your account at any time.
- Interest rates and APYs for different balance ranges are listed on the Bank's website.
- We reserve the right to change balance ranges or apply the same interest rate to more than one range.

Balance Computation Method: We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the balance in the account each day.

Compounding and Crediting: Interest is compounded daily and calculated on a 365/366 day basis. Interest is credited on a monthly basis. If your account is closed before interest is credited, your accrued uncredited interest will be forfeited. If your account is at zero at the end of your statement cycle, we reserve the right to close your account, in which case your accrued uncredited interest for that cycle will be forfeited.

Accrual of Interest on Noncash Deposits: Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).

Right to require advance notice of withdrawals: For all savings accounts and all interest-bearing checking accounts, we reserve the right to require seven days' prior written notice of withdrawal. Although we usually pay withdrawals or checks without prior notice on these accounts, doing so does not mean that we give up that right.

Limitations on Withdrawals

Federal regulations impose limits on the number of certain types of withdrawals and transfers you can make each month from your savings or money market account. Please note, that these limits do not apply to withdrawals or transfers made at a branch, by mail or at an ATM. You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:

- Preauthorized transfers (including transfers for overdraft protection)
- Telephone transfers or other electronic transmissions
- Online Banking and Mobile Banking transfers or bill payment transfers
- Transfers by check, draft, debit card, if allowed on your savings account
- We count checks for the purposes of transaction limitations as of the date the check posts to your account (not as of the date you write them)

In addition, each time a transfer is paid against your account in excess of those allowed by federal regulation, you will be assessed an "Excess Transaction or Withdrawal Fee". See Schedule of Fees herein.

If you exceed the transfer limits on more than an occasional basis, we may convert your account to one not subject to transfer limitations or close your account. If we close or convert your account, you will receive a separate communication from us informing you of our actions.

We may refuse to allow any withdrawals without the Bank creating liability to you, if we have a concern that one or more transactions on your account may have been unauthorized or fraudulent, if there is a dispute concerning the Deposit Account that makes us uncertain regarding the instructions that have been given, the Deposit Account is garnished or attached, the Deposit Account has been pledged to the Bank as collateral for a debt, the availability of the funds on deposit cannot be verified, any required documentation has not been presented, or you have failed to repay an obligation to us on time.

REFER TO THE ACCOUNT DESCRIPTION FOR YOUR ACCOUNT TYPE BELOW FOR ADDITIONAL IMPORTANT INFORMATION REGARDING YOUR ACCOUNT.

Direct Checking NW

Account Features:

- Non interest-bearing account
- Free Online Banking
- Up to \$30.00 Domestic ATM Fees Reimbursed per month
- Your Card transactions may be subject to daily Basic Limits as follows:
 - Cash withdrawal from an ATM using an ATM card - \$310.00
 - Cash withdrawal from an ATM using a Visa® Debit card - \$310.00
 - Point-of-sale transaction using your Visa® Debit card - \$500.00

Minimum Deposit to Open Account: None

Monthly Maintenance Fees: No monthly maintenance fee with a Direct Deposit. Otherwise, \$5.00

First Checking NW

Account Features:

- Interest-bearing account
- Account available to customers who are 13 through 17 years old (18 years old in Alabama) and have an adult co-owner on the account.
- Up to \$12.00 Domestic ATM Fees Reimbursed per month
- Limited to daily \$100 cash withdrawal and \$500 of Point-of-Sale transactions
- No Non-Sufficient Fund or Overdraft Fee
- Free Debit Card
- No check writing privileges
- Due to age sensitivity, the following merchant codes are prohibited: 5813; 5921; 7273; 7297; 7995; 9223

Minimum Balance Required to Open the Account: \$ 50.00

Monthly Maintenance Fees: None

Interest Checking NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$2,499.99
 - \$2,500-\$9,999.99
 - \$10,000-\$24,999.99
 - >\$25,000
- Up to \$30.00 Domestic ATM Fees Reimbursed per month
- Receive free starter kit of checks (if ordered at account opening)

Minimum Deposit to Open Account: \$100.00

Monthly Maintenance Fees: None

My Checking NW

Account Features:

- Non interest-bearing account
- Free Online Banking
- Unlimited Domestic ATM Fees Reimbursed per month
- Free Debit Card

Minimum Deposit to Open Account: \$100.00
 Monthly Maintenance Fees: None

Premier Checking NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$499.99
 - \$500-\$999.99
 - \$1,000-\$2,499.99
 - \$2,500-\$4,999.99
 - \$5,000-\$9,999.99
 - >\$10,000
- Unlimited Domestic ATM Fees Reimbursed per month
- Receive free starter kit of checks (if ordered at account opening)

Minimum Balance Required to Open the Account: \$25.00
 Monthly Maintenance Fees: None

Restoration Checking NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$2,499.99
 - \$2,500-\$9,999.99
 - \$10,000-\$24,999.99
 - >\$25,000
- Receive free starter kit of checks (if ordered at account opening)
- Up to \$30.00 Domestic ATM Fees Reimbursed per month

Minimum Balance Required to Open the Account: \$500.00
 Monthly Maintenance Fees: None

Total Loan Rewards Checking

Account Features:

- Non-interest-bearing account
- Unlimited Domestic ATM Fees Reimbursed
- Unlimited check writing
- No annual fee
- Cashback credit is effective for the life of the loan(s) based on the following criteria:
 - Account holder(s) maintains an average daily balance equal to two times the borrower’s monthly principal and interest payments of their eligible Axos Bank consumer loan or combined minimum monthly principal and interest payments if borrower has multiple eligible Axos Bank consumer loans.

Example of required minimum average daily balance requirement:

Customer with single Axos Bank loan	Customer with multiple Axos Bank loans
<ul style="list-style-type: none"> • Monthly mortgage principal and interest payment: \$2,000 • Required min. average daily balance: \$4,000 	<ul style="list-style-type: none"> • Monthly mortgage principal and interest payment: \$2,000 • Monthly auto loan payment: \$500 • Combined monthly payments: \$2,500 • Required minimum average daily balance: \$5,000

- Eligible Axos Bank consumer loans and Total Loan Rewards Checking account must be active as of the first day of the evaluation month in order to be eligible for the cashback credit for that period.

- The 3% annualized cashback credit (0.25% per month) is calculated using principal and interest payments only (excludes any additional escrow amount included in the monthly payment) on the last day of each month, and, if applicable, posted to the account within the 10 business days of the following month.
- Monthly cashback credit is limited to \$100 (0.25% of aggregated minimum monthly principal and interest payment of \$40,000).
- Axos Bank reserves the right to sell a loan at any time without notice and may result in termination of any future cashback credit based on that loan.
- Axos Bank may cancel the program or change the annualized cashback rate and account requirements at the Bank's discretion any time without notice.
- If your account is closed mid-cycle, your accrued cashback earnings will be forfeited. If your account is at zero at the end of your statement cycle, your accrued cashback earnings will be forfeited for that cycle and your account will be closed.
- Your total cashback value may be reported as miscellaneous income to the IRS on a 1099-MISC form.

Minimum Balance Required to Open the Account: \$ 0.00

Monthly Maintenance Fees: None

First Savings NW

Account Features:

- Interest-bearing account
- Account available to customers who are 13 through 17 years old (18 years old in Alabama) and have an adult co-owner on the account Interest Earning Account
- Up to \$12.00 Domestic ATM Fees Reimbursed per month
- Free ATM Card
- Limited to daily \$100 cash withdrawal
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account

Minimum Balance Required to Open the Account: \$50.00

Monthly Maintenance Fees: None

My Savings NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$999.99
 - \$1,000-\$9,999.99
 - \$10,000-\$24,999.99
 - \$25,000-\$49,999.99
 - \$50,000-\$99,999.99
 - >\$100,000
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account

Minimum Balance Required to Open the Account: \$100.00

Monthly Maintenance Fees: None

Regular Savings NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Up to \$10.00 Domestic ATM Fees Reimbursed per month
- Your Card transactions may be subject to daily Basic Limits as follows:
 - Cash withdrawal from an ATM using an ATM card - \$310.00
 - Cash withdrawal from an ATM using a Visa® Debit card - \$310.00
 - Point-of-sale transaction using your Visa® Debit card - \$500.00
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account

Minimum Balance Required to Open the Account: \$25.00

Monthly Maintenance Fees: No monthly maintenance fee when you maintain a minimum daily balance of \$300.00; or a monthly direct deposit of \$25 or more; otherwise, \$3.00

Associate Money Market Plus NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$999.99
 - \$1,000-\$9,999.99
 - \$10,000-\$24,999.99
 - \$25,000-\$49,999.99
 - \$50,000-\$99,999.99
 - >\$100,000
- Unlimited Domestic ATM Fees Reimbursed per month
- Receive free starter kit of checks (if ordered at account opening)
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account
 - We count checks for the purposes of transaction limitations as of the date the check posts to your account (not as of the date you write them)

Minimum Balance Required to Open the Account: \$250.00

Monthly Maintenance Fees: None

Money Market Plus NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$999.99
 - \$1,000-\$9,999.99
 - \$10,000-\$24,999.99
 - \$25,000-\$49,999.99
 - \$50,000-\$99,999.99
 - >\$100,000
- Up to \$10.00 Domestic ATM Fees Reimbursed per month
- Receive free starter kit of checks (if ordered at account opening)
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)

- Telephone transfers or other electronic transmissions
- Online Banking and Mobile Banking transfers or bill payment transfers
- Transfers by check, draft, debit card, if allowed on your savings account
- We count checks for the purposes of transaction limitations as of the date the check posts to your account (not as of the date you write them)

Minimum Balance Required to Open the Account: \$1,000.00

Monthly Maintenance Fees: No monthly maintenance fee when you maintain a minimum daily balance of \$1,000; otherwise, \$8.00

Secure Money Market NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$999.99
 - \$1,000-\$9,999.99
 - \$10,000-\$24,999.99
 - \$25,000-\$49,999.99
 - \$50,000-\$99,999.99
 - >\$100,000
- Up to \$10.00 Domestic ATM Fees Reimbursed per month
- Free ATM Card
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account
 - We count checks for the purposes of transaction limitations as of the date the check posts to your account (not as of the date you write them)

Minimum Balance Required to Open the Account: \$5,000.00

Monthly Maintenance Fees: None

Certificates of Deposits Accounts (CDs)

When you open a Certificate of Deposit Account, you agree to keep your funds in the account until the maturity date. You must deposit at least \$ 500 to open a Certificate of Deposit Account. We provide a confirmation notice that serves as the certificate. Certificates of deposit are opened for a fixed amount and held for a specific term. Withdrawal prior to the maturity of the term selected will result in an early redemption fee which will substantially reduce the interest earned and could result in the loss of some of the principal.

Types of Certificate of Deposit (CD) Accounts

Interest rates on Certificate of Deposit Accounts will vary based on the amount and term requested. The interest rate and annual percentage yield (APY) on the Certificate of Deposit Account is determined on the day we receive your application. This rate is reserved for a period of 5 business days to allow time for your deposit to arrive. Our current rates, tiers and annual percentage yields (APY) for time deposits as of today can be found at our Website, www.axosbank.com/nationwide

Interest

We use the daily balance method to calculate the interest on your account. Interest begins to accrue on the business day you deposit non-cash items (for example, checks). Interest is compounded daily and credited monthly. Interest begins to accrue on the business day you deposit non-cash items (for example, checks). Interest is compounded daily and credited monthly. We may change the interest rate from time to time, at our discretion. The annual percentage yield (APY) assumes that interest remains on deposit until maturity. A withdrawal of interest will reduce earnings. You must maintain the entire balance in the account until maturity to obtain the disclosed annual percentage yield.

Terms

Terms for Certificates of Deposit are offered in monthly increments up to five years.

Maturity Options

Personal Certificate of Deposit (CDs) Accounts automatically renew for the same term and at the current interest rate then paid for the term in which the Account was renewed. Special 13-Month Certificate of Deposit will automatically renew for 12-Months and at the current interest rate. The current interest rates are always available on our Website. You may also email or call us on the maturity date and we can tell you what the interest rate will be for the next renewal term.

In the event you wish to close out your Certificate of Deposit Account at maturity, you can contact us via secure email, telephone or provide instructions in writing. Close out funds can be provided either by bank check or via a wire transfer. In the event you elect to transfer funds via a wire transfer, the Bank's Wire Transfer Form is to be completed and forwarded to the Bank, a fee will apply.

Grace Period

If the Certificate of Deposit Account automatically renews, you have 10 days from the maturity date that you can make changes to your CD's term, rate, or make additional deposits or withdraw funds without penalty before it automatically renews for the same term. This time period is referred to as the "Grace Period". Interest earned during one term that is not withdrawn during or within the ten-day grace period immediately after that term is added to principal for the renewal term. If you close the Certificate of Deposit during the grace period, you will forfeit any interest accrued since the maturity date.

Early Withdrawal Penalty

You have contracted to keep your funds on deposit for the agreed term. You may not withdraw all or part of a CD except as provided in this Agreement. At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We withdraw interest before principal. Each time we permit you to make an early withdrawal of principal; we may charge you an early withdrawal penalty. If your account has not earned enough interest to cover an early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

If we are required to pay an amount from your CD (i.e. levy or garnishment), we may charge you an early withdrawal penalty, calculated on the amount withdrawn from the CD.

Standard Early Withdrawal Penalty. On a Certificate of Deposit account, we will impose a penalty if you withdraw any or all of the principal before the maturity date. The penalty imposed will be determined by the following schedule based on the number of days in the stated term. We calculate the standard early withdrawal penalty on the principal amount withdrawn. Please note that the term of the CD is the specified period of time you agreed to leave your funds on deposit – not the time remaining until maturity of your CD.

- CD term of 3 thru 5 months, one and a half months' loss of interest, accrued or not;
- CD term of 6 thru 11 months, three months' loss of interest, accrued or not;
- CD term of 12 thru 23 months, six months' loss of interest, accrued or not;
- CD term of 24 thru 35 months, twelve months' loss of interest, accrued or not;
- CD term of 36 thru 47 months, eighteen months' loss of interest, accrued or not;
- CD term of 48 months or greater, twenty-four months loss of interest, accrued or not.

The above schedule applies to personal CD accounts only.

Retirement Certificate of Deposit (CD) Accounts

When you open a CD account, you agree to keep your funds in the account until the maturity date. You must deposit at least \$ 500 to open a retirement CD account. We provide a confirmation notice that serves as the certificate. Retirement CD accounts are opened for a fixed amount and held for a specific term. Withdrawal prior to the maturity of the term selected will result in an early redemption fee which will substantially reduce the interest earned and could result in the loss of some of the principal. Please refer to Schedule of Fees herein for additional fees.

NOTE: An early withdrawal penalty will not be charged for Required Minimum Distributions (RMDs).

Types of Retirement CD Accounts

Interest rates on retirement CD accounts will vary based on the term requested. The interest rate and annual percentage yield (APY) on the retirement CD account is determined on the day we receive your application. This rate is reserved for a period of 10 business days to allow time for your deposit to arrive. However, IRS Regulations require funds to be received by us by certain contribution and rollover deposit deadlines. If the funds are received by us after the IRS deadlines, the deposit will be declined. Our current rates and annual percentage yields (APYs) for time deposits as of today can be found at our Website, www.axosbank.com

Interest

We use the daily balance method to calculate the interest on your retirement CD account. This method applies a daily periodic rate to the daily Collected Balance in the account. Interest begins to accrue on the business day you deposit non-cash items (for example, checks). Interest is compounded daily and credited monthly. We may change the interest rate from time to time, at our discretion. The annual percentage yield (APY) assumes that interest remains on deposit until maturity. A withdrawal of interest will reduce earnings. You must maintain the entire balance in the account until maturity to obtain the disclosed annual percentage yield.

Terms

Terms for Certificates of Deposit are offered in monthly increments up to five years.

Maturity Options

Retirement CD accounts automatically renew for the same term and at the current interest rate then paid for the term in which the account was renewed. The current interest rates are always available on our Website. You may also email or call us on the maturity date and we can tell you what the interest rate will be for the next renewal term.

Retirement CD accounts can be closed either as a distribution or a transfer.

To close your retirement CD account as a distribution, you must contact us via secure email or telephone and provide information on how the funds are to be remitted and your elections on federal and state tax withholding. The appropriate withdrawal form will then be sent to you and must be signed by you and returned to us prior to the retirement CD account closing. Distribution of the funds will be sent to you via bank check payable to you, or to your non-retirement checking or savings account by ACH payment. In the event you elect an ACH payment you will provide the following:

- Name of the receiving institution
- Routing number of the receiving institution
- Account number and type of account (either checking or savings) at the receiving institution.

In addition, you agree not to hold Bank responsible for any delay or loss of funds due to incorrect or incomplete information supplied by you or by your financial institution or due to an error on the part of your financial institution in depositing the funds to your account.

To close your Retirement CD account as a transfer to a retirement account held at another institution, we must receive the appropriate, completed Transfer Request form from that institution. Funds transferred to a retirement account at another institution are sent via bank check.

Grace Period

If the retirement CD account automatically renews, you have 10 days from the maturity date that you can make changes to your retirement CD's term or rate, or make additional deposits or withdraw funds without penalty before the account automatically renews for the same term. This time period is referred to as the "Grace Period". Interest earned during one term that is not withdrawn during or within the ten-day grace period immediately after that term is added to principal for the renewal term. If you close the retirement CD during the grace period, you will forfeit any interest accrued since the maturity date.

NOTE: If you wish to make an additional deposit during the retirement CD grace period, you must contact us via secure email or telephone and provide information on the type of deposit being made. The appropriate form will then be sent to you and must be signed by you and returned to us prior to the deposit being posted. In addition, the funds must be received by us within the IRS deadlines. If the funds are received by us after the IRS deadlines, the deposit will be applied to the current year contribution. If you wish to take a distribution of funds, refer to the requirements in the Maturity Options section above.

Early Withdrawal Penalty

You have contracted to keep your funds on deposit for the agreed term. You may not withdraw all or part of a retirement CD except as provided in this Agreement. At our discretion, we may allow you to withdraw all or part of your funds at times other than the grace period. We withdraw interest before principal. Each time we permit you to make an early withdrawal of principal, we may charge you an early withdrawal penalty. If your account has not earned enough interest to cover the early withdrawal penalty, we deduct any interest first and take the remainder of the penalty from your principal.

NOTE: An early withdrawal penalty will not be charged for Required Minimum Distributions (RMDs) for CDs held at Axos Bank.

If we are required to pay an amount from your retirement CD (i.e. levy or garnishment), we may charge you a CD penalty, calculated on the amount withdrawn from the retirement CD. If the levy is from the IRS, federal tax will be withheld and, depending on state laws, state tax may also be withheld. You can elect to have no tax withheld by contacting us via secure email or telephone and requesting a withdrawal form. The withdrawal form will be sent to you and must be signed by you and returned to us prior to the levy deadline for remitting the funds.

Standard Early Withdrawal Penalty

On a retirement CD account held at Axos Bank we will impose a penalty if you withdraw any or all of the principal before the maturity date, with the exception of required minimum distributions. The penalty imposed will be determined by the following schedule based on the number of days in the stated term. We calculate the standard early withdrawal penalty on the principal amount withdrawn. Please note that the term of the retirement CD is the specified period of time you agreed to leave your funds on deposit – not the time remaining until maturity of your retirement CD.

- CD term of 6 thru 11 months, three months' loss of interest, accrued or not;
- CD term of 12 thru 23 months, six months' loss of interest, accrued or not;
- CD term of 24 thru 35 months, twelve months' loss of interest, accrued or not;
- CD term of 36 thru 47 months, eighteen months' loss of interest, accrued or not;
- CD term of 48 months or greater, twenty-four months loss of interest, accrued or not.

The above schedule applies to retirement CD accounts only.

Legacy Accounts – No Longer Available

Associate Money Market NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers are as follows:
 - \$0–\$999.99
 - \$1,000–\$9,999.99
 - \$10,000–\$24,999.99
 - \$25,000–\$49,999.99
 - \$50,000–\$99,999.99
 - >\$100,000
- Must be a Nationwide Associate
- Receive free starter kit of checks (if ordered at account opening)
- Unlimited Domestic ATM Fees Reimbursed (excludes International ATM transactions)
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account
 - We count checks for the purposes of transaction limitations as of the date the check posts to your account (not as of the date you write them)

Minimum Balance Required to Open the Account: \$250.00

Monthly Maintenance Fees: None

eChecking NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0–\$499.99
 - \$500–\$999.99
 - \$1,000–\$2,499.99
 - \$2,500–\$4,999.99
 - \$5,000–\$9,999.99
 - >\$10,000
- Up to \$30.00 Domestic ATM Fees Reimbursed per month

Minimum Deposit to Open Account: \$0

Monthly Maintenance Fees: No monthly maintenance fee with a Direct Deposit and eight (8) Point of Sale (POS) transactions during the month; or \$10,000 combined balance; otherwise, \$8.00. Qualifying POS transactions must post and clear the account during the monthly qualification cycle. Transactions may take one or more business days from the transaction date to post to the account.

Holiday Savings NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Free ATM Card
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account

Minimum Balance Required to Open the Account: None

Monthly Maintenance Fees: None

IRA Savings NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$999.99
 - \$1,000-\$9,999.99
 - \$10,000-\$24,999.99
 - \$25,000-\$49,999.99
 - \$50,000-\$99,999.99
 - >\$100,000
- ATM Cards Not Available

Minimum Balance Required to Open the Account: \$1,000.00

Monthly Maintenance Fees: None

Money Market NW

Account Features:

- Interest-bearing account
- Variable Interest Rate Account
- Tiered Interest Earning Account. Tiers as follows:
 - \$0-\$999.99
 - \$1,000-\$9,999.99
 - \$10,000-\$24,999.99
 - \$25,000-\$49,999.99
 - \$50,000-\$99,999.99
 - >\$100,000
- Up to \$10.00 Domestic ATM Fees Reimbursed per month
- Receive free starter kit of checks (if ordered at account opening)
- **Transaction Limits:** You can make no more than a combined total of six (6) per month or monthly statement cycle (subject to Available Balance) from among the following:
 - Preauthorized transfers (including transfers for overdraft protection)
 - Telephone transfers or other electronic transmissions
 - Online Banking and Mobile Banking transfers or bill payment transfers
 - Transfers by check, draft, debit card, if allowed on your savings account
 - We count checks for the purposes of transaction limitations as of the date the check posts to your account (not as of the date you write them)

Minimum Balance Required to Open the Account: \$1,000.00

Monthly Maintenance Fees: No monthly maintenance fee when you maintain a minimum daily balance of \$1,000; otherwise, \$8.00

Funds Availability Disclosure for Personal Accounts

Your Ability To Withdraw Funds

This policy applies to deposits into accounts that are opened at the Bank. All deposits are processed at the Bank's processing facility located in San Diego, CA, and are received either electronically or through the mail. Please do not send cash deposits. In the event Bank receives cash deposits, you agree that Bank's determination of the amount of the deposit will be conclusive. The Bank is responsible for mailed deposits only after the Bank has received them. The Bank is not liable for any deposits, including cash, lost in the mail. Remember: when you use the U.S. mail to make a deposit, you will need to allow extra time for the deposit to reach us.

The Bank's policy is to make funds from certain electronic deposits available to you on the business day the Bank receives the deposit. However, the Bank may delay the availability of funds from your check deposits to afford us time to verify the deposit and ensure the funds are collected. During the delay, you may not withdraw the funds and the Bank will not use the funds to pay checks you have written or other debits against the account that you have initiated, such as electronic bill payments.

Determining the Availability of a Deposit

The length of the delay is counted in Business Days from the day of your deposit. Every day is a Business Day, except Saturdays, Sundays, and federal holidays. For walk-in deposits, if the Bank receives your deposit before 3:00 PM (PT) on a Business Day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after

3:00 PM (PT) or on a day we are not open, we will consider the next business day we are open to be the day of your deposit. The availability of your deposit varies depending on the type of deposit and is explained below.

This funds availability policy does not apply to checks drawn on banks located outside the United States of America.

Same Day Availability

Funds from electronic direct deposits to your account will be available on the same day the Bank receives the deposit.

Interbank Transfers initiated from your Online Banking account will be made available upon actual and final credit of the funds. This is typically within 3 to 5 Business Days.

Next-Day Availability

Funds from the following deposits on established accounts are available on the first Business Day after the day of your deposit:

- U.S. Treasury Checks that are payable to you
- U.S. Postal Service Money Orders that are payable to you
- Wire Transfers
- Checks drawn on the Bank

If you make a deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

- Cash
- State and local government checks that are payable to you
- Cashiers, certified
- Federal Reserve Bank checks

If you do not make your deposit in person to one of our employees (for example you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

If you make your deposit at a nonproprietary ATM (an ATM **not** owned or operated by Axos Bank), funds from these deposits will be available no later than the fifth business day after the banking day of deposit.

Note: At its discretion, the Bank may decline to accept any item for deposit.

Other Check Deposits

Checks are available as follows:

Checks: The first \$200 from a deposit of checks will be available on the first business day after the day of your deposit. The remaining funds from a deposit of checks will be available on the second business day after the day of your deposit. For example, if you deposit a check of \$700 on Monday, \$200 of the deposit is available on Tuesday. The remaining \$500 is available on Wednesday.

If we are going to take longer to make all of the funds from these types of deposits available as disclosed above, we will notify you by mail or e-mail within one business day after we receive your deposit. We will also tell you when the funds will be available.

Longer Delays May Apply

In some cases, we will not make all funds that you deposit by check available to you by the first business day after the day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the day of your deposit. The first \$200 of your deposits, however, may be available no later than the first business day after your deposit. If we are not going to make all funds from your deposit available by the first business day after the day of your deposit, we generally notify you by mail or e-mail if the Bank delays your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit. If you need the funds from a deposit right away, you should ask when the funds will be available.

We may delay the availability of funds you deposit by check for a longer period under the following circumstances:

- The Bank believes a check you deposited will not be paid;
- You deposited checks totaling more than \$5,000 on any one day;
- You redeposit a check that has been returned unpaid;
- You have overdrawn your account repeatedly in the last six months; or

- There is an emergency, such as failure of communications or computer equipment.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first thirty (30) days your account is open:

- Funds from electronic direct deposits to your account will be available on the day we receive the deposit.
- Funds from deposits of cash and wire transfers will be available the first business day after the day of your deposit. The first \$5,000 of a day's total deposits of traveler's, cashier's, certified, teller's and federal, state and local government checks will be available the first business day after the day of your deposit, if the deposit meets certain conditions. For example, the check is deposited into an account held by the payee and in person to an employee of the bank. The excess over \$5,000 will be available on the seventh (7th) business day after the day of your deposit. If your deposit of these checks (other than a US Treasury check) is not made in person to one of our employees, the first \$5,000 will not be made available until the second business day after the deposit.
- Funds from all other check deposits will be available on the seventh (7th) business day after the day of your deposit.

NOTE: A five (5) business day hold will be placed on your initial deposit when the Bank is initiating the transfer via the automated clearing house from your external bank account on your behalf.

Cash Withdrawal Limitations

If we delay availability of your deposit, we place certain limitations on withdrawals in cash. In general, \$200 of a deposit is available for withdrawal in cash on the first business day after the day of deposit. In addition, a total of \$400 of other funds becoming available on a given day is available for withdrawal in cash at or after (time no later than 5:00 Pm (PT)) on that day. Any remaining funds will be available for withdrawal in cash on the following business day.

Holds On Other Funds (Check Cashing)

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you deposited it.

Deposits at Non-Axos Bank ATMs

Non-Axos Bank ATMs are part of ATM networks owned or operated by other financial institutions. You can use your card to deposit funds to accounts linked to your card as primary checking and primary savings. Deposits at made a non-Axos ATM by cash or check will be made available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited. All ATMs that we own or operate are identified as our machines.

IMPORTANT CHECKING ENDORSEMENT STANDARDS FOR CONSUMER ACCOUNTS

Your compliance with the Bank's endorsement standards is necessary to help assure that the checks you deposit will be cleared on a timely basis. Axos Bank's endorsement standards are:

Customer endorsements must be placed on the reverse side of the check where indicated by preprinted format.

The remaining area of the check cannot contain any preprinted, stamped or handwritten customer information.

Some checks or drafts may require personal endorsement.

Check 21 - Substitute Checks and Your Rights

What is a substitute check? To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check. Some or all of the checks that you receive back from us may be substitute checks. This notice describes the rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other laws with respect to those transactions.

What are my rights regarding Substitute Checks? In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, NSF check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You are also entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other laws.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we receive your claim and the remainder of your refund (plus interest if your account earns interest) no later than 45 calendar days after we received your claim. We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do you make a claim for a refund? If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include:

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss, and
- A copy of the substitute check and/or the following information to help us identify the substitute checks: the check number, the name of the person to whom you wrote the check and the amount of the check.

Overdrafts and Nonsufficient Funds

When we determine that you do not have enough available funds in your account to cover an Item (including an ATM or Debit Card transaction), then we consider the Item an insufficient funds item. If you have enrolled in our optional Overdraft Line of Credit Program and have enough funds in the linked account under the Overdraft Line plan, we transfer funds to cover the item. You may also establish a link from your checking account to a savings account or money market account to cover the shortfall in your checking account. Otherwise, without notice to you, we either authorize or pay the insufficient item and overdraw your account (an overdraft item) or we decline or return the insufficient item without payment (a returned item). All types of Items, including Bank fees, may overdraw your account.

We pay overdrafts at our discretion, which means we do not guarantee that we will always, or ever, authorize and pay them. If we authorize or pay an item and create an overdraft, you must pay back any overdraft immediately. Each Owner will be jointly and severally liable to pay back any overdraft created by any account Owner, even if the Owner did not write the check, initiate the transaction, benefit from it or make any deposits to the account. If we overdraw your account to pay items on one or more occasions, we are not obligated to continue to paying future insufficient funds items. We may also close your account due to overdraft activity. See Closing an Account. You agree that we may apply deposits (including, but not limited to, Social Security and similar benefits) to overdrafts without notice to or consent from you, unless the law states otherwise.

We may charge you a fee regardless of whether we authorize, pay or return an item. We may assess this fee for each item we authorize, pay or return. See our Schedule of Fees herein.

Overdraft Protection

The Bank Offers overdraft protection services that may protect your account against overdrafts in the event you do not have sufficient available funds to cover an item authorized or presented for payment. Overdraft protection may be less costly than paying overdraft or Non-sufficient return item fees.

- *Overdraft Protection By Linked Accounts* – With this plan, you authorize the Bank to make an automatic transfer from your savings account to cover items presented for payment against non-sufficient funds to your designated checking account. These automated transfers are considered limited transfers and each transfer is counted as one of the six transfers from a savings account allowed per calendar month per federal regulations.

A transfer occurs from your savings account to cover items presented against non-sufficient funds. Transfers are made for the exact amount to cover the shortfall in Available Funds.

Electronic Fund Transfer (EFT) Services

General Rules and Definitions

This agreement (the "EFT Agreement") governs your use of Electronic Funds Transfer Services described below ("EFT Services") that are available for the Accounts opened through the Bank Website (the "Website"). The following provisions apply only to accounts established primarily for personal, family, or household purposes. This EFT Agreement describes your rights as well as your responsibilities and as such should be read carefully. We recommend that you keep the EFT Agreement for future reference.

Definitions. In this EFT Agreement, "Checking Account" means a Demand Deposit account (DDA), a Negotiable Order of Withdrawal (NOW) account, a Savings account and a Money Market account at the Bank that you open through the Bank website; "Account" includes any Checking, Certificate of Deposit, or Savings account at the Bank opened through the Website or in person; "Card" means an automated teller machine card and/or a VISA debit card that accesses your Checking, Savings, Money Market, or NOW account; "PIN" means the personal identification number you use in connection with your Card; "Password" means the password you use to access the Website and your Bank Accounts through a personal computer or other electronic terminal; "Access Device" means your Card, Password, or other device or code we make available to you to access your Accounts; "Business Day" means Monday through Friday, except federal holidays; and "Authorized User" means any person you authorize or permit to use your Card, Password or other Access Device to access your Accounts, whether that person uses the Access Device to obtain information or to conduct a transaction.

This EFT Agreement is part of the Banking Documents. Other terms used in this EFT agreement may be defined elsewhere in the Banking Documents.

- ATM Safety
- Funds Transfers
- Other Electronic Fund Transfer Services
- Liability For Unauthorized Electronic Transfers
- Other Electronic Fund Transfer Services

Types of Transactions

We offer the following types of Electronic Fund Transfers (EFT) Services for your Checking Account.

- **Direct Deposits.**

You can arrange for direct deposits to your checking and savings account(s).

- **Preauthorized Credits/Debits.**

We accept, on your behalf preauthorized Credits/Debits drawn on your Deposit Accounts which allow unrestricted activity. Through our electronic bill payment service, you are able to electronically transfer funds from your Deposit Account to other parties, provided the account allows such activity. We may conduct these transactions via Automated Clearinghouse (ACH) transfer. We may also accept and direct funds by wire transfer. Each of these services has unique fees associated with the transaction. Please consult our Schedule of Fees herein. When you provide the party initiating the withdrawal or deposit with advance authorization to make recurring ACH transfers to or from your Account, the transfers are referred to as "preauthorized transfers." Because these preauthorized transfers are performed electronically through the ACH, they are governed by federal regulations pertaining to EFT Services, which entitle you to certain benefits and protections in connection with the EFT Services, such as the right to receive a copy of your written authorization to make preauthorized transfers from your Account from the party that obtains it.

- **ATM and Point-of-Sale Transactions.**

ATM Transactions. ATM Cards issued by us to you remain our property and you may be requested to return the Card to us at any time for any reason. Each card is used in conjunction with an authorizing Personal Identification Number ("PIN"). To guard against someone initiating a transaction that you have not authorized, you must take all reasonable precautions to prevent any other person from learning your PIN. If you permit or authorize another person to use your Card and PIN, you will be liable for all resulting transactions. You may use your Card at ATMs which are a part of an Electronic Funds Transfer service network to which the Bank belongs ("EFT network"). ATM withdrawals are available up to the daily authorization limits disclosed below, provided the available balance in the Deposit Account associated with your card is greater than or equal to the amount requested, plus any fees that may be charged along with the cash disbursement.

- Withdraw cash from your Checking Account.
- Find out your Checking Account balances.
- Transfer funds between your own accounts at the Bank (if available on the ATM in use).
- Withdraw cash from your Savings Account.
- Make deposits to your own accounts.

Note: We cannot assure that a specific ATM or EFT network will perform or permit all the above transactions. In addition, some or all transactions may be subject to a surcharge assessed by the terminal owner. Some fees and/or charges assessed by the terminal owner may be reimbursed to you in accordance with our published Schedule of Fees herein. Also, a specific ATM or EFT network may not provide you with access to all of your Accounts or may automatically post withdrawals to certain account types (such as checking), rather than the

account you selected. If you have a question regarding whether a certain ATM or EFT network will process a transaction, sign on to your online banking, call, e-mail or write us.

- **Point-of-Sale Transactions.** You may use your Visa debit card to purchase goods and services from merchants that participate in certain EFT networks and have agreed to accept your Card as a means of payment. Purchases made with your Card are referred to as point-of-sale ("POS") transactions, and will be charged against your Checking Account. POS withdrawals may, at the Bank's discretion, be authorized even when the available balance is not sufficient.
- **Other Electronic Transfers.**
 - **Transfers to Your Other Accounts at the Bank.** You may transfer funds to a Savings, Money Market, or Checking Account on the Website by logging into online banking.
 - **Transfers to Third Parties.** You can transfer funds from your Account to third parties ("Recipients") by entering payment instructions through our online banking Bill Payment Service. Once the transfer has occurred, it is irrevocable.
 - **Terms Relating to Goods and Services Purchased using Electronic Transfers with an ATM or Visa Debit Card.**
 - No Liability. The Bank is not responsible in any way for any goods or services you decide to purchase, including without limitation, their quality, safety, legality or delivery. The Bank will not become involved in any dispute involving such goods or services. You also agree to release the Bank and their respective directors, officers, employees and agents from any and all claims, demands and damages between persons using and accepting the Bank's ATM and Visa Debit Cards issued to you, including any claims, demands or damages arising out of or related to the purchase or sale of goods or services.
 - Rejected Funding Transactions. Payments are made solely out of funds on deposit with the Bank in accordance with the Banking Documents. If you fund your account through a credit card or ACH transaction, you may not dispute that transaction if you have transferred funds out of your account. If you are the recipient of a transfer from another Bank customer, and the sender reverses or charges back a transaction used to fund your transfer, Bank immediately and without notice or presentment may debit your account for the amount of the transfer, regardless of whether your account has a sufficient balance to fund the transaction. You are responsible for any overdraft created because of the reversal. You may incur interest, fees and charges in accordance with the Banking Documents if there are insufficient funds in your designated Account to cover such amount.
 - Limitations on Payments. The Bank may terminate access to the Bank's ATM and/or Visa Debit **Card Services at any time for any reason, including without limitation (i) with respect to any recipient of transfers, if the Bank believes in its sole discretion that there are an excessive number of disputes involving customer use, or (ii) with respect to any third party, if the Bank believes in its sole discretion that the third party has initiated disputes without reasonable cause or in bad faith.** The Bank also may reject a transaction or restrict your access to the Website to make further transactions at any time if it believes the security of your accounts or the Website is at risk or any fraudulent or illegal activity may be occurring, including evidence of unusual activity in your accounts.

Limitations on Transfers

Your Card transactions will be subject to daily limits as follows*:

- Cash withdrawal from an ATM using an ATM card - \$510.00
- Point-of-sale transaction using your ATM card - \$500.00
- Cash withdrawal from an ATM using a Visa® Debit card - \$1,010.00
- Point-of-sale transaction using your Visa® Debit card - \$2,500.00

*For Direct Checking and Regular Savings products – please refer to product features for limits.

For security reasons, we may further limit these amounts from time to time without notice. Non-sufficient funds activity involving an ATM or Visa Debit Card may result in decreased daily limits or revocation of the card.

Charges For Use Of Your Card. We do not charge you a fee to use your Card at an ATM or to make a POS transaction. However, ATM transactions may be subject to a fee or surcharge assessed by the terminal owner, for which you will be reimbursed by the Bank up to the amount per month which corresponds to the type of account you have.

Preauthorization Payments Holds

When you use your Card at a point of sale location or when you use the Visa or other network enhancement feature of the Cards to obtain goods or services or to obtain cash, the merchant may attempt to obtain preauthorization from us for the transaction. When the preauthorization is approved by us, we immediately debit the preauthorized amount from your designated Account. The amount you actually approved or signed for may vary in some cases from the amount of the actual purchase, depending on the merchant's request. If the preauthorization request varies from the amount of the actual transaction, payment of the transaction (which usually occurs within two to five days) will adjust the amount previously deducted from your designated Account. This process may affect the availability of funds from your designated Account to pay checks or for other electronic fund transfers. Since all transactions are immediately posted to your designated Account, please check your current balance on the Website. We will not be responsible for damages for wrongful dishonor if any items are not paid because the amount requested by the merchant was different from the actual amount you approved.

Using your Card for International Transactions

If you use your Card to obtain cash or to purchase goods or services in another country, the amount of the charge in foreign currency will be converted to a U.S. dollar amount by the applicable network (e.g. Visa, MasterCard, etc.). In making this conversion, the network will use the procedures set forth in its operating regulations. Conversion to U.S. dollars may occur on a date other than the date of the transaction; therefore, the currency conversion rate may be different from the conversion rate in effect on the transaction date. You understand that we do not determine the currency conversion rate that is used, and we do not receive any portion of the currency conversion rate.

Documentation of Transfers

- Receipts: You have a right to receive a receipt at ATMs and POS terminals that accept your ATM and/or Visa debit cards each time you make a transaction.
- Preauthorized Credits: If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at 888.502.2967 to find out whether or not the deposit has been made.
- Periodic Statements: You will also be able to view your bank statement and transaction history on the Website.

Lost or Stolen Card or Unauthorized Transactions

Notify us immediately if your ATM Card, Visa Debit Card or PIN or other access code has been lost or stolen or used without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all your money in your account plus your maximum Overdraft Line of Credit.

In Case of Errors or Questions about Your Electronic Transfers

Telephone Customer Service at 1-844-773-0647, email, or write us at Axos Bank, P.O. Box 509127, San Diego, CA 92150, as soon as you can if you think your online statement or receipt is wrong or if you need more information about a transfer listed on the online statement or receipt. We must hear from you NO LATER than 60 days after your FIRST online statement on which the problem or error has appeared. In your communication to us, be prepared to provide us with the following information:

- Your name and Account number (if any).
- A description of the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- The dollar amount of the suspected error.

If you tell us orally, we may require that you send your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (20 business days for new accounts) after we hear from you and will correct the error, promptly. If we need more time, however, we may take up to 45 days (90 days for new accounts, point-of-sale, or foreign-initiated transactions) to investigate your complaint or question. If we decide to do this, we will provisionally credit your account within 10 business days (20 business days for new accounts) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your questions or complaint in writing and we do not receive it within 10 business days, we may not credit your account.

For disputes involving the unauthorized use of your Visa Debit Card for Visa point-of-sale transactions, we will provisionally credit your Account within 5 business days. Under the Visa Rules, we may withhold provisional credit to the extent allowed under applicable law if we determine that the circumstances or account history warrants the delay. The Visa Rules do not apply to ATM transactions, certain commercial card transactions, PIN or other transactions not processed over the V network.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

Electronic Transaction Cancellations

If you have arranged with us in advance to make regular periodic payments out of your designated Account using our Electronic Bill Payment Service, you can stop any of those payments by following these procedures:

- Sign on to the Website and cancel the future payments using the procedure as called for in the Bill Payment section.
- Call Customer Service, write the Bank, or e-mail in time for us to receive your request three or more business days before the payment is scheduled to be made. If you call, we may require you to put your request in writing so that it reaches us within 14 days after your call.

NOTE: This section does not apply to stop payment orders for checks.

Liability of Bank for Failure to Stop Payment of Preauthorized Transfer

If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Your Liability for Unauthorized Electronic Funds Transfers

TELL US AT ONCE if you believe your ATM and/or Visa Debit Card or any other Access Device has been lost or stolen or if you think your PIN or Password is no longer secure or confidential. Telephoning us is the best and fastest way of keeping your possible losses down. During business hours you may call 1-844-773-0647 or login to your online banking and send us a secure message to report your ATM/Visa Debit Card lost or Stolen.

You can lose no more than \$50.00 if someone used your Card without your permission, if you tell us within two business days, subject to Visa's Zero Liability policy. If you do NOT tell us within two business days after you learn of the loss or theft of your Card or other Access Device, and we can prove we could have stopped the unauthorized transactions if you had told us, you could lose as much as \$500.00. Also if your on-line statement shows transactions that you did not make, TELL US AT ONCE. If you do not tell us within 60 days after the daily transactions (Periodic Statement) are provided to you on the Website, you may not get back any money you lost after the 60 days if we can prove that we could have prevented the transactions if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, let us know. We may extend the time periods.

You agree that you will not reveal your User ID, Password, PIN, or any other Access Device to any person not authorized by you to use your Access Devices; not write your PIN or Password on your ATM and/or VISA Debit Cards or on any item kept with your Access Devices; and not leave a computer terminal unattended after you have logged in using your Password or other Access Device.

Our Liability For Failure To Complete Electronic Funds Transfers

If we do not complete a transaction from your consumer account on time or in the correct amount, according to our agreement with you, we will be liable for your losses or damages only directly caused by this failure. However, there are some exceptions. For instance, we will not be liable if:

Through no fault of ours, you do not have enough available funds in your Account, including any available overdraft line of credit, to make the transaction.

- The automated teller or cash dispensing machine does not have enough cash.
- Any terminal or system was not working properly and you knew about the breakdown when you started the transaction.
- Circumstances beyond our control (such as fire, flood or riot) prevent the transaction, despite reasonable precautions that we have taken.
- In the case of pre-authorized credits, the data from the third party is not received, is incomplete or erroneous.

Amendments

If you do not agree to a change or amendment to this EFT Agreement, you must notify us prior to the effective date of the change or amendment and cancel your EFT Services and surrender or destroy your Access Devices.

Termination

We may terminate EFT Services, in whole or in part, without notice, due to your default or as a security precaution. If you or we cancel this EFT Agreement you must surrender or destroy your Card or any other Access Device issued to you.

Confidentiality

We will disclose information to third parties about your account or the transfers you make:

- Where it is necessary for completing transfers, or
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- In order to comply with government agency or court orders, or
- If you give us your written permission.

Transactions Not Subject to Electronic Fund Transfer Act or Regulation E

Electronic transfers made from an account used for business purposes, regardless of account ownership, are not subject to the Electronic Funds Transfer Act, Regulation E or to the error resolution procedures set forth herein. You must notify us at once of any unauthorized or erroneous electronic transactions not subject to the Electronic Fund Transfer Act or Regulation E shown on your statement or a notice. Your notice must be in writing, must include a statement of relevant facts and must reach us no later than 60 days after the date of the statement or notice on which the erroneous transaction appears.

ATM Safety Tips

The suggestions that follow offer some simple tips on protecting your card and PIN and on exercising care when using an ATM. Please review them carefully,

Protect Your ATM Card and Personal Identification Number (PIN)

- Always protect your card by keeping it in a safe place. If your card is lost or stolen, contact us immediately.
- Always protect your PIN. You should never give your PIN to anyone and you should never write your PIN anywhere, especially on your card. If you choose your own PIN, avoid using obvious numbers such as telephone numbers, addresses, or birthdates.
- Never give someone information about your card or PIN over the telephone. If someone is asking for this information, refuse and immediately contact us.

Be aware of Your Surroundings at ATMs

- Look around when you walk up to the ATM or exit the ATM. If you notice anyone or anything suspicious or that you deem unsafe, such as the lighting around the ATM not working, use another ATM or return later.
- While at the ATM, enter your PIN discreetly; shield the keypad with your hand or body. After completing your transaction, be sure to put your card away, cash, and transaction record before exiting the ATM area. Count the cash later in the safety of your locked car or home.
- When you enter or exit an ATM in an enclosed area, be sure you close the entry door completely. Do not open locked ATM vestibule doors for others or allow any unknown persons to enter the ATM area when you are making your transaction. Authorized customers should have their own access.
- When you use a drive-up ATM, be sure your passenger windows are closed and doors are locked.
- If you must use an ATM at night, consider taking someone with you.

Other Electronic Fund Transfer Services:

Funds Transfer Services

The following provisions apply to funds transfers you send or receive through Axos Bank "the Bank", but do not apply to electronic funds transfers governed by Regulation E of the U.S. Federal Reserve Board. If you have a specific agreement with the Bank for these services, these provisions supplement that agreement to the extent these provisions are not consistent with the specific agreement.

The Uniform Commercial Code includes provisions relating to funds transfers. These provisions define the following terms: funds transfer, payment order and beneficiary. These terms are used here as they are defined in Article 4A of the Uniform Commercial Code - Funds Transfers as adopted by the state whose law applies to accounts for which the funds transfer service is provided. In general: a funds transfer is the process of carrying out payment orders that lead to paying a beneficiary. The payment order is the set of instructions given to the Bank to transfer funds. The beneficiary is the person or business who receives the payment. We may charge fees for sending or receiving a funds transfer. We may deduct our fees from your account or from the amount of the transfer. For current fees, please refer to our Schedule of Fees herein.

Fedwire

Fedwire is the electronic funds transfer system of the US Federal Reserve Banks. When you send a payment order or receive a funds transfer, we or other banks involved in the funds transfer may use Fedwire. If any part of a funds transfer is carried out by Fedwire, your rights and obligations are governed by Regulation J of the Federal Reserve Board.

Sending Funds Transfer:

Cutoff times for Payment Orders. We have cutoff times for processing payment orders. Cutoff times vary depending on the type of payment order. If the Bank receives your domestic payment order after 1:00 PM (PT), or international payment order after 12:00 PM (PT), or on Saturday, Sunday or federal holiday, it may be processed on the next funds-transfer business day.

Amending or Canceling Payment Orders. You may only amend or cancel a payment order prior to the funds transfer being sent by the Bank. If you ask the Bank to do this, we may make a reasonable effort to act on your request. But we are not liable to you if, for any reason, a payment order is not amended or cancelled. You agree to reimburse the Bank for any costs, losses or damages that we incur in connection with your request to amend or cancel a payment order.

Inconsistency of Name or Number. When receiving a payment order, payment may be made by the Bank, or by other banks, to which the payment order is forwarded, based solely on the account number even if the account number identifies a beneficiary different from the beneficiary named by the Originator of the payment order. Furthermore, when receiving a payment order, we may rely, and any other banks to which the payment order is forwarded may rely, on the bank identification number provided in the payment order even if the identification number identifies a bank different from the bank named by the Originator of the payment order.

Sending Payment Orders. We may select any intermediary bank; funds transfer system or means of transmittal to send payment orders. Our selection may differ from that indicated in your instructions.

Notice of Rejection. The Bank may reject payment orders. We notify you of any rejection electronically or orally. We are not liable to you for the rejection or obligated to pay you interest for the period before you receive timely notice of rejection.

Errors or Questions About Payment Orders. The Bank will notify you about funds transfer by listing them on your account statement. In some cases, we may also notify you electronically or in writing. You must notify us at once if you think a funds transfer shown on your statement or notice is incorrect. You must send us written notice, including a statement of relevant facts, no later than 10 days after the date you receive the first notice or statement on which the problem or error appears. If you fail to notify us within this 10-day period, we are not liable for any loss of interest because of an unauthorized or erroneous debit or because your statement or notice is incorrect. We are not required to compensate you, and we are not required to credit or adjust your account for any loss of interest or interest equivalent.

Receiving Funds Transfers:

The Bank may receive instructions to pay funds to your account. We may receive funds transfers directly from the sender, through a funds transfer system or through some other communications system. This includes wire transfers, ACH transfers that may be sent through an ACH system or processed directly to an account with us.

ACH Provisional Payment Rule. Credit given by us to you with respect to an automated clearing house credit or debit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with the entry, and the party making payment to you (i.e. Originator of the entry) will not be deemed to have paid you the amount of such entry.

Notice of Funds Transfer. Under the Operating Rules of the National Automated Clearing House Association which are applicable to ACH transactions involving your account, we are not required to give next-day notice to you of receipt of an ACH item, and we will not do so. However, we will continue to notify you of the receipt of payments in periodic statements we provide to you.

ACH Debits and Credits. From time to time, originators that you authorize may send Automated Clearing House (ACH) credits or debits for your account. For each ACH transaction, you agree that the transaction is subject to the National Automated Clearing House Association (NACHA) Operating Rules and any local ACH operating rules in effect. You agree that we may rely on the representations and warranties contained in these operating rules and either credit or debit your account, as instructed by the originator of the ACH transaction. You should be cautious about giving someone your account number to help prevent unauthorized transactions on your account. You must notify the Bank immediately of unauthorized activity.

Online Banking and Bill Payment Services

This Axos Bank Online Banking Agreement ("Agreement") with Axos Bank applies to your use of the Axos Bank Website. In this Agreement, "you" or "your" means each person that uses the Bank's Website to obtain a Financial Service; "Financial Service" means a deposit account, overdraft credit account, bill payment service, Mobile Banking or any other financial product or service available through the Axos Bank Website; "Provider" means a service provider that offers a Financial Service through the Bank's Website or an affiliate of the Bank's; "The Bank's website" and the "Website" means the Internet site operated by the Bank for itself and the Providers. "Provider Documents" means you have a separate agreement with some or

each Provider regarding the Financial Service it provides. "Banking Product Documents" means the Deposit Account Terms, Online Banking Agreement, Electronic Funds Transfer (EFT) Services Agreement, Funds Availability Policy, Overdraft Line of Credit Agreement and Disclosure Statement, Truth in Savings Disclosure and the Schedule of Fees herein.

Terms defined in this Agreement have the same meaning as the Banking Product Documents and, unless specified otherwise, any term defined in a part of the Banking Product Documents has the same meaning.

[Consent to Terms and Conditions](#) By submitting the application accessible through the Bank's Website or using any Financial Service, you agree to the terms and conditions set forth in this Agreement and the Provider Documents, if any, governing the Financial Service you obtain through Online Banking. In the event that the Bank amends this Agreement or a Provider amends the Provider Document, to the extent permitted by law; your continued use of the Website or a Financial Service subject to such Provider Document after the effective date of such change evidences your acceptance to such amendment. A Provider may enforce this Agreement against you to the extent it relates to that Provider.

[Consumer Credit Reports](#) Consumer Credit reports may be obtained by the Bank or any Provider in connection with any Financial Service that you request or receive. If you ask, you will be informed whether or not such a report was requested, and if so, the name and address of each agency that furnished the report.

[Bill Payment Processing](#)

Axos Bank customers with an online banking service may use the optional Bill Payment service in the following manner:

- Payments can be entered as a one-time transaction or as recurring transactions that are scheduled.
- You certify that any account you add through the bill payment service is an account from which you are authorized to make payments, and any payment you make using the bill payment service will debit an account that you are legally authorized to use.
- Payments (other than Axos Bank loan payments, entered on our system before 2:00 p.m. PT on a bank business day will be scheduled and begin processing on the same bank business day. Payments that are entered after this cut-off time or on a day that is a non-bank business day will be scheduled for processing and be processed the next bank business day.
- Scheduled recurring payments that fall on a weekend or a non-bank business day will be processed on the next bank business day.
- You authorize us to make payments in the manner we select from the following methods:
 - Electronic Transmission - The majority of payees are this and the payment is sent via ACH to these types of payees.
 - Check - Payees that are not able to be set up as an electronic transmission will receive a check drawn directly from your designated account.
- Scheduling Bill Payments
 - The scheduled "Send Date" is the date you enter for the payment to be sent to the Payee. For payments made by electronic transmission, the payment amount will be debited from, or charged to an account that you designate on the scheduled "Send Date." If the scheduled "Send Date" is a weekend or non-bank business day, then the "Send Date" will be the next bank business day. For payments made by personal check, the account you designate will be debited when the check is presented to us for payment which may occur before, on or after the scheduled send date.
 - For payments made from an Axos Bank deposit account and to an Axos Bank loan, line of credit, or mortgage, Axos Bank will process and credit the payment to the appropriate account effective the same business day, provided the payment is scheduled prior to the 2:00 p.m. PT cut-off.

When you attempt to schedule a payment, we will inform you of the earliest available delivery date. To assure timely payment and obtain the full benefit of the Online Banking Service, you must schedule payments and your account must be in good standing, you will be fully responsible for all late fees, interest charges, or other action taken by the Payee.

[Contact Us](#) Contact information for the Bank is provided on the Website or from within Online Banking or Mobile Browser Banking by selecting the "Contact Us" link.

[Electronic Communications](#) To the fullest extent permitted by applicable law, this Agreement and any other Financial Services, Provider Documents, notices or other communications regarding Online Banking (collectively referred to as "Communications"), may be provided to you electronically and you agree to receive Communications in an electronic form. Electronic Communications may be posted on the pages within our Website or Online Banking and/or delivered to your e-mail address or access device. Any Communications that are required by law or regulation will be provided, at our Website www.axosbank.com in a form you can print and retain for your records. All Communications in either electronic or paper format will be considered to be "in writing," and to have been received no later than five (5) business days after posting or dissemination, whether or not you have received or retrieved the Communication. The Bank and the Providers reserve the right to provide Communications in paper format. Your consent to receive Communications electronically is valid until you revoke your consent by notifying the Bank on behalf of itself and the Providers of your decision to do so. If you revoke your consent to receive Communications electronically, the Bank and the Providers will terminate your right to use Online Banking, Mobile Banking or obtain Financial Services (including redeeming any deposit accounts), and you accept sole liability for any

early withdrawal penalty, tax or other consequence resulting from an involuntary termination of a Financial Service, to the extent permitted by law.

You agree to monitor your Account and important account information through your Online Banking service, periodic statements for your Account, if applicable and important notices about your Account delivered by us electronically or by mail, in addition to any services or information you may receive through Mobile Banking. You agree to keep informed of any changes to Mobile Banking by regularly visiting our website.

Governing Law This Online Agreement and Financial Services are accepted by the Bank in the State of California, and is governed by California and Federal law between you and the Bank. Providers may select a state law other than California law to govern matters covered by their specific Provider Documents and the enforcement of this Online Banking Agreement with respect to the Financial Services they provide.

THE FOREGOING SHALL CONSTITUTE THE SERVICE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL THE SERVICE BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS (EVEN IF ADVISED OF THE POSSIBILITY THEREOF) ARISING IN ANY WAY OUT OF THE INSTALLATION, USE, OR MAINTENANCE OF THE EQUIPMENT, SOFTWARE, AND/OR THE SERVICE.

Illegal, Fraudulent Or Improper Activity You will not use the Website or any Financial Service for any illegal, fraudulent or improper activity. If the Bank or any Provider suspects that you may be engaging in or have engaged in a fraudulent, illegal or improper activity, including a violation of any terms and conditions relating to Online Banking or any Financial Service, your access to Online Banking and any Financial Services may be suspended or terminated. You understand that access to and transactions in your accounts may be suspended or terminated if an access device has been reported lost or stolen or when the Bank or any Provider reasonably believes that there is unusual activity on any of your Accounts. You agree to cooperate fully with the Bank and each Provider to investigate any suspected illegal, fraudulent or improper activity.

Indemnification You agree to indemnify, defend, and hold the Bank and its affiliates, officers, directors, employees, consultants, agents, Providers, and licensors harmless from any and all third party claims, liability, damages and/or costs (including but not limited to reasonable attorneys' fees) arising from (a) a third party claim, dispute, action, or allegation of infringement, misuse, or misappropriation based on information, data, files, or otherwise in connection with the service; (b) your violation of any law or rights of a third party; or (c) your use, or use by a third party, of Mobile Banking; (d) indirect, incidental, special or punitive damages arising out of or in connection with use of Mobile Banking.

Internet Access You certify that you have access to the Internet and a current e-mail address. You have sole responsibility for providing the Bank with a correct and operational e-mail address. Neither the Bank nor any Provider will be liable for any undelivered e-mail communications or any costs you incur for maintaining Internet access and an e-mail account. You must promptly notify the Bank and all Providers of any change in your e-mail address.

Limit On Liability To the fullest extent permitted by law, neither the Bank nor any Provider will have any liability in connection with any unauthorized interception or use of data relating to you or the Financial Services; any inability to use or access Online Banking or Mobile Banking for any reason; any actions or transactions by an individual that uses your Online Banking ID together with your Password; or any cause over which the Bank or a Provider does not have direct control, including problems attributable to computer hardware or software (including computer viruses), telephone or other communications, or Internet service providers. Your sole and exclusive remedy for any failure or non-performance of Mobile Banking (including any software or their materials supplied in connection with mobile banking) shall be for us to use commercially reasonable efforts to perform an adjustment or repair of the mobile banking service. The Financial Services accessible through the Website or Mobile Banking are provided "as is" and "as available" with all faults, and the Bank and each Provider hereby disclaims, for themselves and for each other entity involved in the provision of the Financial Services, all warranties, either express or implied or statutory, including, but not limited to, any implied warranties of merchantability, of fitness for a particular purpose and of lack of viruses. In no event shall the Bank or any other Provider be liable (a) for damages caused other than by its own gross negligence or intentional misconduct or (b) for indirect, special, incidental, consequential or punitive damages whatsoever (including, but not limited to, damages for lost profits, disclosure of confidential information, or loss of privacy), arising out of or in any way related to the use of or inability to use Online Banking, Mobile Banking or any Financial Service, even if the Bank or the Provider has been advised of the possibility of such damages. In no event shall the Bank or any Provider be liable for any act or circumstances beyond our control (such as, for example, a fire, flood or other natural disaster, war, riot, strike, act of civil or military authority, equipment failure, computer virus, or failure or interruption of electrical, telecommunications or other utility services). Limitations on this notice with respect to certain electronic funds transfers are stated in the EFT Services Agreement as contained in the Banking Product Documents and displayed on the Website.

Miscellaneous Any waiver by the Bank or any Provider must be in writing and signed by an authorized representative of the Bank or the Provider. If a waiver is made, no party is obligated to provide similar waivers in the future. This Agreement and the Provider Documents are binding upon and shall inure to the benefit of permitted successors and assigns of you and the Bank and/or the Providers. If any provision of this Agreement or the Provider Documents is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Mobile Banking Services Mobile Banking is offered as a convenience and supplemental service to the Bank's Online Banking Services. It is not intended to replace access to Online Banking from your personal computer or other methods you use for managing your accounts and services with us. Not all mobile devices will be capable of accessing and using Mobile Banking. The Bank cannot guarantee the availability of underlying data services provided by your mobile carrier, (i.e. we are not responsible for carrier data outages or "out of range" issues). We will not be responsible for any inability of your mobile device to access or use Mobile Banking, or for any loss or damage to your mobile device resulting from your access or use, or attempted access or use, of Mobile Banking (including downloading any associated Java applications for Mobile Banking), and you should satisfy yourself as to these matters before attempting to access or use Mobile Banking. Some mobile devices may store (cache) information that is accessed during a Mobile Banking session. You must have an eligible mobile device capable of SMS messaging (for SMS (Text) Banking), or downloading Java applications and making data connections to the Internet (for Mobile Browser Banking). You must be authorized to use and incur charges on your mobile device cellular account in relation to Mobile Banking.

We make no representation that any content or use of Mobile Banking is available for use in locations outside of the United States. Accessing Mobile Banking from locations outside of the United States is at your own risk.

Mobile Banking consists of two separate features:

SMS (Text) Banking – access available account information via text messaging.

Browser Mobile Banking - a mobile version of Online Banking accessed via an URL.

To activate Browser Mobile Banking, you must have at least one active deposit Account, be an owner of the Account and be registered for Online Banking. To access the Browser Mobile Banking feature, you must know the Mobile Banking URL and will log in using the required login credentials used for Online Banking.

The following options are available in the Browser Mobile Banking:

Account information - includes transaction history (length of time is limited) and does not replace the periodic statements for your Account.

Transfers - between Bank accounts.

Bill Payment - submit payments to payees already set-up within the Bill Pay module of Online Banking.

We may offer additional mobile services and features in the future. Any such added mobile services and features will be governed by this Agreement and by any terms and conditions provided to you at the time the new mobile service or feature is added and/or at the time of enrollment for the feature or service if applicable.

If at any time you should cancel your Online Banking access or your Online Banking access changes or becomes inactive, Mobile Banking Services may not be available. You may cancel Mobile Banking at any time by contacting us by email or phone.

We do not charge fees for Mobile Banking including EFTs. However, please see the Schedule of Fees herein for any excess transaction fees that may apply to your Account. Also, you are responsible for web access and/or data or text message charges that may be billed by your mobile carrier. Check with your mobile carrier for details on specific fees and charges that may be applicable.

Password and Device Protection You will not disclose your password to access Online Banking ("Password") to any person. You understand and agree that the Bank and the Providers rely on the use of your Password to confirm your permission to access your account and are therefore authorized to act upon instructions and information received from any person that enters your Online Banking ID (User Name) and Password. You agree not to use any personally identifiable information when creating shortcuts to your Account. You are required to change your Password periodically.

Create a Password that is not easily able to be guessed or identified as relating to you, or is an obvious combination of letters and numbers (e.g. sequential numbers, birth date, etc.); do not keep any record of your Password in a form that it can be readily identified, accessed or stored anywhere, in written or electronic form.

If you forget your password, become locked out and the Bank resets your password, or your password expires you will be required to re-establish your login credentials at a PC or laptop to regain access to Mobile Banking.

You will notify the Bank immediately if your Password, PC, laptop, mobile device or any another access device used to access your account is compromised, lost, stolen or is suspected of being compromised or lost. If you believe that someone may have unauthorized access to your online Banking or Mobile Banking, you agree to notify us immediately and cancel your Mobile Banking associated with the device.

You agree to notify us immediately if you change or cancel the number of your mobile device.

You agree to take every precaution to ensure the safety, security and integrity of your Account and transactions when using Mobile Banking. You agree not to leave your Device unattended while logged; if you do we will not be liable for any damages. Log off immediately at the completion of each access by you, lock your mobile device or take other steps necessary to stop unauthorized use of Mobile Phone Banking.

Privacy You agree that you have had an opportunity to review, download or print, and that you agree to the Bank's Privacy Policy relating to the Bank's Website, the Financial Services and the Providers.

Security Features The Bank has taken strong measures to protect the security of information transmitted between the Bank and its customers. The Bank strongly suggests that you use a web browser with 128-bit encryption. In fact, some selected services require a web browser with 128-bit encryption and you will be notified upon your application for access to those specific services. Regardless of the security features in use by you and/or your web browser, the Bank and the Providers are unable to ensure that the data transmitted by you to the Bank or a Provider, or from the Bank or a Provider to you, will not be intercepted by third parties.

Transfer You may not transfer any rights or obligations you may have under this Agreement, under any Provider Documents or with respect to any Financial Service, without the prior written consent of the Bank and any Provider that would be affected. The Bank and each Provider reserve the right to transfer any right or obligation under this Agreement, under any agreement provided with the Provider Documents or with respect to any Financial Service without your consent.



Schedule of Fees

Account Services:

Initial Debit Card/ATM Card (if ordered at account opening)	Free
Debit Card/ATM Card replacement (if second occurrence and any thereafter)	Free
Debit Card/ATM Replacement - Special Mailing/Rush Delivery Fee	\$50.00
Debit Card/ATM Transactions*	Free
Bank Verification Letter	\$35.00
Collection Items, domestic, per item*	Free
Collection Items, international, per item*	\$35.00 + cost
Visa® Debit Card Foreign Currency Conversion Rate	1%

* Additional charges may be imposed by other financial institutions

Statement and Research Services:

Check copy from archive, per item	\$5.00
Legal Processing	\$100.00
Research/Reconciliation, per hour, one hour minimum (includes time spent pulling documentation for legal process)	\$35.00
Statement Copy from Online Banking	Free
Statement Copy from archive with our assistance, per statement	\$10.00
Account Electronic Statement	Free
Account Paper Statement	\$5.00

Individual Retirement Account (IRA) Services:

Transfer Fee	\$35.00
Closing Fee	\$35.00
Fair Market Value on IRAs – Paper	\$10.00 (produced annually at year-end)
Fair Market Value on IRAs – Electronic Statement	Free

Wire Transfer Services: (Customers only):

Wire Transfers Incoming (Domestic and International)	Free
Wire Transfers Outgoing (Domestic)	\$35.00 each
Wire Transfers Outgoing (International)	\$45.00 each

Other Fees:

Certified or Overnight Mail – Special Mailing/Rush Delivery Fee	\$10.00 + postage
Deposited checks (and other items) returned unpaid, per item	\$10.00
Check Orders For All Checking Accounts	At Cost
Check Orders with our assistance (if second occurrence and any thereafter)	\$10.00 + cost of checks
Escheatment Notification	\$2.00
Excess Transaction or Withdrawal Fee	\$10.00
Non-sufficient/uncollected funds- Paid or Returned Item (includes checks, ACH and bill payments), per item	\$25.00† (Max \$75.00 per day)
Official checks, per item	\$10.00

Online or automated telephone transfers	Free
Overdraft Protection Transfer (from linked account)	Free
Stop payments, per request Online (initial or extension)	\$10.00
Stop payments, per request with assistance (initial or extension)	\$35.00
Axos Bank On-Ups Check Cashing Fee for Non-Customers, per item	\$5.00
Non-Customer Notary Fee	\$2.00

†No fee for an item generating a negative balance less than the NSF fee

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Alleges Axos Fails to Disclose 'Abusive' Overdraft Fee Practice](#)
