

YES NO

EXHIBITS

CASE NO. 2021 CH 2971

DATE: 6/21/2021

CASE TYPE: Class Action

PAGE COUNT: 18

CASE NOTE

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ANDREA BROCKLAND
Plaintiff,

v.

ROUNDY’S ILLINOIS, LLC
d/b/a MARIANO’S,
Defendants.

CASE NUMBER

**CLASS ACTION
COMPLAINT**

FILED
6/21/2021 12:00 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH02971

Plaintiff Andrea Brockland (collectively “Plaintiff), individually and on behalf of other similarly situated individuals, brings this Class Action Complaint against Roundy’s Illinois, LLC d/b/a Mariano’s (“Mariano’s” or “Defendant”) to stop Defendant’s unlawful practice of assessing an unlawful surcharge on debit card cash-back transactions at Defendant’s grocery stores. Plaintiff alleges as follows, based upon her own personal knowledge, and upon information and belief, including investigation conducted by her attorneys:

I. NATURE OF THE ACTION

1. Defendant owns and operates a large grocery store chain in the Midwest with 44 locations in Illinois.

2. Every time a consumer uses a debit card to make a purchase at one of Defendant’s stores and elects to receive cash back, Defendant incurs a processing fee for the transaction — known colloquially as an “interchange fee.” Merchants who accept credit and debit card payments typically absorb the interchange fees and recoup these costs through higher prices for goods and services. However, some merchants, like Defendant, choose to impose a surcharge on the consumer for using debit cards for cash-back transactions.

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3. Defendant calls its surcharge a “Cash Back Fee,” which is a uniform \$0.50 fee imposed upon all consumers regardless of the amount of cash withdrawn through the use of the debit card.

4. A merchant’s ability to impose a surcharge differs depending on whether the consumer uses a credit card or a debit card to complete the transaction. Federal and state laws permit merchants to surcharge credit card transactions, as long as the amount of surcharge is (a) properly disclosed pursuant to the credit card company rules; and (b) consistent with the processing and interchange rates authorized in the standard form contract agreements between merchants and the credit card companies.

5. However, those same contractual agreements between merchants and credit card companies prohibit merchants from imposing any surcharge on debit card transactions, including cash back transactions. It does not matter if the debit card surcharge is properly disclosed to consumers because debit card surcharges are strictly prohibited by all credit card companies.

6. Defendant systematically, routinely, and repeatedly charges a “Cash Back Fee” for cash-back debit card transactions in violation of the credit card company Rules and Regulations, and the imposition of such fees is an unfair and deceptive practice in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 502/1 *et seq.*

7. Defendant must disgorge all unlawful “Cash Back Fees” imposed upon cash-back debit card transactions.

II. VENUE AND JURISDICTION

8. This Court has personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant is registered to do business within this State, is doing business within the State, and transacts business within this State.

9. Venue is proper in Cook County under 735 ILCS 5/2-101, because Defendant conducts business in Cook County and because the transactions out of which this cause of action arises occurred in Cook County, as Plaintiff was charged the deceptive and unauthorized debit card “Cash Back Fee” at issue in Cook County.

10. Plaintiff Brockland is a natural person and citizen of Illinois. Plaintiff Brockland is a “consumer” or “person” as defined under the Illinois Consumer Fraud Act.

11. Defendant Roundy’s Illinois, LLC d/b/a Mariano’s is a grocery store that provides its services to consumers in Illinois. It is a Wisconsin corporation with a principal place of business located in Milwaukee, WI.

12. Defendant’s conduct alleged herein occurred in the course of trade or commerce.

III. FACTUAL ALLEGATIONS

A. The Ability of Merchants to Charge a Surcharge

13. Americans pay some of the highest interchange fees in the world – seven times higher than the standard European rate even though there is higher volume and lower technology costs in the United States.¹

14. As more transactions are conducted through credit and debit cards, interchange fees amount to a substantial overhead cost for merchants. Any way merchants can recoup these costs through surcharges substantially benefits the merchant’s bottom line.

15. As a result of interchange fees eating away at profits, merchants have been engaged in a decades - long legal battle with the credit card and banking industry over their ability to pass through interchange fees to consumers.

¹ <http://www.reformswipefees.com/> Last visited: 6/18/2021

16. In 1976, Congress enacted a temporary ban on credit card surcharges. *See* Pub. L. No. 94-222, 90 Stat. 197 (“No seller in sales transactions may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.”) This Congressional measure set the stage for a series of battles over renewal of the ban, culminating in an intense political debate in the mid-1980s that pitted both the Reagan Administration and consumer groups against the credit card industry.

17. With the “surcharge” ban set to expire in 1981, Congress renewed the law for an additional three years. Pub. L. 97-25, 95 Stat. 144 (1981).

18. In 1984, the federal no-surcharge law expired. After that, credit card surcharges were universally permitted except for fewer than a dozen states that enacted state specific no-surcharge laws.

19. However, at the same time that some states were enacting no-surcharge laws, the major credit card companies changed their contractual terms with their merchants to include no-surcharge rules. This meant that merchants accepting credit and debit cards could not impose credit or debit card surcharges upon consumers.

20. As a result of these contract terms, from the mid-1980s until the mid-2000s, surcharge fees were not a political issue.

21. However, developments in the late 2000s lead to interchange fees and surcharges reemerging as volatile political issues.

22. The global financial crisis of 2007-2008, and the ensuing push for financial regulation reform resulted in renewed focus on interchange fees and surcharges. Senator Dick Durbin of Illinois proposed an amendment to the Senate version of the Dodd-Frank Wall Street Reform and Consumer Protection Act that aimed to reduce the fees associated with credit and debit

card transactions. The Durbin Amendment was enacted and established a procedure by which the Federal Reserve Board now sets the maximum interchange fees for debit card transactions. 15 U.S.C. §1693o-2(a).

B. Visa Authorize Merchants to Surcharge Credit Cards, but not Debit Cards

23. In May 2005, a credit card merchant, Animal Land Inc., sued Visa for a declaration that its no-surcharge contractual rule violated antitrust laws by preventing Animal Land and other merchants from charging a surcharge for credit card transactions, as opposed to cash, checks, or debit cards. *Animal Land, Inc. v. Visa USA, Inc.*, No. 05-CV-1210 (N.D. Ga.). In the ensuing months, numerous other U.S. merchants and trade associations brought similar claims against the dominant credit card networks, alleging that they engaged in illegal price-fixing and impermissibly banned merchants from charging a surcharge for credit card transactions and encouraging customers to use less expensive payment methods. These cases were all consolidated into *In re: Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. MDL 1720, 2013 WL 8123000, at *1 (U.S. Jud. Pan. Mult. Lit. Dec. 18, 2013). That case was thereafter settled.

24. Under the terms of a January 2013 national class action settlement in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Visa amended its standard form contracts with merchants to permit a credit card surcharge with appropriate disclosures. However, but the parties did not allow any surcharge to be imposed upon debit card transactions. Thus, merchants under contract with Visa cannot impose a debit card surcharge on consumers.

25. Visa is the primary provider of debit cards in the United States.

26. Even after the credit card companies changed their standard form contracts to permit credit card surcharging, some states still have laws in place preventing merchants from imposing credit card surcharges upon consumers.

27. Defendant is a “merchant” under its agreements with Visa and is bound by those terms.

C. Visa’s Standard Form Merchant Agreement Does Not Authorize Cash Back Debit Card Surcharges

28. To begin, Visa’s Merchant Agreement requires that all merchants follow the “Visa Rules” which are published by Visa on its website and are incorporated by reference into its Merchant Agreements.

29. The Visa’s Rules’ glossary defines “Cash-Back” as “Cash obtained from a Merchant through use of a Card in conjunction with, and processed as, a Retail Transaction.”

Exhibit A, Visa Rules Glossary².

30. Therefore, any cash back transactions made via debit card, like those transactions entered into by Defendant and Plaintiff and class members, are subject to the Visa Rules (and other credit card company rules) pertaining to debit card transactions.

31. Visa Rule 5.5.1.7 prohibits debit card transaction surcharge fees (as a condition for Defendant receiving payment), such as Defendant’s “Cash Back Fee”:

US Credit Card Surcharge Disclosure Requirements- US Region and US Territories

In the US Region or a US Territory: A Merchant must, at both the point of entry into the Merchant Outlet and the Point-of-Transaction, clearly and prominently disclose any US Credit Card Surcharge that will be assessed.

The disclosure at the Point-of-Transaction must include all of the following:

- The exact amount or percentage of the US Credit Card Surcharge
- A statement that the US Credit Card Surcharge is being assessed by the Merchant and is only applicable to credit Transactions

² <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf> (pg. 794)

- A statement that the US Credit Card Surcharge amount is not greater than the applicable Merchant **Discount Rate for Visa Credit Card Transactions at the Merchant**

Merchants with Acceptance Devices that offer Cardholder choice for debit Transactions in the form of “credit” and “debit” buttons must ensure that:

- **Debit Card Transactions are not assessed a US Credit Card Surcharge**
- **It is made clear to the Cardholder that surcharges are not permitted on debit Transactions regardless whether a Cardholder selects the “credit” or “debit” button.**

Exhibit B, Visa Rule 5.5.1.7³ (emphasis added).

32. Visa even restates the prohibition on Debit Card surcharge fees in its Frequently

Asked Questions page for merchants:

Q. Can I assess a surcharge on both credit and debit card purchases?

No. The ability to surcharge only applies to credit card purchases, and only under certain conditions. **U.S. merchants cannot surcharge debit card or prepaid card purchases.** (emphasis added)

Q. I am a merchant who intends to surcharge. What is the process I need to follow?

U.S. merchants that intend to surcharge are required to:

....
Limit surcharging to credit cards only (no surcharging debit and prepaid cards) and limit the amount to your merchant discount rate for the applicable credit card surcharged*.⁴ (emphasis added)

Exhibit C, Visa FAQ.

33. Therefore, under no circumstance may a merchant under Merchant Agreement with Visa impose a debit card cash back surcharge. Despite this clear prohibition, Defendant imposes a \$.50 Cash Back Surcharge on every Visa cash back debit card transaction.

³ <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf> (pg. 344)

⁴ <https://usa.visa.com/dam/VCOM/download/merchants/surcharging-faq-by-merchants.pdf>

D. Defendant Imposes Illegal Debit Card Surcharges on Consumers

34. Upon information and belief, Defendant entered into a Merchant Agreement with Visa which prohibits debit card surcharges such as Defendant's "Cash Back Fee."

35. As a part of its ordinary and routine business practice, Defendant knowingly charges consumers a "Cash Back Fee" whenever consumers complete a cash back transaction using a debit card.

36. Defendant's "Cash Back Fee" conceals from consumers the true nature of the fee, which is actually a surcharge for debit card transactions, in violation of Defendant's Merchant Agreements with Visa.

37. Visa's Merchant Agreement does not permit Defendant to charge a surcharge for debit card cash back transactions.

38. Accordingly, Defendant regularly collects debit card surcharges that they did not have authorization to impose on all cash back debit card transactions.

39. Defendant intended for Plaintiffs and Class members to rely on its representations that it had the authority to charge and collect a \$0.50 "Cash Back Fee" that Defendant imposes on debit card cash-back transactions, and Plaintiff and Class members relied on such representations when paying the \$0.50 debit card "Cash Back Fee."

E. Plaintiff was Charged a Prohibited Debit Card Surcharge by Defendant

40. On or around March 3, 2021, Plaintiff Brockland purchased grocery items from Defendant's grocery store located in Chicago, Illinois and elected to receive \$20.00 cash back using her Visa debit card.

41. As part of Plaintiff's debit card cash-back transaction, Defendant imposed a \$0.50 "Cash Back Fee" surcharge that appeared separately on Plaintiff's receipt as "DEBIT CARD CASHINGNP." **Exhibit D.**

42. Defendant represented to Plaintiff that it was authorized to charge a \$0.50 “Cash Back Fee” surcharge for debit card transactions on Defendant’s Verifone payment processing screen. **Exhibit E.**

43. Plaintiff Brockland and members of the Class were deceived and/or misled by Defendant’s presentation of its Cash Back Fee as if it were an authorized charge in accordance with Visa Rules.

44. Plaintiff Brockland and members of the class relied on Defendant’s material representation that it was authorized to charge and collect a \$0.50 debit card “Cash Back Fee” surcharge.

45. Plaintiff Brockland actually paid a \$0.50 debit card “Cash Back Fee” surcharge on her visa debit card to receive the \$20.00 cash back in addition to her groceries.

46. The \$0.50 “Cash Back Fee” surcharge that Plaintiff Brockland paid to Defendant was a debit card surcharge prohibited by Defendant’s Merchant Agreement with Visa and other payment providers.

47. Defendant also made the material omission that the “Cash Back Fee” surcharge could not be charged on debit cards without violating the Visa Rules as a condition of receiving payment.

48. Plaintiff Brockland and members of the Class suffered actual damages in the amount of the unauthorized \$0.50 Cash Back Fee for debit card surcharge they paid to Defendant for debit card cash-back transactions.

CLASS ACTION ALLEGATIONS

49. Plaintiff satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801 *et seq.*, and brings this action on behalf of herself and a nationwide class and Subclass, as defined as follows:

All persons in the United States, within the applicable statute of limitations, who paid a “Cash Back Fee” (marked as “DEBIT CARD CASHINGNP” on receipt) to Defendant with a debit card.

(the “Class”).

50. Plaintiff reserves the right to amend her class definition.

51. **Numerosity.** The members of the Class are so numerous that joinder of all members would be impracticable. The precise number of Class members are unknown to Plaintiff, but likely includes thousands of class members. The true number of Class members is known by Defendant, however, and potential Class members may be identified and notified of the pendency of this action by first class mail, electronic mail, and/or published notice.

52. **Commonality.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, *inter alia*, the following:

- a) whether Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices act by charging unauthorized debit card cash-back surcharges;
- b) whether Defendant unjustly enriched themselves with illegal surcharges;
- c) whether Defendant breached its contracts with Visa;
- d) whether Plaintiff and Class members suffered damages; and
- e) whether Plaintiff and Class members are entitled to equitable relief.

53. **Typicality.** The claims of Plaintiff are typical of the claims of the members of the Class because, *inter alia*, Plaintiff and all Class members were injured through the uniform

misconduct described above regarding Cash Back Fees on debit card transactions. Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class.

54. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained competent counsel and experienced class action attorneys to represent her interest and the interests of the Class. Plaintiff and her counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiff possesses no adverse or antagonistic interests to those of the Class. Plaintiff is willing and prepared to serve the Court and the Class members in a representative capacity with all of the obligations and duties material thereto and is determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for all Class members.

55. **Predominance and Superiority.** A class action is an appropriate method for the fair and efficient adjudication of this controversy. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class. Also, the likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the small amount of monetary relief at issue for individual Class members. A class action will cause an orderly and expeditious administration of the claims of the Class. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

56. Damages may be calculated based upon data maintained in Defendant's records so that the cost of administering a recovery for the Class can be minimized. However, the precise amount of damages available to Plaintiff and Class members is not a barrier to class certification.

CAUSES OF ACTION

COUNT I

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act
(815 ILCS 505/1 *et seq.*)**

57. Plaintiff hereby incorporates paragraphs 1 through 56 above by reference as if fully set forth herein.

58. At all times relevant hereto, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (“ICFA”) was in full force and effect.

59. ICFA is a regulatory and remedial statute intended to protect consumers, including Plaintiff and the Class, against unfair or deceptive acts or practices. Specifically, Chapter 2 of the ICFA prohibits unfair or deceptive acts or practices used or employed in the conduct of any trade or commerce with the intent that others rely upon such deceptive acts or practices. 815 ILCS 505/2.

Section 2 provides, in full:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act” approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section, consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

815 ILCS 505/2.

60. As alleged in detail *supra*, Defendant made material misrepresentations on its Verifone transaction processing screen by presenting its \$0.50 Cash Back Fee as if it was authorized under its Merchant Agreements with Visa and other credit card processors to charge a debit card cash back surcharge. A reasonable consumer, such as Plaintiff, would be misled to believe that Defendant’s Cash Back Fee was a lawful fee that could be charged to Visa debit card

purchasers, such as herself. Such material misrepresentations constitute unfair or deceptive acts or practices prohibited by Chapter 2 of ICFA. 815 ILCS 505/2.

61. Defendant also made the material omission that the Cash Back Fee surcharge could not be charged on debit cards without violating the Visa Rules.

62. Defendant intended for Plaintiff and Class members to rely on its representations and omissions regarding the “Cash Back Fee” when choosing to complete the transaction with a debit card, and Plaintiff and Class members relied on such representation and omissions and believed that Defendant was authorized to charge a debit card “Cash Back Fee.”

63. Defendant intended for Plaintiff and the Class to rely on its deceptive acts and practices is evidenced by, *inter alia*, Defendant’s policy and practice of knowingly charging every consumer getting cash back on a debit card a \$0.50 debit card “Cash Back Fee,” which is not authorized by Defendant’s Merchant Agreements with Visa.

64. In fact, Plaintiff did rely on these misrepresentations and omissions as she believed that Defendant’s Cash Back Fee satisfied the requirements for such fees under the Visa Rules of debit card transactions. If Plaintiff had been made aware that the Cash Back Fee violated Visa’s Rules for debit card transactions, she would not have paid the fee, or objected to Defendant’s management, or contacted her Visa debit card provider to complaint. However, she did not complain about this fee because she was deceived by Defendant’s false representations and omissions.

65. The above-described unfair or deceptive acts and practices occurred in the course of conduct involving trade or commerce, namely, the sale of food and other grocery product at its various grocery store locations.

66. Defendant's business acts or practices of charging an unauthorized debit card "Cash Back Fee" surcharge therefore offends an established public policy, and Defendant has engaged and continued to engage in immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers, as consumers are paying a "Cash Back Fee" that serves as a profit center for Defendant while being explicitly prohibited by Defendant's Merchant Agreements with Visa, and therefore Defendant's actions are unfair or deceptive acts or practices prohibited by Chapter 2 of the ICFA. 815 ILCS 505/2.

67. The unfair acts and practices alleged herein proximately caused actual damage to Plaintiff and the Class, including but not limited to the actual amounts they were overcharged for the debit card "Cash Back Fee" surcharge.

68. Plaintiff and the other members of the Illinois Subclass have suffered injury in fact and lost money as a result of these unlawful, unfair, and fraudulent practices of charging the prohibited "Cash Back Fee" on debit card transactions.

69. Defendant's conduct is in violation of the ICFA, and pursuant to 815 ILCS 505/10a, Plaintiff and Class members are entitled to actual damages, reasonable attorney's fees, injunctive relief, and any other penalties or awards that may be appropriate under applicable law.

COUNT II

Breach of Contract - Third Party Beneficiaries

70. Plaintiff hereby incorporates paragraphs 1 through 56 above by reference as if fully set forth herein.

71. Defendant entered into a Merchant Agreements with Visa. **Exhibit B.** Defendant is referred to therein as a "Merchant."

72. In the Merchant Agreement, the parties agreed that Defendant could not charge and collect any surcharge when consumers pay for any transaction with a debit card. **Exhibit B.**

73. Specifically, Visa’s standard Merchant Agreement with Defendant and other merchants across the United States specifically states that the merchant must follow all Visa Rules which specifically prohibit surcharges for debit card transactions. Specifically, Visa Rule 5.5.1.7 prohibits debit card transaction surcharge fees, such as Defendant’s “Cash Back Fee”:

US Credit Card Surcharge Disclosure Requirements- US Region and US Territories

In the US Region or a US Territory: A Merchant must, at both the point of entry into the Merchant Outlet and the Point-of-Transaction, clearly and prominently disclose any US Credit Card Surcharge that will be assessed.

The disclosure at the Point-of-Transaction must include all of the following:

- The exact amount or percentage of the US Credit Card Surcharge
- A statement that the US Credit Card Surcharge is being assessed by the Merchant and is only applicable to credit Transactions
- A statement that the US Credit Card Surcharge amount is not greater than the applicable Merchant **Discount Rate for Visa Credit Card Transactions at the Merchant**

Merchants with Acceptance Devices that offer Cardholder choice for debit Transactions in the form of “credit” and “debit” buttons must ensure that:

- **Debit Card Transactions are not assessed a US Credit Card Surcharge**
- **It is made clear to the Cardholder that surcharges are not permitted on debit Transactions regardless whether a Cardholder selects the “credit” or “debit” button.**

Exhibit B (emphasis added)

74. Visa’s Rules frequently asked questions also explicitly declares that debit and prepaid cards shall not be charged a surcharge:

Q. Can I assess a surcharge on both credit and debit card purchases?

No. The ability to surcharge only applies to credit card purchases, and only under certain conditions. **U.S. merchants cannot**

surcharge debit card or prepaid card purchases. (emphasis added)

Q. I am a merchant who intends to surcharge. What is the process I need to follow?

U.S. merchants that intend to surcharge are required to:

....

Limit surcharging to credit cards only (no surcharging debit and prepaid cards) and limit the amount to your merchant discount rate for the applicable credit card surcharged*. (emphasis added)

Exhibit C, Visa FAQ.

75. As such, Defendant’s standard form Merchant Agreement with Visa explicitly prohibits Defendant from charging a surcharge when a consumer uses a debit card for any transaction, including cash back.

76. The Merchant Agreement between Defendant and Visa deliberately confers benefits and rights to consumers who use Visa’s debit cards, and demonstrate the parties’ intention to confer such benefits and rights to those customers, including but not limited to the right to not be charged debit card surcharge fees, including Defendant’s debit card “Cash Back Fee”

77. Plaintiff and Class members chose to receive cash back on a debit card transaction from Defendant.

78. Defendant breached its own contracts with Visa by charging Plaintiff and Class members a \$0.50 debit card surcharge (“Cash Back Fee”) for debit card transactions.

79. As a direct and proximate result of Defendant’s material breaches of the Visa Rules and its Merchant Agreements, Plaintiff and Class members each suffered damages and are entitled to a refund of \$0.50 “Cash Back Fee” imposed on transactions completed with a debit card.

80. Plaintiff and Class members suffered actual damages by paying an unauthorized \$0.50 debit card “Cash Back Fee” to Defendant.

COUNT III
Unjust Enrichment

81. Plaintiff and Class members repeat and reallege each allegation of paragraphs 1 through 56, as if fully stated herein.

82. Count III is brought in the alternative to Plaintiff's breach of contract claim in Count II.

83. By virtue of having charged Plaintiff and Class members a debit card surcharge "Cash Back Fee" that Defendant was not authorized to charge, Defendant unjustly retained a benefit to the detriment of Plaintiff and the Class. Specifically, Defendant retained \$0.50 for each debit card cash-back transaction that was represented as a "Cash Back Fee" although such fees are prohibited by Visa as a condition of accepting such payments.

84. Defendant's retention of the aforementioned benefit violates the fundamental principles of justice, equity, and good conscience.

85. As a direct and proximate result of Defendant charging Plaintiff an unauthorized debit card "Cash Back Fee" surcharge, Plaintiff and the Class have suffered actual damages in an amount to be determined at trial, including, but not limited to the actual amounts Plaintiff and Class members paid in debit card "Cash Back Fee" surcharges to Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class defined herein, pray for the following relief:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801 *et seq.*, and certifying the Class defined herein;
- B. Designating Plaintiff as the representative of the Class and her counsel as counsel for the Class;

- C. Entering judgment in favor of Plaintiff and the Class and against Defendant for violating the ICFA, and/or for breach of contract, and/or for unjust enrichment;
- D. Awarding Plaintiff and the Class their damages, including statutory damages, attorneys' fees, their costs and interest thereon under the ICFA;
- E. Granting all such further and other relief, including equitable relief, as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

NOTICE TO ILLINOIS ATTORNEY GENERAL OF ACTION

Pursuant to 815 ILCS 505/10a(d), a copy of this Complaint has been mailed to the Illinois Attorney General with the filing of Plaintiff's Complaint.

Respectfully submitted June 18, 2021.

VARNELL & WARWICK, P.A.



Matthew T. Peterson
Brian W. Warwick (Pro Hac Vice to be filed)
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Mariano's Debit Card Fees for Cash-Back Transactions Are Unlawful, Class Action Claims](#)
