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14 *Attorneys for Plaintiff*
 15 *and the Proposed Class*

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 ANDREA DURKEE, individually on behalf
 19 of herself and all others similarly situated,
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 21 Plaintiffs,
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 23 v.
 24 FCTI, INC., and DOES 1-10, inclusive,
 25
 26 Defendants.

Case No.: 2:23-cv-2537
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

27 Plaintiff Andrea Durkee (“Plaintiff”), on behalf of herself and all persons similarly
 28 situated, alleges the following, based on personal knowledge as to allegations regarding
 the Plaintiff and on information and belief as to other allegations, against Defendant
 FCTI, Inc. (“FCTI” or “Defendant”):

INTRODUCTION

1. Defendant is one of the largest deployers of automated teller machines (“ATM”) in the country. Defendant supplies ATMs to some of the most prominent convenience stores (7-Eleven) nationwide. Cash withdrawals, funds transfers, and (most relevant here) account balance inquiries are available transactions at ATMs. Banks deem these ATM activities, conducted by their accountholders, as “out of network” if they are conducted at Defendant’s machines.

1 2. One of the primary sources of revenue for Defendant is the interchange fees
2 it receives from retail banks. Interchange fees are paid by the retail banks to Defendant
3 each time a retail bank accountholder makes a cash withdrawal, funds transfer, or (most
4 relevant here) account balance inquiry at one of Defendant’s ATMs. When
5 accountholders undertake balance inquiries at out-of-network ATMs, their home banks
6 will typically assess an out-of-network ATM fee for doing so. For each fee assessed, retail
7 banks pay an “interchange fee” of approximately \$0.25 to Defendant because it owns the
8 ATM where the balance inquiry was conducted. Retail banks also pay a “switch fee” to
9 the network provider (for example, “Plus” or “Star” networks). Therefore, Defendant
10 profits from the accountholder’s out-of-network balance inquiries.

11 3. This case arises from Defendant’s deceptive and unlawful practice of
12 systematically doubling the number of out-of-network ATM balance inquiries at its
13 machines. Defendant has a monetary incentive to generate as many balance inquiries as
14 possible. This has led Defendant to concoct a scheme in which it presents a non-balance
15 inquiry screen prompt at the machine, but transmits a balance inquiry request to the bank
16 anyway, resulting in the customers’ banks assessing the customers unwarranted out-of-
17 network balance inquiry fees, with Defendant receiving a portion of it in the form of the
18 interchange fee for each such instance.

19 4. Specifically, FCTI’s ATM machine interface first shows a prompt asking if
20 the customer would like to check their balance and continue with the transaction. If the
21 customer presses the “yes” button, then FCTI transmits a balance inquiry request to the
22 customer’s bank, which results in both the display of the balance information on the ATM
23 machines, and the bank’s assessment of an out-network balance inquiry fee on the
24 customer’s account. Plaintiff does not challenge this first balance inquiry. However, after
25 the customer has inquired, received, and paid for the balance information, FCTI’s
26 interface then presents a second prompt which asks: “Would you like to print your
27 Balance and continue the Transaction?” This second question presented to customers is
28 simply not a balance inquiry prompt. It instead asks customers whether they would like

1 to print the balance information the customers already inquired, paid for, and is displayed
2 on the screen while continuing to make a cash withdrawal.

3 5. The very word “inquiry” is defined as asking for information. Here, the
4 customers already inquired their balance information and this second prompt simply asks
5 if they would like to print the already inquired balance information on a receipt while
6 simultaneously proceeding to the cash withdrawal. Furthermore, pressing the “Continue”
7 button on this prompt is the only way for customers to proceed directly to the intended
8 cash withdrawal.

9 6. Customers, including Plaintiff, have been charged two fees—and FCTI
10 received a portion of each fee in the form of interchange fees—despite making only one
11 balance inquiry at Defendant’s ATMs. Plaintiff and members of the Class (defined below)
12 seek to recover wrongfully attained funds from Defendant pursuant to the Unfair
13 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.* Plaintiff and
14 members of the putative Class have been injured by Defendant and bring a claim for
15 violation of the UCL against Defendant, seeking restitution, injunction, and other
16 appropriate relief.

17 **PARTIES**

18 7. Plaintiff Andrea Durkee is a citizen and resident of San Diego, California.

19 8. Defendant FCTI, Inc. is a California corporation, with its headquarters and
20 principal place of business located in Los Angeles, California. FCTI is also one of the
21 nation’s largest independent operators of stand-alone ATM machines with over
22 30,000 such machines in service. FCTI operates ATMs, and thus conducts business,
23 throughout the United States, including in this district.

24 9. Plaintiff does not know the true names or capacities of the persons or entities
25 sued herein as Does 1-50, inclusive, and therefore sues such defendants by such fictitious
26 names. Plaintiff is informed and believes, and upon such information and belief alleges,
27 that each of the Doe defendants are in some manner legally responsible for the damages
28 suffered by Plaintiff and the Class members as alleged herein. Plaintiff will amend this

1 Complaint to set forth the true names and capacities of these defendants when they have
2 been ascertained, along with appropriate charging allegations, as may be necessary.

3 **JURISDICTION AND VENUE**

4 10. This Court has original jurisdiction over the action under the Class Action
5 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original
6 jurisdiction because the aggregate claims of the putative Class members exceed
7 \$5 million, exclusive of interests and costs, and at least one member of the proposed Class
8 is a citizen of a different state than Defendant.

9 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
10 Defendant is subject to personal jurisdiction here and regularly conducts business in this
11 District, and because a substantial part of the events or omissions giving rise to the claims
12 asserted herein occurred in this District.

13 **FACTUAL BACKGROUND**

14 **A. FCTI was Incentivized to Artificially Increase the Number of Balance
15 Inquiries at its Machines**

16 12. FCTI unlawfully utilized its ATM screen interface to register balance
17 inquiries through non-balance-inquiry prompts. Defendant then transmitted coded
18 “balance inquiries” to the customers’ retail banks. The retail banks automatically
19 accepted Defendant’s coding, assumed the balance inquiries made at “out-of-network”
20 (“OON”) ATMs were valid, and assessed OON fees against Plaintiff’s account. After
21 collecting the fee, the retail banks then paid approximately \$0.25 to Defendant in the form
22 of an “interchange fee.”

23 13. Based on this interchange fee, Defendant received a directly traceable and
24 standardized amount of money from retail banks each time it misled Plaintiff and other
25 customers into engaging in a purported OON balance inquiry at one of its ATMs
26 machines:

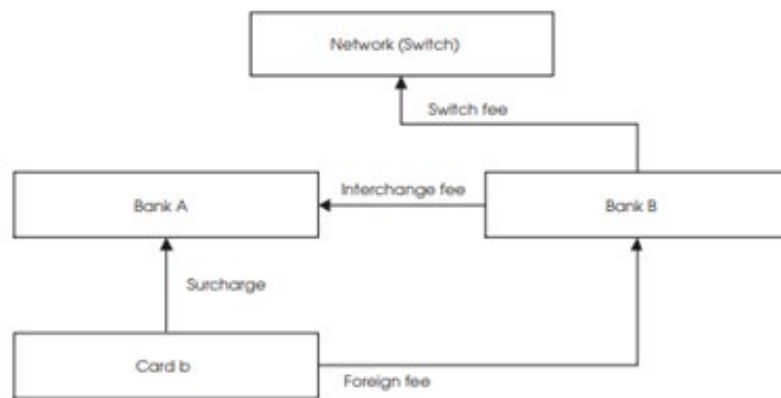
27 In ATM transactions, the consumer may pay a foreign fee to his or her bank
28 if the ATM used is not owned by his or her bank. The consumer may also

1 pay a surcharge fee to the ATM owner. The *issuing bank pays an*
 2 *interchange fee to the ATM owner for the consumer’s use of that ATM*
 3 and also pays a switch fee to the ATM network for transmitting the
 4 transaction information.

5 See “A Guide to the ATM and Debit Card Industry, 2003 Federal Reserve Bank of Kansas
 6 City” (“KC Federal Reserve ATM Guide”), at pp. 5-6 (emphasis added).¹ The report by
 7 the Federal Reserve Bank of Kansas City clearly illustrates and describes the traceable
 8 nature of this practice in the following flow chart (*id.* at p. 38):

9 38 *A Guide to the ATM and Debit Card Industry*

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 11 **Figure 1 (cont.): ATM Transaction—Network on-us**
 12 *1b: Fees*



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 20 Suppose Bank A surcharges Bank B’s cardholders and Bank B charges a foreign fee to its cardholders.
 21 Cardholder b is charged a surcharge by Bank A, the ATM owner, and is charged a foreign fee by Bank B, the card
 issuer. Both fees are automatically debited from her/his account.
 22 Bank B, the card issuer, pays the interchange fee set by the network to Bank A, the ATM owner.
 Bank B also pays the switch fee set by the network to the network.
 23 Note: Besides the fees described above, Bank A and Bank B pay fees to their third-party processors, depending on what services they get.
 The ATM owner may pay a terminal driving fee and a transaction routing fee to its third-party processor and the card issuer may pay an
 24 authorization fee to its third-party processor.

25 14. An interchange fee is a payment by the card-issuing bank to the ATM owner
 26 to compensate the owner for the expense of installing and maintaining the ATM.
 27 Different types of ATM activities carry different interchange fees. Visa’s Plus and
 28

¹ <https://www.kansascityfed.org/publicat/PSR/BksJournArticles/ATMPaper.pdf>

1 Mastercard’s Cirrus, for example, set a fee of 50 cents for a withdrawal and **25 cents for**
 2 **either a balance inquiry** or an inter-account transfer. *Id.* (emphasis added). While the
 3 networks set the interchange fee amounts, the banks are required to pay Defendant the
 4 preset amount on a per transaction basis.

5 15. As set forth in greater detail below, Plaintiff was assessed a balance inquiry
 6 fee as a result of using one of Defendant’s ATMs. In these transactions, Plaintiff utilized
 7 a Visa-branded debit card issued from Bank of America. Visa publishes an annual
 8 schedule of its interchange reimbursement fees. The April 2019, “Visa USA Interchange
 9 Reimbursement Fees; Visa Supplemental Requirements” provides that the interchange
 10 reimbursement fee for ATM Balance Inquiries is set at \$0.25 per transaction:

Other ATM Non-Cash Disbursement Transactions	
ATM Decline Fee	\$0.25
ATM Balance Inquiry Fee	\$0.25
ATM Funds Transfer Fee	\$0.25
ATM Mini Statement Fee	\$0.30
ATM Shared Deposit Fee	\$2.50
Plus Alternative Media Fee (Paid by acquirer)	\$0.10

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 17 See Visa USA Interchange Reimbursement Fees; Visa Supplemental Requirements, April
 18 2019, at p. 18.² Accordingly, *every time* Defendant registers a balance inquiry request
 19 through a non-balance-inquiry prompt, Defendant receives \$0.25 (or a portion thereof)
 20 from the out-of-network balance inquiry fee assessed by retail banks, which is directly
 21 traceable to the customer’s account.

22 16. Thus, Defendant has a monetary incentive to increase the total number of
 23 out-of-network balance inquiries that are performed at its ATMs by Plaintiff, as it
 24 received interchange fees directly from retail banks for each balance inquiry performed
 25 by Plaintiff and other customers at the OON ATMs. As the Federal Reserve Bank of
 26 Kansas City observed:

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 28 ² Upon information and belief, Visa’s interchange rules or similar rules set by other
 networks apply to all ATM machine activities owned by Defendant.

1 There are two measures of network volume: transaction and switch. ATM
2 transaction volume includes the total number of deposits, withdrawals,
3 transfers, payments and *balance inquiries performed* on ATMs in the
4 network, whether or not those transactions are transmitted through a network
5 data center. This measure is relevant, in part, because *interchange fees paid*
6 *to ATM owners are based on transaction volume.*

7 See KC Federal Reserve ATM Guide, at p. 20 (emphasis added).

8 17. As set forth in greater detail below, Defendant employed a non-balance-
9 inquiry screen prompt to register a second balance inquiry, thereby fraudulently doubling
10 the amount of interchange fee revenue it receives from customers' use of its machines.

11 **B. Consumers' Experience and Reasonable Expectations in Utilizing ATM**
12 **Machines.**

13 18. Customers, including Plaintiff, use ATMs almost exclusively to make fast
14 and convenient cash withdrawals. In 2018, there were 5.1 billion ATM cash
15 withdrawals—more than twice as many as over-the-counter withdrawals at financial
16 institution branches (2.1 billion). The 2019 Federal Reserve Payments Study, at p. 12.³
17 Defendant has known for years that the vast majority of customers who come to use its
18 ATM machines are there to perform only a cash withdrawal.

19 19. In 2002, approximately 77% of the average transaction mix at retail bank
20 ATMs were cash withdrawals, while balance inquiries only made up 11% of all activities.
21 See KC Federal Reserve ATM Guide, at p. 119, n. 6.⁴ The number of balance inquiry
22 transactions at Defendant's ATMs has declined even further since 2002, due to the rapidly
23 increasing availability of cost-free alternatives, like checking a balance on a mobile app,
24 phone banking, or online access. In other words, paying for a balance inquiry at an ATM
25 is not a rational act for the vast majority of consumers with so many no-cost alternatives
26 which can be conducted anywhere at any time.

27 _____
28 ³ <https://www.federalreserve.gov/newsevents/pressreleases/files/2019-payments-study-20191219.pdf>

⁴ https://www.kansascityfed.org/documents/6674/GuideATM_DebitCardIndustry_2003.pdf

1 20. Furthermore, retail bank customers are accustomed to having to
2 affirmatively *opt-in* to perform balance inquiry transactions. For example, major retail
3 banks uniformly present a “menu” screen to their customers at the beginning of an ATM
4 transaction on their bank-owned ATMs. This screen allows users the clear choice as to
5 whether or not they would like a balance inquiry or, as is much more likely, go straight
6 into making a cash withdrawal.

7 21. For example, when a Bank of America customer enters their ATM card into
8 a Bank of America ATM, after they enter their PIN, they are greeted by a *menu* of
9 transaction options (“Menu”). At Bank of America, the Menu options are as follows:

- 10 • Withdrawal
- 11 • Deposit
- 12 • Balance Inquiry
- 13 • Transfers and Payments
- 14 • Set Preferences
- 15 • Additional Options

16 22. In order for a Bank of America customer to check their balance, they are
17 required to affirmatively press the “Balance Inquiry” button. This set-up makes sense.

18 23. Importantly—accontholders of all retail banks, including Plaintiff, have
19 become accustomed to receiving a receipt at the conclusion of their cash withdrawal
20 transactions conducted at their home bank’s ATM machines. For instance, Bank of
21 America accountholders, including Plaintiff, are asked if they would like to receive a
22 printed receipt from the Bank of America ATM *at the conclusion of every cash*
23 *withdrawal transaction*, which sets forth their resulting account balance following the
24 withdrawal. The same holds true for every major bank in California, including the largest
25 seven banks: their customers are always presented with a separate screen prompt that asks
26 them if they would like a receipt with their account balance on it—free of charge—at the
27 conclusion of a cash withdrawal transaction.

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1 24. In fact, financial institutions are uniformly required to provide customers the
2 option of receiving a receipt after they complete a funds transfer (which includes a cash
3 withdrawal) free of charge. *See* 12 C.F.R. § 1005.9. Consumers are accustomed to
4 receiving a receipt with their account balance information printed on it following a cash
5 withdrawal transaction at an ATM—free of charge—when they use their home bank’s
6 ATM machines.

7 25. In the face of the above-mentioned realities, Defendant instead utilized an
8 ATM interface that prevents customers from being able to directly elect which type of
9 transaction they would like to engage in, while forcing customers to pay for the printing
10 of receipts for the transaction.

11 **C. FCTI’s Double Balance Inquiry Scheme**

12 26. ATM operators, including FCTI, utilize “Balance Inquiry At Start” screen
13 prompts at their ATMs to increase their interchange revenue.

14 27. “Balance Inquiry At Start” refers to the reordering of ATM screen prompts
15 so that the first screen a customer encounters, following PIN entry, is an immediate
16 prompt to view their available account balance. The adoption of “Balance Inquiry At
17 Start” resulted in a significant increase in balance inquiries made at the beginning of every
18 transaction, prior to the actual cash withdrawal. Indeed, consumers began to believe such
19 balance inquiries were part and parcel of the cash withdrawal they intended to make when
20 they walked up to the ATM. Several industry forums have touted the financial benefits to
21 Independent ATM deployers (“IADs”) of utilizing Balance Inquiry At Start. For example:

22 Many IADs do not include balance inquiries as an option during a
23 transaction. Although the ATM doesn’t charge the customer, **IADs can**
24 **derive significant interchange revenue from these transactions. ATMs**
25 **that are set to suggest balance inquiries at the start of transactions can**
26 **expect a significant increase in the number of balance inquiries**
27 performed by the machine.
28

1 See ATM Atom, at <http://www.atmatom.com/5-ways-to-boost-atm-portfolio-profitability/>
2 (last viewed July 11, 2018) (emphasis added).

3 Enable “balance inquiry at start” on Every ATM—an easy step to make,
4 **“Balance Inquiry at Start” can increase your balance inquiries 20 to 30**
5 **percent**—at minimal cost. By making this slight adjustment in
6 programming, the incremental revenue it produces can make quite a
7 difference.

8 See ATM Marketplace at [https://www.atmmarketplace.com/blogs/five-ways-to-increase-](https://www.atmmarketplace.com/blogs/five-ways-to-increase-atm-profitability/)
9 [atm-profitability/](https://www.atmmarketplace.com/blogs/five-ways-to-increase-atm-profitability/) (last viewed July 11, 2018) (emphasis added).

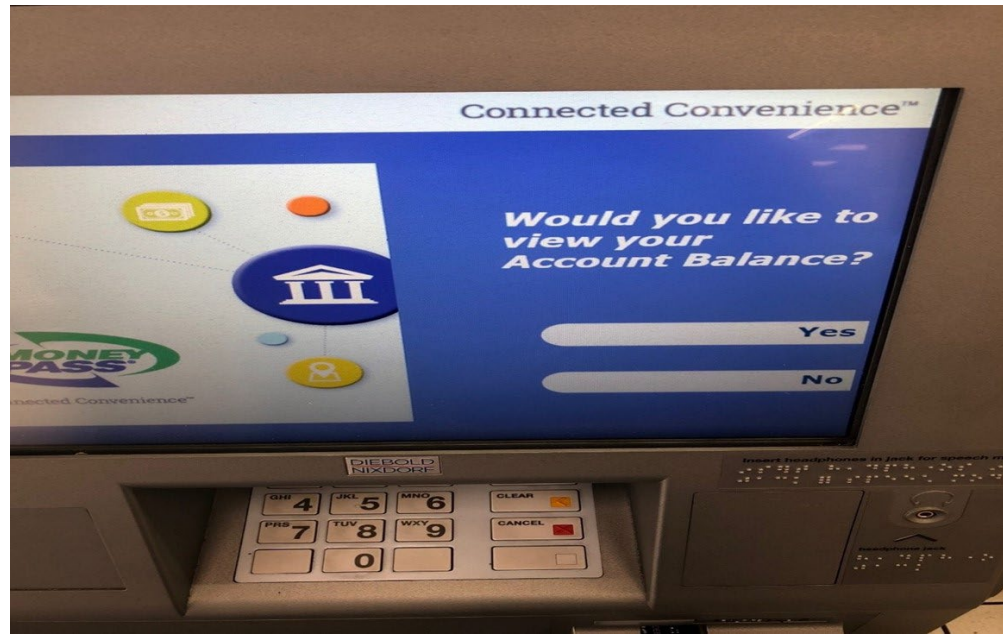
10 Once Balance Inquiry At Start is enabled, **deployers can expect between**
11 **20-30 percent of their transactions to be balance inquiries**, whereas
12 before such transactions might have been 10 percent or less.

13 See Slawsky, Richard, *Five Ways to Boost the Profitability of an ATM Portfolio*, ATM
14 Marketplace White Paper, 2011, at 2 available at: [http://www.grantvictor.com/pdfs/Five](http://www.grantvictor.com/pdfs/Five%20Ways%20to%20Boost%20ATM%20Profitability.pdf)
15 [%20Ways%20to%20Boost%20ATM%20Profitability.pdf](http://www.grantvictor.com/pdfs/Five%20Ways%20to%20Boost%20ATM%20Profitability.pdf) (last viewed July 11, 2018)
16 (emphasis added).

17 28. However, FCTI took this scheme much further to unconscionable ends by
18 designing an ATM interface that erroneously registers two balance inquiries, resulting in
19 the assessment of two out-of-network balance inquiry fees by Plaintiff and other
20 customers’ home banks, even though they (at most) undertook a single balance inquiry.
21 FCTI knowingly and/or willfully engages in this practice to increase its interchange
22 revenue by a factor of two.

23 29. Indeed, no consumer in his right mind would undertake two balance
24 inquiries on a single ATM use. It would be nonsensical to do so.

25 30. Upon entering their PIN, customers, including Plaintiff, were immediately
26 presented with FCTI’s version of a “Balance Inquiry At Start” screen prompt:
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31. As mentioned above, “Balance Inquiry At Start” is a deceptive practice to begin with it as pushes onto customers needless balance inquiry transactions and the resultant OON balance inquiry fees when customers overwhelmingly intend to withdraw cash at an ATM.

32. In any event, when Plaintiff and other customers press the “yes” button, they are shown the following screen whereby they are to select which account’s balance they would like to inquire about:



1 After selecting “Checking,” FCTI transmits a balance inquiry request through the ATM
2 network to the customer’s bank. The bank then provides the balance information through
3 the network back to the ATM machine for the customer to view. The bank then
4 automatically assesses the customer an OON balance inquiry fee and becomes liable to
5 pay the interchange fee through the ATM networks back to FCTI.

6 33. Customers are then presented with the following screen which provides the
7 balance information to the customer by displaying it prominently on the screen, while
8 asking if the user would like “to print your Balance and continue the Transaction”:



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20 34. This second prompt presented to customers is simply not a balance inquiry
21 prompt. It instead asks customers whether they would like to print the balance
22 information the customers already inquired, paid for, and is displayed on the screen while
23 continuing to make a cash withdrawal.

24 35. The very word “inquiry” is defined as a request for information.⁵ Here, this
25 second prompt is not asking the customer if they would like to request *information*
26 regarding their account balance. Instead, the customers already inquired their balance
27

28 ⁵“Inquiry.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/inquiry>. Accessed Mar. 22, 2022.

1 information and this second prompt simply asks if they would like to print the already
2 inquired balance information on the receipt while simultaneously proceeding to the cash
3 withdrawal. Furthermore, pressing the “Continue” button on this prompt is the only way
4 for customers to proceed directly to the intended cash withdrawal.

5 36. However, when customers press the “Continue” button, FCTI sends a
6 second balance inquiry request to the customers’ bank, which automatically triggers the
7 assessment of a second OON Fee for a balance inquiry by the customers’ bank and the
8 payment of the second interchange fee to FCTI.

9 37. Consumers, including Plaintiff, could not have reasonably understand that
10 they could be assessed an OON balance inquiry fee through this second prompt that is:
11 1) already showing the balance information they inquired and paid for, and 2) not even
12 asking if the customer would like to inquire their balance information. Indeed, it is
13 impossible for customers to make a balance inquiry through this prompt since the
14 question and the button options presented, as designed by FCTI, have nothing to do with
15 making a balance inquiry. There is no “request for information” regarding their account
16 balance. Indeed, it would be absurd for any customer to inquire the balance information
17 of the same account within seconds, while the results of the first inquiry are still on the
18 screen.

19 38. Yet, in each case, FCTI customers, including Plaintiff, were charged **two**
20 separate OON balance inquiry fees by their home banks after performing **one** balance
21 inquiry. FCTI, in turn, received a second interchange fee for each of the additional,
22 unwarranted balance inquiries that the accountholders never performed.

23 39. Accordingly, Plaintiff and the Class are entitled to restitution of the second,
24 unwarranted interchange fees FCTI received for the fraudulent and invalid balance
25 inquiries.

26 **D. Plaintiff’s Experience**

27 40. On or around November 21, 2019, Plaintiff places her Bank of America
28 ATM Debit card into the FCTI ATM located at a 7-Eleven convenience store at 417 Ninth

1 Ave., Suite A, San Diego, CA 92101 to make a quick cash withdrawal. Plaintiff places
2 her card into the machine and entered her PIN. She was immediately asked (consistent
3 with paragraph 30 above):

4 **Would you like to view your account balance?**

5 41. Plaintiff was confused—believing that she might have pressed the wrong
6 button the menu screen. She did not realize that a menu screen had not been presented
7 because she was in a hurry. Wanting to get to her intended cash withdrawal, she quickly
8 pressed “YES” and viewed her account balance. The next screen asked her if she would
9 like to “print [her] Balance and continue the Transaction?” Still confused, but wanting to
10 get to the cash withdrawal, she pressed, “continue.” At that point, a receipt was printed
11 and her transaction was abruptly ended. The next screen asked her to re-enter her PIN. At
12 that point, she was again asked if she would like a receipt for the transaction, and then
13 was finally presented the main menu screen throughout which she was able to select the
14 cash withdrawal option and withdraw cash. Plaintiff does not recall seeking another
15 balance inquiry.

16 42. Following her transaction, Plaintiff was surprised to learn that she was
17 assessed, in addition to the cash withdrawal surcharge paid to FCTI (\$3.50), two separate
18 \$2.50 fees from Bank of America for making balance inquiries, and an additional \$2.50
19 fee from Bank of America for making a cash withdrawal. She was charged \$11.00 in total
20 fees for making a \$100.00 withdrawal. Plaintiff is only challenging the second, phantom
21 balance inquiry fee.

22 43. Had Plaintiff known that FCTI would register a second OON balance inquiry
23 during the same transaction through a non-balance inquiry prompt, she would have
24 considered other options for reviewing her account balance.

25 44. Immediately following her transaction, Bank of America twice debited a
26 \$2.50 OON ATM fee from her account directly related to her supposed requests for
27 balance inquiries. Bank of America then forwarded approximately \$0.25 of the \$3.00
28 collected, with FCTI receiving all or a portion of this amount.

1 45. Plaintiff intends to continue to use third party ATMs, including ATMs
2 owned by FCTI, at times when she finds them convenient, when she does not have time
3 to visit her home bank's ATM. Plaintiff is seeking an injunction to prevent herself and
4 others from being misled in the future by the FCTI screen prompts. Because ATM
5 transactions are so common, the likelihood of Plaintiff falling victim to this improper
6 business practice persists in the future.

7 **CLASS ALLEGATIONS**

8 46. Plaintiff brings this action on her own behalf and all others similarly situated.
9 The Class includes:

10 All holders of a checking account who, within the applicable statute of
11 limitation preceding the filing of this lawsuit, were assessed more than one
12 fee for a balance inquiry during the same visit at a FCTI ATM in the United
13 States, excluding the State of New York (the "Class").

14 47. Excluded from the Class is Defendant, its subsidiaries and affiliates, their
15 officers, directors and members of their immediate families and any entity in which
16 Defendant has a controlling interest, the legal representatives, heirs, successors or assigns
17 of any such excluded party, the judicial officer(s) to whom this action is assigned, and
18 the members of their immediate families.

19 48. Plaintiff reserves the right to modify or amend the definition of the proposed
20 Class and/or to add a Subclass(es) if necessary before this Court determines whether
21 certification is appropriate.

22 49. The parties are numerous such that joinder is impracticable. Upon
23 information and belief, and subject to Class discovery, the Class consists of thousands of
24 members or more, the identity of whom are within the exclusive knowledge of and can
25 be ascertained by resorting to Defendant's and related bank's records. Defendant has the
26 administrative capability through its computer system and other records to identify all
27 members of the Class, and such specific information is not otherwise available to
28 Plaintiff.

1 50. The questions here are ones of common or general interest such that there is
2 a well-defined community of interest among the Class members. These questions
3 predominate over questions that may affect only individual Class members because
4 Defendant has acted on grounds generally applicable to the Class. Such common legal
5 or factual questions include, but are not limited to:

6 a. whether Defendant improperly received interchange fees from
7 financial institutions resulting from improper out-of-network balance inquiries;

8 b. whether a prompt asking if customers would like to print the balance
9 information which the customers already inquired, paid for, and have displayed on
10 the screen and continue with the cash withdrawal transaction, does not constitute a
11 balance inquiry;

12 c. whether FCTI transmitted two balance inquiry requests during the
13 same ATM visit;

14 d. whether such conduct enumerated herein is deceptive;

15 e. whether Defendant violated the UCL; and

16 f. whether Plaintiff and other members of the Class have sustained
17 financial losses as a result of Defendant's wrongful business practices described
18 herein, and the proper measure of restitution.

19 51. It is impracticable to bring Class members' individual claims before the Court.
20 Class treatment permits a large number of similarly situated persons or entities to prosecute
21 their common claims in a single forum simultaneously, efficiently and without the
22 unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or
23 contradictory judgments that numerous individual actions would engender. The benefits of
24 the class mechanism, including providing injured persons or entities with a method for
25 obtaining redress on claims that might not be practicable to pursue individually, substantially
26 outweigh any difficulties that may arise in the management of this class action.

27 52. Plaintiff's claims are typical of the claims of the other Class members in that
28 they arise out of the same wrongful business practice by Defendant, as described herein.

1 53. Plaintiff is more than an adequate representative of the Class in that she has
2 suffered damages as a result of Defendant's improper business practices. In addition:

3 a. Plaintiff is committed to the vigorous prosecution of this action on
4 behalf of herself and all others similarly situated and has retained competent
5 counsel experienced in the prosecution of class actions and, in particular, class
6 actions on behalf of consumers against financial institutions;

7 b. there is no conflict of interest between Plaintiff and the unnamed Class
8 members;

9 c. Plaintiff anticipates no difficulty in the management of this litigation
10 as a class action; and

11 d. her legal counsel has the financial and legal resources to meet the
12 substantial costs and legal issues associated with this type of litigation.

13 54. Plaintiff knows of no difficulty to be encountered in the maintenance of this
14 action that would preclude its maintenance as a class action.

15 55. Defendant has acted, or refused to act, on grounds generally applicable to
16 the Class, thereby making appropriate final injunctive relief or corresponding declaratory
17 relief with respect to the Class as a whole.

18 56. All conditions precedent to bringing this action have been satisfied and/or
19 waived.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE UNFAIR COMPETITION LAW**
22 **Cal. Bus. & Prof. Code § 17200, *et seq.***
(Against Defendant on Behalf of the Class)

23 57. Plaintiff incorporates the preceding allegations by reference as if fully set
24 forth herein.

25 58. FCTI's conduct in double-charging consumers two out-of-network Balance
26 Inquiry Fees for single balance inquiries, and the deceptive manner in which FCTI
27 designs and presents its screen prompts at is ATM machines to consumers, constitutes a
28

1 fraudulent and unfair business act or practice in violation of Cal. Bus. & Prof. Code
2 § 17200, *et seq.*

3 59. FCTI's conduct was unfair insofar as it was not motivated by any business
4 or economic need or rationale. The harm and adverse impact of FCTI's conduct on
5 members of the general public was neither outweighed nor justified by any legitimate
6 reasons, justifications, or motives.

7 60. The harm to Plaintiff and Class members arising from FCTI's unfair
8 practices relating to its deceptive screen prompts and the unconscionable double-charging
9 out-of-network Balance Inquiry Fees for a single purported balance inquiry outweighs
10 the utility, if any, of those practices.

11 61. FCTI's unfair business practices relating to its deceptive screen prompts and
12 double charging out-of-network Balance Inquiry Fees as alleged herein are immoral,
13 unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to
14 Plaintiffs and Class members.

15 62. FCTI's conduct was substantially injurious to consumers in that they have been
16 forced to pay double the amount of out-of-network Balance Inquiry Fees than necessary.

17 63. As a result of Defendant's violations of the UCL, Plaintiff and members of
18 the Class have paid, and/or will continue to pay, unreasonably excessive amounts of money
19 for banking services and thereby have suffered and will continue to suffer actual damages.

20 64. As a result of Defendant's unfair and deceptive conduct, FCTI has been
21 unjustly enriched and should be required to disgorge its unjust profits and make restitution
22 to Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.

23 65. Plaintiff and the Class further seek an order enjoining FCTI's unfair or
24 deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of
25 Civ. Proc. § 1021.5.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff demands judgment against Defendant for herself and the
28 Class members as follows:

1 (a) Certifying this matter as a class action;

2 (b) Designating Plaintiff as appropriate Class representative and her counsel as
3 Class Counsel;

4 (c) An order enjoining FCTI from continuing to employ unfair methods of
5 competition and commit unfair and deceptive acts and practices alleged in this complaint
6 and any other acts and practices proven at trial;

7 (d) Restitution of all relevant interchange fees paid to FCTI as a portion of the
8 unwarranted OON balance inquiry fees assessed to Plaintiff and the Class, in an amount
9 to be determined at trial;

10 (e) Disgorgement of the ill-gotten gains derived by FCTI from its misconduct;

11 (f) Pre-judgment interest at the maximum rate permitted by applicable law;

12 (g) Costs and disbursements assessed by Plaintiff in connection with this action,
13 including reasonable attorneys' fees pursuant to applicable law; and

14 (h) Such other relief as this Court deems just and proper.

15 **DEMAND FOR JURY TRIAL**

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

18 Dated: April 4, 2023

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19 By: /s/ Todd D. Carpenter

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26 *Attorneys for Plaintiff*
27 *and the Proposed Class*

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges 7-Eleven ATM Supplier FCTI Doubles Balance Inquiry Charges](#)
