

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|---|---|-----------------------------|
| GEORGE MOORE, VIRGINIA CARTER, |) | |
| JAMES JILEK, FRANCIS JAYE, and |) | |
| SEAN MADELMAYER, on behalf of |) | |
| themselves and all others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Cause No. 4:18-cv-01962-SEP |
| v. |) | |
| |) | |
| COMPASS GROUP USA, INC., D/B/A |) | |
| CANTEEN |) | JURY TRIAL DEMANDED |
| |) | |
| Defendant. |) | |

PLAINTIFFS' CONSOLIDATED CLASS ACTION COMPLAINT

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| THE PARTIES..... | 1 |
| Plaintiffs | 1 |
| Defendant..... | 2 |
| JURISDICTION AND VENUE | 3 |
| FACTUAL ALLEGATIONS REGARDING DEFENDANT’S LIABILITY | 3 |
| Plaintiff Moore’s Purchases | 6 |
| Plaintiff Carter’s Purchases..... | 7 |
| Plaintiff Jilek’s Purchases | 8 |
| Plaintiffs Jaye’s and Madelmayer’s Purchases | 9 |
| After This Lawsuit Was Filed, Defendant Began Telling the Truth on Its Vending Machines | 11 |
| CLASS ACTION ALLEGATIONS | 12 |
| COUNT I: BREACH OF CONTRACT | 15 |
| COUNT II: VIOLATION OF THE MMPA BY MEANS OF DECEPTION | 16 |
| COUNT III: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES | 18 |
| COUNT IV: UNJUST ENRICHMENT in Missouri | 21 |
| COUNT V: MONEY HAD AND RECEIVED IN MISSOURI..... | 22 |
| <u>COUNT VI: VIOLATION OF THE ICFA</u> | 22 |
| COUNT VIII: UNJUST ENRICHMENT in ILLINOIS..... | 24 |
| COUNT IX: MONEY HAD AND RECEIVED IN ILLINOIS..... | 25 |
| COUNT X: Violation of California’s Unfair Competition Law, <u>Cal. Bus. & Prof. Code §§ 17200</u> , et seq. | 25 |
| COUNT XI: Violation of Consumers Legal Remedies Act, <u>Cal. Civil Code §§ 1750</u> , et seq. | 27 |

| | |
|---|----|
| COUNT XII: VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES CONSUMER PROTECTION ACT (DTPA) | 29 |
| COUNT XIII: UNJUST ENRICHMENT IN TEXAS..... | 30 |
| PRAYER FOR RELIEF | 32 |

PLAINTIFFS GEORGE MOORE, VIRGINIA CARTER, JAMES JILEK, FRANCIS JAYE, and SEAN MADELMAYER (“Plaintiffs”), on behalf of themselves and all others similarly situated, file this Consolidated Complaint against DEFENDANT COMPASS GROUP USA, INC., D/B/A CANTEEN (“Canteen”) as follows based on personal knowledge as to their own actions and on information and belief as to Defendant’s conduct and practices.

INTRODUCTION

1. Plaintiffs bring this class action individually and on behalf of a Class and Subclasses of similarly situated consumers who have purchased items from Defendant’s vending machines and been charged more than the amount displayed for those items.

2. Defendant’s actions as alleged herein constitute breach of contract; violation of the Missouri Merchandising Practices Act (“MMPA”), § 407.010 *et seq.*, by means of deception, misrepresentation and unfair practices; violation of the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq.*, (“ICFA”) by means of unfair practices; violation of California’s Unfair Competition Law, [Cal. Bus. & Prof. Code §§ 17200, et seq.](#), violation of California’s Consumers Legal Remedies Act, [Cal. Civil Code §§ 1750, et seq.](#), violation of the Texas Deceptive Trade Practices Consumer Protection Act (DTPA), § 17.41 *et seq.*; unjust enrichment and money had and received.

THE PARTIES

Plaintiffs

3. Plaintiff George Moore is a resident of the City of St. Louis and a citizen of the State of Missouri who used a prepaid card to purchase items from a vending machine located at 1010 Market Street in the City of St. Louis, after which Defendant charged his prepaid card more than the posted prices.

4. Plaintiff Virginia Carter, at the time of her purchases set forth herein, was a resident of St. Clair County, Illinois, and a citizen of the State of Illinois who used a debit card from FCB Banks in O'Fallon, Illinois, to purchase items from a vending machine located at 1010 Market Street in the City of St. Louis, after which Defendant withdrew more than the posted prices from her bank account. She is currently a resident of St. Charles County and a citizen of the State of Missouri.

5. Plaintiff James Jilek is a resident of Los Angeles County and a citizen of the State of California who used a credit card to purchase items from a vending machine located at 1739 East Holly Avenue, El Segundo, California, after which Defendant charged his card more than the posted prices.

6. Plaintiff Francis Jaye resides in Dallas, Texas and used a debit card to purchase items from Defendant's vending machines, including at the Dallas Love Field Airport, after which Defendant withdrew more than the posted prices from her account.

7. Plaintiff Sean Madelmayer resides in Dallas, Texas and used a debit card to purchase items from Defendant's vending machines, including at the Dallas/Fort Worth Airport, after which Defendant withdrew more than the posted prices from his account.

Defendant

8. Defendant Compass Group USA, Inc., is a corporation incorporated in Delaware with its principal place of business located at 2400 Yorkmount Road in Charlotte, NC. It does business under the name "Canteen" and has offices in Missouri at 2331 Millpark Drive, Maryland Heights, MO 63043. Its registered agent in Missouri is CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, MO 65101.

9. Defendant owns and operates vending machines in Missouri, Illinois, California, Texas, and elsewhere in the United States, including vending machines located in the office

building at 1010 Market Street, St. Louis, Missouri 63101. On its website, Defendant states: “Canteen’s St. Louis branch, located just outside the city in Maryland Heights, provides refreshment and vending services to the St. Louis metropolitan area and surrounding counties in Eastern Missouri.”¹

10. Defendant also owns and operates vending machines in other areas of Missouri and the United States. On its website, Defendant states that it is “the nation’s largest vending services company”²

JURISDICTION AND VENUE

11. This is a class action under Rule 23 of the Federal Rules of Civil Procedure.

12. As Defendant alleged in removing this case, this Court has jurisdiction pursuant to the Class Action Fairness Act, 18 U.S.C. § 1332(d). Because Plaintiffs and Defendant are citizens of different states, there is minimal diversity. The total claims of Class Members are in excess of \$5,000,000 exclusive of interest and costs. There are at least 100 Class Members.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS REGARDING DEFENDANT’S LIABILITY

14. Defendant maintains vending machines in the office building at 1010 Market Street, St. Louis, MO 63101 (“1010 Market”).

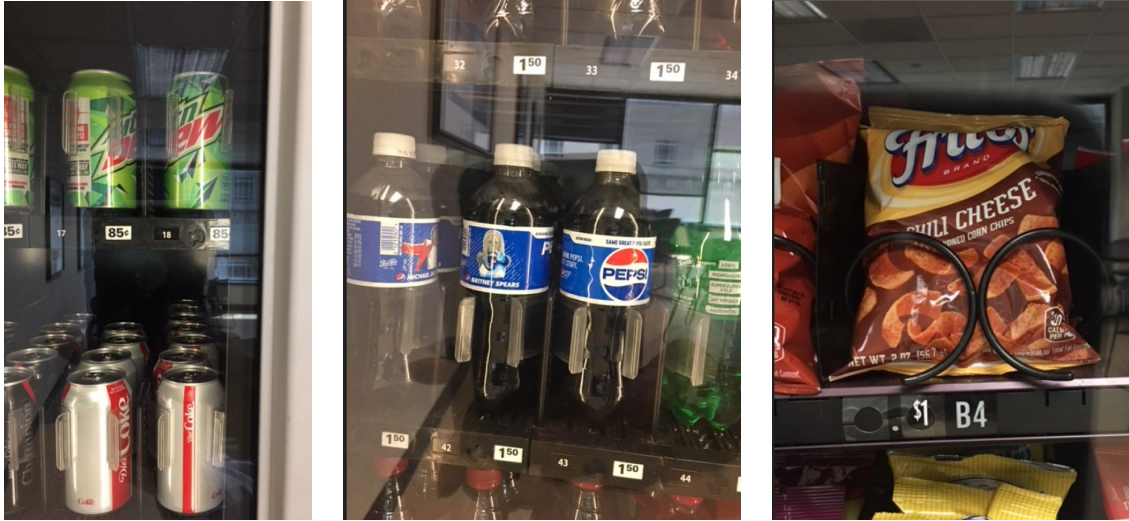
15. Those vending machines sell soft drinks, water and snacks and display a price for each item.

¹ <https://www.canteen.com/find-your-canteen/maryland-heights-st-louis/> (accessed August 13, 2018).

² <https://www.canteen.com/vending/> (accessed August 13, 2018).

16. However, when a customer purchases an item and pays for it with a credit, debit or prepaid card (“card”), Defendant charges his or her card an amount that exceeds its displayed price.

17. The photographs below show the way these vending machines display their prices:



18. Defendant also owns and operates vending machines in California, including vending machines located in Los Angeles, California. Those vending machines sell items such as soft drinks, water, and snacks, and display a price for each item.

19. The vending machines pictured below, which are owned and/or operated by Defendant, are located at 1739 East Holly Avenue, El Segundo, California (“1739 East Holly”).



20. These vending machines, which allow for payment either via cash or with a credit, debit or prepaid card (“card”), display the price for each item offered for sale. Thus, for example, sodas are priced at \$1.00 and a package of Skittles are priced at \$1.25.



21. A single price is displayed for each of the items offered for sale in the two above-pictured vending machines at 1739 East Holly. The vending machines do not contain or provide any disclosure that an additional fee will be charged if the items offered for sale are paid for using a card or that a different, higher price will be charged for items that are paid for using a card.

22. In fact, however, as the experience of Plaintiff Jilek shows, a hidden, undisclosed fee is imposed when items are purchased using a card.

23. Similarly, as shown by the experiences of Plaintiffs Jaye and Madelmayer, Defendant's vending machines in Texas, including at the Dallas Love Field Airport and the Dallas/Fort Worth Airport, also fail to disclose that a higher amount than the price set forth on the machine will be charged or debited if a consumer pays with a credit or debit card.

Plaintiff Moore's Purchases

24. On or about March 18, 2018, Plaintiff Moore purchased a soft drink with a displayed price of \$1.50 from a vending machine owned and operated by Defendant at 1010 Market. He paid with his prepaid card. Subsequently, he received his Prepaid Statement showing that Defendant had charged his prepaid card \$1.60 for this item.

25. When Plaintiff Moore made his purchase from Defendant's vending machine on March 18, 2018, there was no sign or other indication on the vending machine signifying that the purchaser's card would be charged more than the displayed price.

26. On or about March 23, 2018, Plaintiff Moore purchased a soft drink with a displayed price of \$0.85 from a vending machine owned and operated by Defendant at 1010 Market. He paid with his prepaid card. Subsequently, he received his Prepaid Statement showing that Defendant had charged his card \$0.95 for this item.

27. When Plaintiff Moore made his purchase from Defendant's vending machine on March 23, 2018, there was no sign or other indication on or near the vending machine signifying that the purchaser's card would be charged more than the displayed price.

28. On or about April 18, 2018, Plaintiff Moore purchased a soft drink with a displayed price of \$1.50 from a vending machine owned and operated by Defendant at 1010 Market. He paid with his prepaid card. Subsequently, he received his Prepaid Statement showing that Defendant had charged his card \$1.60 for this item.

29. When Plaintiff Moore made his purchase from Defendant's vending machine on April 18, 2018, there was no sign or other indication on the vending machine signifying that the purchaser's card would be charged more than the displayed price.

30. Plaintiff Moore made his purchases from Defendant's vending machines, as alleged above, for personal, family or household purposes.

Plaintiff Carter's Purchases

31. Plaintiff Carter has frequently used her debit card from FCB Banks of O'Fallon, Illinois ("FCB Banks") to purchase items from the vending machines at 1010 Market. After many, if not all, such purchases, Defendant, from its offices in Maryland Heights, Missouri, withdrew from Plaintiff Carter's account at FCB Banks ten cents more than the price shown on the machines.

32. Among those instances are those shown in the following list, with the date of purchase and the amount Defendant withdrew from Plaintiff Carter's account at FCB:

October 6, 2017: \$0.95
October 6, 2017: \$1.10
October 6, 2017: \$1.10
October 6, 2017: \$1.35
October 6, 2017: \$1.60
October 8, 2017: \$1.10
October 8, 2017: \$1.10

October 8, 2017: \$1.60
December 7, 2017: \$2.85
December 7, 2017: \$2.85
December 8, 2017: \$1.60
December 11, 2017: \$1.10
December 11, 2017: \$1.10
December 18, 2017: \$2.85
January 1, 2018: \$1.60
January 3, 2018: \$1.10
January 3, 2018: \$1.10
January 3, 2018: \$1.10
January 3, 2018: \$2.85
January 5, 2018: \$1.60
January 5, 2018: \$1.60
January 5, 2018: \$2.85
January 5, 2018: \$3.10
April 9, 2018: \$2.85
April 28, 2018: \$3.10
May 3, 2018: \$0.95
May 3, 2018: \$1.60
May 14, 2018: \$1.10
May 16, 2018: \$1.10
May 16, 2018: \$2.10

33. Plaintiff Carter had the right to immediate possession of the money in her bank account with FCB Banks. That right was absolute and unconditional and not dependent on some act to be performed.

34. Plaintiff Carter was deprived of her interest in the money in her bank account with FCB Banks by the Defendant's unauthorized acts of taking more from her account than the prices shown on Defendant's vending machines for the items she purchased.

Plaintiff Jilek's Purchases

35. On or about July 26, 2019, Plaintiff Jilek purchased a soda with a display price of \$1.00 from a vending machine at 1739 East Holly using his credit card. Using the same credit card, on or about August 14, 2019, Plaintiff Jilek purchased a package of Skittles with a display price of \$1.25 from a vending machine at 1739 East Holly.

36. When Plaintiff Jilek made the above purchases on July 26, 2019 and August 14, 2019, there was no sign or other indication on either of the two vending machines that the purchaser's card would be charged more than the displayed price. However, as shown on his credit card statement, Plaintiff Jilek was actually charged more than the display price for the items he purchased from these vending machines. Instead of the \$1.00 display price for the soda, Plaintiff Jilek was charged \$1.10. Likewise, instead of the \$1.25 display price for a package of Skittles, Plaintiff Jilek was charged \$1.35.

| Date | Description | Amount |
|--------------|-------------------------|--------|
| Aug 14, 2019 | CANTEEN LA 714-899-2520 | \$1.35 |
| Date | Description | Amount |
| Jul 26, 2019 | CANTEEN LA 714-899-2520 | \$1.10 |

Plaintiffs Jaye's and Madelmayer's Purchases

37. On March 14, 2019, Plaintiff Jaye purchased various items from Defendant's vending machines using her debit card.

38. Plaintiff Jaye made purchases with her debit card at Defendant's vending machines throughout the City of Dallas, including Dallas Love Field Airport.

39. On April 24, 2019, Plaintiff Madelmayer purchased various items from Defendant's vending machines using his debit card.

40. Plaintiff Madelmayer made purchases with his debit card at Defendant's vending machines throughout the city of Dallas, including Dallas Fort Worth Airport.

41. At each vending machine referenced above, the prices for each product were clearly visible.

42. Upon information and belief, Defendant's vending machines accept cash and/or credit and debit cards.

43. There is only one price per good displayed on Defendant's vending machines and Defendant did not disclose that an additional charge would be added for all credit card and debit card purchases.

44. Specifically, relying on the prices represented on Defendant's vending machine, Plaintiffs chose to purchase various items.

45. Plaintiffs Jaye and Madelmayer swiped their credit/debit cards on the payment terminals attached to the vending machines to provide payment for their purchases, and they selected the products they wished to buy, which were promptly provided to them by Defendant's machines.

46. However, when Plaintiffs Jaye and Madelmayer later checked their bank statements, they discovered Defendant added an additional charge of approximately \$0.10 per item purchased to each of Plaintiffs' purchase, which additional charges were collected from their debit/credit card accounts.

47. Critically, nowhere on the machines, or at any point during the purchase processes, did Defendant disclose that credit and debit card users would be charged an additional surcharge.

48. Plaintiffs Jaye and Madelmayer were deceived and/or misled by Defendant's representations regarding the purchase price of the beverage and food products which they purchased from Defendant's vending machines and these representations, and Defendant's failure to disclose a credit card fee were material factors that influenced Plaintiffs' decisions to purchase such products.

49. Plaintiffs Jaye and Madelmayer would not have purchased the products that they bought, or would have chosen a different payment method, had they known that Defendant's representations about the purchase price were false and misleading and that an additional fee would be assessed if they used a credit or debit card.

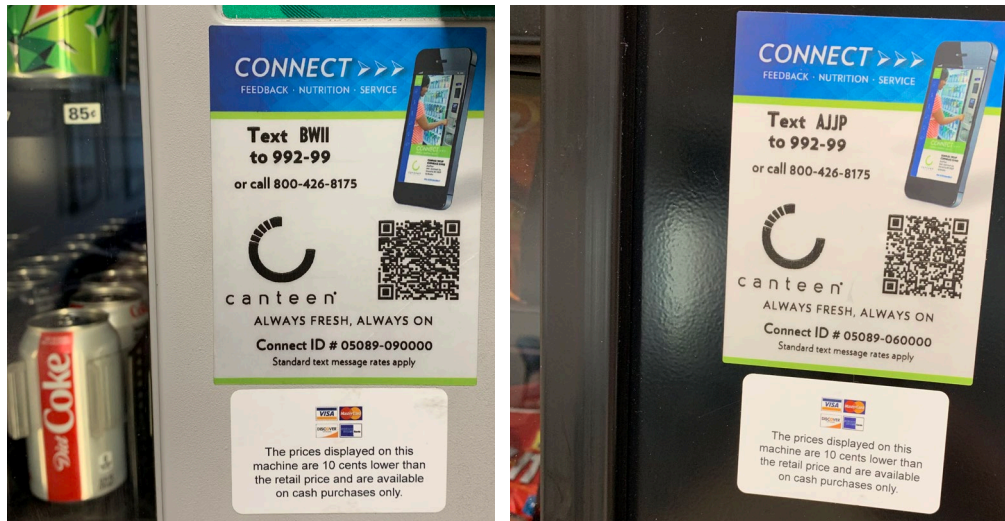
50. Plaintiffs Jaye and Madelmayer did not receive the benefit of the bargain when they purchased food and drink products from Defendant's vending machines that were not sold to them for the price explicitly offered by Defendant.

After This Lawsuit Was Filed, Defendant Began Telling the Truth on Its Vending Machines

51. This lawsuit was first filed in the Circuit Court of St. Louis County, Missouri, on October 23, 2018. At that time, the above allegations were all true. However, since being sued for not informing consumers that the displayed prices on its vending machines would be increased by 10 cents if the consumer did not pay cash, Defendant has changed its practices on at least some of its machines. For example, Defendant added on its machines at 1010 Market, the following statement beneath symbols for various credit cards:

The prices displayed on the machine are 10 cents lower than the retail price and are available on cash purchases only.

52. The photographs below, taken on December 18, 2018, show how the signs with that statement appeared on Defendant's vending machines from which Plaintiffs Moore and Carter made the purchases described above:



53. These new signs on Defendant's vending machines shows that it would have been feasible before this lawsuit was filed to tell consumers that the posted prices on Defendant's vending machines would be increased by 10 cents if the consumer paid with a card.

54. The above new signs on Defendant's vending machines show that Defendant recognized that it had a duty to tell consumers that, if they paid with a card, the card would be charged 10 cents more than the posted price.

CLASS ACTION ALLEGATIONS

55. Plaintiffs seek to represent the following Class:

Class: All persons or entities who, within the applicable statute of limitations preceding the filing of this lawsuit to the date of class certification, purchased an item from a vending machine owned or operated by Defendant in the United States with a credit, debit or prepaid card and were charged an amount in excess of the price displayed for that item on the vending machine, except for items purchased from a vending machine that stated that charges would be increased for purchases with a card.

56. Plaintiff Moore seeks to represent the following Missouri Subclass:

Missouri: Subclass: All persons who, within the applicable statute of limitations preceding the filing of this lawsuit to the date of class certification, purchased an item from a vending machine owned or operated by Defendant in Missouri for personal, family or household purposes and were charged an amount in excess of

the price displayed for that item, except for items purchased from a vending machine stating that charges would be increased for purchases with a card.

57. Plaintiff Carter seeks to represent the following Illinois Subclass:

Illinois Subclass: All persons or entities who, within the applicable statute of limitations preceding the filing of this lawsuit to the date of class certification, had an account in Illinois from which Defendant withdrew an amount in excess of the price displayed for an item they purchased on a vending machine owned or operated by Defendant, except for items purchased from a vending machine stating that charges would be increased for purchases with a card.

58. Plaintiff Jilek seeks to represent the following California Subclass:

California Subclass: All persons who, within the applicable statute of limitations preceding the filing of this lawsuit to the date of class certification, purchased an item from a vending machine owned or operated by Defendant in California using a credit, debit or prepaid card and who were charged an amount in excess of the price displayed for that item, except for items purchased from a vending machine clearly disclosing prior to the purchase that charges would be increased for purchases with a card.

59. Plaintiffs Jaye and Madelmayer seek to represent the following Texas Subclass:

Texas Subclass: All persons who, within the applicable statute of limitations preceding the filing of this lawsuit to the date of class certification, purchased an item from a vending machine owned or operated by Defendant in Texas using a credit, debit or prepaid card and who were charged an amount in excess of the price displayed for that item, except for items purchased from a vending machine clearly disclosing prior to the purchase that charges would be increased for purchases with a card.

60. Excluded from the Class and Subclasses are officers, directors and employees of Defendant, counsel and members of the immediate family of counsel for Plaintiffs herein, and the judge presiding over this action and any member of the judge's immediate family.

61. The Class and Subclasses are believed to comprise many consumers, the joinder of whom is impracticable both because of their number and because they are spread out across the country. Moreover, the amount of damages suffered individually by each member of the Class is so small as to make suit for its recovery by each one economically unfeasible.

62. Class treatment will provide substantial benefit to both the parties and the

court system. A well-defined commonality of interest in questions of law and fact affects Plaintiffs and all proposed members of the Class and Subclasses. Common questions of law and fact include:

- A. Whether Defendant sells items in vending machines with a particular displayed price;
 - B. Whether Defendant charges customers' cards or accounts for more than the displayed price;
 - C. Whether Defendant as a result has breached a contract for the sale of items from its vending machines;
 - D. Whether Defendant's actions are deceptive and unfair under the MMPA;
 - E. Whether Defendant's actions are unfair under the ICFA;
 - F. Whether Defendant's conduct as alleged herein is unfair, unlawful and or fraudulent in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200, *et seq.*;
 - G. Whether Defendant's conduct as alleged herein violates California's Consumers Legal Remedies Act, Civil Code sections 1750, *et seq.*;
 - H. Whether Defendant's conduct as alleged herein violates Texas' Deceptive Trade Practices-Consumer Protection Act, § 17.41 *et seq.*;
 - I. Whether Defendant's actions constitute unjust enrichment; and
 - J. Whether Defendant's actions constitute money had and received.
63. Plaintiffs' claims are typical of the claims of the proposed Class and Subclasses.

64. Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class. Plaintiffs do not have any interest antagonistic to those of the Class. Plaintiffs have retained competent and experienced counsel.

65. The questions of law and fact common to the members of the Class, some of which are set out above, predominate over any questions affecting only individual members of the Class. The resolution of common questions in this case will resolve the claims of both Plaintiffs and the Class.

66. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because members of the Class are numerous and individual joinder is impracticable. The expenses and burden of individual litigation would make it impracticable or impossible for proposed members of the Class to prosecute their claims individually. Trial of Plaintiffs' claims is manageable.

67. Unless a class is certified, Defendant will retain monies it has improperly taken from Plaintiffs and proposed members of the Class. Unless a class-wide injunction is issued, Defendant will continue to commit violations against Customers.

68. This action is maintainable as a class action pursuant [Fed. R. Civ. P. 23](#).

69. Because there are common individual issues among the Class, it is appropriate for this action to be maintained as a class action with respect to particular issues if necessary. *See* [Fed. R. Civ. P. 23\(c\)\(4\)](#).

COUNT I: BREACH OF CONTRACT
(Plaintiffs and the Class)

70. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if fully set forth herein.

71. Plaintiffs and Class Members entered into contracts with Defendant; pursuant to those contracts Defendant offered to sell to Plaintiffs and Class Members the items that were for sale in its vending machines for the displayed prices and Plaintiffs and Class Members agreed to pay those prices.

72. Plaintiffs and Class Members performed pursuant to those contracts by using their cards to buy the items at the displayed prices.

73. Defendant breached those contracts by charging Plaintiffs' cards more than the displayed prices.

74. Plaintiffs thereby suffered damages.

75. WHEREFORE, Plaintiffs and the Class pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT II: VIOLATION OF THE MMPA BY MEANS OF DECEPTION
(Plaintiff Moore and the Missouri Subclass)

76. Plaintiff Moore incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

77. The MMPA, [Mo. Rev. Stat. § 407.020](#), states in relevant part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . is declared to be an unlawful practice.

78. The actions of Defendant alleged herein violated, and continue to violate, the MMPA because they constitute deception, fraud, false pretense, false promise and misrepresentation.

79. Pursuant to the MMPA, Defendant had a duty not to engage in any deceptive practice in connection with the sale or advertisement of any merchandise in trade or commerce,

such as not informing customers that, if they used a card to buy an item from its vending machine, their card would be charged more than the displayed price. For the reasons stated herein, it breached that duty.

80. Plaintiff Moore, on behalf of himself and Class Members, is entitled to bring this action pursuant to [Mo. Rev. Stat. § 407.025](#), which provides in relevant part that:

1. Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

2. Persons entitled to bring an action pursuant to subsection 1 of this section may, if the unlawful method, act or practice has caused similar injury to numerous other persons, institute an action as representative or representatives of a class against one or more defendants as representatives of a class In any action brought pursuant to this section, the court may in its discretion order, in addition to damages, injunction or other equitable relief and reasonable attorney's fees.

81. The MMPA defines "merchandise" as any objects, wares, goods, commodities, intangibles, real estate or services. [Mo. Rev. Stat. § 407.010](#). Thus, the items that Defendant sells through its vending machines are merchandise.

82. In selling merchandise from its vending machines, Defendant is engaged in trade and commerce.

83. Plaintiff Moore and members of the Missouri Subclass purchased items from Defendant's vending machines that were falsely represented as being sold for prices that were less than the amounts Defendant charged customers' cards.

84. Plaintiff Moore and members of the Missouri Subclass suffered ascertainable losses in that their credit, debit or prepaid cards were charged amounts greater than the prices Defendant displayed.

85. Defendant's false promises, misrepresentations, and omissions of material fact in connection with the advertisement of prices that it sold in its vending machines in Missouri violated the above provision of the MMPA.

86. Defendant also concealed from customers that it would charge their cards amounts that exceeded the prices it displayed in its vending machines. For this additional reason Defendant violated [Mo. Rev. Stat. § 407.020](#).

87. As a direct and proximate result of Defendant's violation of the MMPA, Plaintiff Moore and members of the Missouri Subclass have suffered and will continue to suffer damages and losses as alleged herein in an amount to be determined at trial.

88. Defendant's deceptive actions in violation of the MMPA were performed willfully and wantonly, were outrageous and were done in reckless indifference to the rights of Plaintiff Moore and Class Members.

89. WHEREFORE, Plaintiff Moore and the Missouri Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT III: VIOLATION OF THE MMPA BY MEANS OF UNFAIR PRACTICES
(Plaintiff Moore and the Missouri Subclass)

90. Plaintiff Moore incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

91. The actions of Defendant alleged herein violated, and continue to violate, the MMPA because they constitute unfair practices.

92. [Mo. Rev. Stat. §407.020.1](#) prohibits “[t]he act, use or employment by any person of any ... unfair practice ... in connection with the sale or advertisement of any merchandise in trade or commerce.”

93. The Missouri Attorney General has promulgated regulations defining the meaning of unfair practice as used in the MMPA. That definition states that unethical practices are unfair in violation of the above statute. [Mo. Code Regs. tit. 15, § 60-8.020](#).

94. Pursuant to the MMPA, Defendant has a duty not to engage in any unethical or unfair practice in connection with the sale or advertisement of any merchandise in trade or commerce, such as charging a customer’s card more than the displayed price for a purchase from its vending machine without informing the customer of that fact. For the reasons stated herein, it breached that duty.

95. In selling merchandise from its vending machines, Defendant is engaged in trade and commerce.

96. Displaying one price for a snack, water or soft drink and then charging a purchaser’s card for a greater amount is unfair and unethical.

97. The basis for the allegation that it was unethical to engage in the above practices comes, in part, from established ethical principles recognized by the Direct Marketing Association (“DMA”), the leading industry association for companies that, like Defendant, market directly to consumers.

98. DMA has published principles of ethical business practices for such marketing activities. Direct Marketing Association’s Guidelines for Ethical Business Practices (“DMA Ethical Guidelines”). See Ex. A - DMA Ethical Guidelines, revised May 2011. Ex. B - DMA Ethical Guideline, revised January 2014, both of which are incorporated herein by reference.

99. These Ethical Guidelines “are intended to provide individuals and organizations involved in direct marketing in all media with generally accepted principles of conduct.” *Id.* at 2. They “reflect DMA’s long-standing policy of high levels of ethics and the responsibility of the Association, its members, and all marketers to maintain consumer and community relationships that are based on fair and ethical principles.” *Id.* (emphasis added).

100. In addition, DMA states that the Ethical Guidelines “are intended to be honored in light of their aims and principles. *All marketers* should support the guidelines in spirit and not treat their provisions as obstacles to be circumvented by legal ingenuity.” *Id.* (emphasis added).

101. DMA has also published a companion volume to its Ethical Guidelines called *Do the Right Thing: A Companion to DMA’s Guidelines for Ethical Business Practice* (Revised January 2009) (“*Do the Right Thing*”). Ex. C, incorporated herein by reference. That volume is intended to “give[] direct marketers advice on how to assure their business practices comply with” the Ethical Guidelines. *Do the Right Thing* at 2.

102. DMA’s Ethical Guidelines are set forth in a series of “Articles,” each of which states a separate ethical principle.

103. In both the 2011 and 2014 editions of its Ethical Guidelines, Article #1, “HONESTY AND CLARITY OF OFFER,” states: “All offers should be clear, honest and complete so that the consumer may know the exact nature of what is being offered the price, the terms of payment (including all extra charges) and the commitment involved in the placing of an order.”

104. By offering its merchandise with a display of false prices, Defendant has violated that ethical standard.

105. Defendant's unfair and unethical acts and practices have directly, foreseeably, and proximately caused ascertainable loss, damages and injury to the Class.

106. Defendant's unfair and unethical acts and practices in violation of the MMPA were performed willfully and wantonly, were outrageous and were done in reckless indifference to the rights of Plaintiff Moore and Class Members.

107. WHEREFORE, Plaintiff Moore and the Missouri Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT IV: UNJUST ENRICHMENT IN MISSOURI

(Plaintiff Moore and Missouri Subclass)

108. Plaintiff Moore incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

109. Substantial benefits have been conferred upon Defendant by Plaintiff Moore and members of the Missouri Subclass in purchasing soft drinks and snacks from Defendant's vending machines, and Defendant has knowingly and willingly accepted and enjoyed such benefits.

110. Defendant either knew or should have known that the amounts it charged customers' cards were greater than the prices it displayed. For Defendant to retain the benefit of the payments under these circumstances is inequitable.

111. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable for Defendant to retain the benefit without payment of the value to Plaintiff Moore and the Missouri Subclass.

112. Plaintiff Moore and the Missouri Subclass are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant.

113. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff Moore and the Missouri Subclass are entitled to restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendant, plus attorneys' fees, costs, and interest thereon.

114. WHEREFORE, Plaintiff Moore and the Missouri Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT V: MONEY HAD AND RECEIVED IN MISSOURI
(Plaintiff Moore and the Missouri Subclass)

115. Plaintiff Moore incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

116. Defendant has received money from Plaintiff Moore and the Missouri Subclass by charging their cards in excess of the displayed prices for items that they sold in their vending machines.

117. In equity and good conscience that money should be returned to Plaintiff Moore and the Missouri Subclass.

118. WHEREFORE, Plaintiff Moore and the Missouri Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT VI: VIOLATION OF THE ICFA
(Plaintiff Carter and the Illinois Subclass)

119. Plaintiff Carter realleges and incorporates by reference the allegations contained in paragraphs 1 through 69 of this Complaint, as though fully set forth herein.

120. The ICFA outlaws "unfair or deceptive acts or practices" 815 ILCS 505/2.

121. In outlawing unfair acts and practices, the Illinois legislature adopted the Federal Trade Commission's interpretation of § 5(a)(1) of the Federal Trade Commission ("FTC") Act, 15 U.S.C. § 45(a): "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.

122. In determining whether a practice is unfair in violation of Section 5(a) of the FTC Act, the FTC considers “whether the practice, without necessarily having been previously considered unlawful ... is within at least the penumbra of some common-law, statutory, or other established concept of unfairness” and “whether it is ... unethical.” *FTC v. Sperry & Hutchinson Co.*, [405 U.S. 233, 244](#) n. 5 (1972).

123. Accordingly, unethical practices are unfair under ICFA.

124. Pursuant to the ICFA, Defendant has a duty not to engage in any unethical or unfair practice, such as charging a customer’s card more than the displayed price for a purchase from its vending machine without informing the customer of that fact. For the reasons stated herein, it breached that duty.

125. Defendant’s actions in withdrawing from the accounts of Plaintiff Carter and members of the Illinois Subclass more than the posted prices of items they purchased from Defendant’s vending machines were unfair in violation of the ICFA in that, inter alia, they were unethical.

126. Defendant’s actions, as alleged herein, were performed intentionally, willfully, knowingly, maliciously and with reckless indifference.

127. Plaintiff Carter and members of the Illinois Subclass suffered monetary damages in the amounts that Defendant wrongfully withdrew from their accounts.

128. The ICFA allows for an action for damages, as follows:

Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper

815 ILCS 505/10a(a).

129. WHEREFORE, Plaintiff Carter and the Illinois Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT VIII: UNJUST ENRICHMENT IN ILLINOIS
(Plaintiff Carter and Illinois Subclass)

130. Plaintiff Carter incorporates by reference the allegations contained in paragraphs 1-69 of this Complaint as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

131. Substantial benefits have been conferred upon Defendant by Plaintiff Carter and members of the Illinois Subclass in purchasing items from Defendant's vending machines, and Defendant has knowingly and willingly accepted and enjoyed such benefits.

132. Defendant either knew or should have known that the amounts it charged customers' accounts were greater than the prices it displayed. For Defendant to retain the benefit of the payments under these circumstances is inequitable.

133. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable for Defendant to retain the benefit without payment of the value to Plaintiff Carter and the Illinois Subclass.

134. Plaintiff Carter and the Illinois Subclass are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant.

135. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff Carter and the Illinois Subclass are entitled to restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by Defendant, plus attorneys' fees, costs, and interest thereon.

136. WHEREFORE, Plaintiff Carter and the Illinois Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT IX: MONEY HAD AND RECEIVED IN ILLINOIS
(Plaintiff Carter and the Illinois Subclass)

137. Plaintiff Carter incorporates by reference the allegations contained in Paragraphs 1-69 of this Complaint as if fully set forth herein, and, to the extent necessary, pleads this cause of action in the alternative.

138. Defendant has received money from Plaintiff Carter and the Illinois Subclass by charging their accounts in excess of the displayed prices for items that they sold in their vending machines.

139. In equity and good conscience that money should be returned to Plaintiff Carter and the Illinois Subclass.

140. WHEREFORE, Plaintiff Carter and the Illinois Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT X: VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.
(By Plaintiff Jilek and the California Subclass)

141. Plaintiff Jilek realleges and incorporates by reference the allegations contained in paragraphs 1 through 69 of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

142. Plaintiff Jilek brings this claim individually and on behalf of the members of the California Subclass against Defendant under California law.

143. Plaintiff Jilek has standing to pursue this cause of action as Plaintiff Jilek has suffered injury in fact and has lost money or property as a result of Defendant's actions as delineated herein.

144. California's Unfair Competition Law ("UCL"), California Business and Professions Code sections 17200, et seq., defines unfair business competition to include any "unlawful, unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.

145. Defendant's scheme, as delineated herein, constitutes unlawful, unfair, or fraudulent business practices in violation of the UCL.

146. Defendant's business practices, as alleged herein, violate the "unfair" prong of the UCL because: (i) the utility of Defendant's scheme is significantly outweighed by the gravity of the harm the scheme imposes on Plaintiff and the California Subclass; (ii) the injury suffered by Plaintiff Jilek and the California Subclass as a result of Defendant's scheme is not one that Plaintiff Jilek and the California Subclass could have reasonably avoided; and (iii) Defendant's scheme runs counter to legislatively declared public policy.

147. Defendant's business practices, as alleged herein, violate the "unlawful" prong of the UCL because they constitute a breach of the contracts between Plaintiff Jilek and members of the California Subclass on the one hand and Defendant on the other, and because they constitute a violation of the Consumer Legal Remedies Act.

148. Defendant's business practices, as alleged herein, violate the "fraudulent" prong of the UCL because they are likely to deceive a reasonable consumer. Specifically, Defendant has violated the "fraudulent" prong of the UCL by: (i) representing items for sale in its vending machines at one price but charging a higher, undisclosed price for those items; (ii) failing to disclose that the purchase price displayed for items in its vending machines would be increased if the items were purchased using a credit, debit or prepaid card; (iii) failing to disclose that Defendant would charge a fee for the use of a credit, debit or prepaid card to purchase items

from its vending machines; and/or (iv) failing to disclose the amount of the fee that Defendant would charge if a credit, debit or prepaid card was used to purchase items from its vending machines.

149. Accordingly, Defendant violated, and continues to violate the UCL's proscription against engaging in unlawful business acts or practices.

150. As a direct and proximate result of Defendant's unlawful, unfair, and fraudulent business practices, Plaintiff Jilek and the California Subclass have suffered injury in fact and lost money or property, in that they were charged and paid more for items in Defendant's vending machines than the price displayed for those items and/or were charged and paid a hidden, undisclosed fee for the use of a credit, debit or prepaid card to purchase items from Defendant's vending machines.

151. Pursuant to [California Business and Professions Code section 17203](#), Plaintiff Jilek and the California Subclass seek an order of this court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those acts set forth in the complaint.

152. Plaintiff Jilek and the California Subclass also seek an order requiring Defendant to make full restitution of all monies it wrongfully obtained from Plaintiff Jilek and the California Subclass.

153. WHEREFORE, Plaintiff Jilek and the California Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT XI: VIOLATION OF CONSUMERS LEGAL REMEDIES ACT

CAL. CIVIL CODE §§ 1750, ET SEQ.

(By Plaintiff Jilek and the California Subclass)

154. Plaintiff Jilek realleges and incorporates by reference the allegations contained in paragraphs 1 through 69 of this Complaint, as though fully set forth herein and, to the extent

necessary, pleads this cause of action in the alternative.

155. This cause of action is brought pursuant to the Consumers Legal Remedies Act, Civil Code sections 1750, *et seq.* (the “CLRA”) because Defendant’s actions and conduct described herein constitute transactions that have resulted in the sale or lease of goods or services to consumers.

156. Plaintiff Jilek brings this claim individually and on behalf of the members of the California Subclass against Defendant under California law.

157. Plaintiff Jilek and each member of the California Subclass are consumers as defined by section 1761(d) of the Civil Code.

158. The items sold by Defendant in its vending machines are “goods” as defined in section 1761(a) of the Civil Code.

159. Defendant violated the CLRA in at least the following respects:

A. In violation of section 1770(a)(9), Defendant advertised items for sale in its vending machines with no intent to sell those items as advertised (because Defendant intended to, and did, charge a higher, undisclosed price for those items and/or charged a hidden, undisclosed fee for the use of a credit, debit or prepaid card);

B. In violation of section 1770(a)(14), Defendant represented that a transaction involves obligations (*i.e.*, to pay the posted price) that it does not have or involve or which are prohibited by law (because Defendant charged the higher, undisclosed price and/or charged the hidden, undisclosed fee for the use of a credit, debit or prepaid card to consumers without clearly and conspicuously disclosing the higher prices and/or the undisclosed fee and without the consumers’ express, informed consent to pay the higher price and/or undisclosed fee); and

C. In violation of section 1770(a)(16), Defendant represented that the subject of a transaction has been supplied in accordance with a previous representation (that only the price displayed will be charged for the purchase of the item) when it was not (because Defendant intended to, and did, automatically charge a higher, undisclosed price and/or a hidden, undisclosed fee for the use of a credit, debit or prepaid card).

160. Defendant knew, or should have known, that its representations and advertisements were false and misleading.

161. Plaintiff Jilek and the other California Subclass members have suffered damages as a direct and proximate result of Defendant's actions in violation of the CLRA.

162. Plaintiff Jilek, on behalf of himself and for all similarly situated, seeks an order from this Court under section 1780(a)(2) of the Civil Code enjoining Defendant from continuing to engage in the practices set forth in this Complaint and a declaration that Defendant's conduct violates the CLRA.

163. WHEREFORE, Plaintiff Jilek and the California Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

**COUNT XII: VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES
CONSUMER PROTECTION ACT (DTPA)**
(Plaintiffs Jaye, Madelmayer and the Texas Subclass)

164. Plaintiffs Jaye and Madelmayer reallege and incorporate by reference the allegations contained in paragraphs 1 through 69 of this Complaint, as though fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

165. The DTPA, codified at § 17.41 of the Texas Business and Commerce Code declares unlawful the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the

information been disclosed.

166. The DTPA declares unlawful all deceptive acts and practices in the conduct of any business, including the sale of products, such as Defendant's food and beverage products.

167. Plaintiffs Jaye and Madelmayer and the members of the Texas Subclass constitute "persons" who have been injured by violation of the DTPA, and therefore are entitled to bring an action to enjoin such unlawful and deceptive practices, and recover damages.

168. Defendant's conduct as alleged herein is consumer-oriented conduct, in that Defendant sells food and beverage products to consumers and members of the public.

169. Defendant's actions in assessing a credit card surcharge fee that is not disclosed to consumers is materially misleading.

170. As a result of Defendant's materially misleading statements regarding the price of food and beverages that Defendant offered for sale, Plaintiffs Jaye and Madelmayer and the members of the Texas Subclass have been injured.

171. Upon information and belief, the aforementioned actions and conduct of the Defendant have been committed willfully and knowingly.

172. Defendant's actions in assessing a credit card surcharge fee that is not disclosed to consumers offends public policy, has caused and continues to cause substantial injury to consumers, and constitutes an unfair and deceptive trade practice.

173. WHEREFORE, Plaintiffs Jaye, Madelmayer and the Texas Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

COUNT XIII: UNJUST ENRICHMENT IN TEXAS
(Plaintiffs Jaye, Madelmayer, and the Texas Subclass)

174. Plaintiffs Jaye and Mandelmayer reallege and incorporate by reference the allegations contained in paragraphs 1 through 69 of this Complaint, as though fully set forth

herein and, to the extent necessary, pleads this cause of action in the alternative.

175. Defendant offered various food and beverage products for sale to Plaintiffs Jaye and Madelmayer and the other members of the Texas Subclass at a specific price.

176. Plaintiffs Jaye, Madelmayer, and the other members of the Texas Subclass chose to purchase the food and beverage products offered for sale by Defendant at the price disclosed, and tendered payment.

177. However, Defendant did not honor the prices listed for its food and beverage products, and instead charged Plaintiffs Jaye and Madelmayer and the other members of the Texas Subclass an additional amount that Defendant had not disclosed, and that Plaintiffs Jaye and Madelmayer and the other members of the Texas Subclass did not agree to pay.

178. As a result of Defendant's undisclosed charges, it has been unjustly enriched at the expense of Plaintiffs Jaye and Madelmayer and the other members of the Texas Subclass.

179. Allowing Defendant to retain the undisclosed amount is against equity and good conscience.

180. Defendant lacks any justification for keeping the undisclosed charges paid by Plaintiffs Jaye and Madelmayer and members of the Texas Subclass.

181. Accordingly, Plaintiffs Jaye and Madelmayer and the other members of the Texas Subclass have incurred monetary damages in the amount of the additional charge automatically assessed by Defendant.

182. WHEREFORE, Plaintiffs Jaye, Madelmayer and the Texas Subclass pray for the relief requested in the Prayer for Relief set forth below in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class and Subclasses, pray judgment against Defendant as follows:

1. Certifying the Class and Subclasses as requested herein;
2. Entering an Order appointing Plaintiffs as class representatives and undersigned counsel as lead counsel for the Class;
3. Awarding actual damages from Defendant in an amount to be determined;
4. Awarding punitive damages against Defendant as the Court deems necessary or proper;
5. Awarding declaratory and injunctive relief as permitted by law or equity including a preliminary and permanent injunction enjoining Defendant from continuing the unlawful practices as set forth herein;
6. Awarding pre-judgment and post-judgment interest;
7. Awarding reasonable attorneys' fees and costs herein;
8. Awarding such other and further relief as the Court deems fit and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

LAW OFFICE OF RICHARD S. CORNFELD, LLC

By: /s/ Richard S. Cornfeld

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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2021, the foregoing was served by operation of the Court's electronic filing system on all counsel of record in this matter.

/s/ Richard S. Cornfeld

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$6.94M Canteen Vending Class Action Settlement Ends Case Over Allegedly Hidden Extra Charge for Card Payments](#)
