

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**TEH SHOU KAO and T S KAO, INC., on
behalf of themselves and all others similarly
situated,**

Plaintiffs,

v.

CARDCONNECT CORP.,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT – CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Teh Shou Kao and T S Kao, Inc., on behalf of themselves and the class of persons and entities preliminarily defined below, file this Class Action Complaint against Defendant CardConnect Corp. (“CardConnect” or “Defendant”) pursuant to Federal Rule of Civil Procedure 23 and Local Rule 23.1.

NATURE OF THE CASE

1. This is a civil action seeking monetary damages and restitution from Defendant arising from its improper business practices in connection with the provision of merchant services relating to payments via credit and debit cards (“merchant services” or “payment processing services”).

2. In today’s business world, the vast majority of merchants accept payment for goods and services via credit and debit cards. In order to accept this method of payment, the merchant must utilize merchant services.

3. Merchants rely on the companies that provide merchant services to do so at a fair price and in accordance with fair and appropriate terms. Fees for merchant services are likely the third highest expense most merchants incur, following labor and product costs.

4. Merchant services are provided through a system involving many parties. For instance, in addition to the merchant that receives payment and the customer who provides such payment, the processing of a card transaction is likely to involve (a) the bank that issued the credit or debit card to the customer (e.g., Chase or Bank of America); (b) the card association through which the transaction is processed (e.g., Visa, MasterCard, Discover, or American Express); (c) the card association member bank (e.g., Wells Fargo, Synovus); (d) the company that actually processes the payment (e.g., First Data); (e) the company that sells or leases the payment processing equipment to the merchant (although the merchant is certainly allowed to own this equipment); (f) the merchant acquirer that provides merchant services (e.g., ensures payments are processed, handles monthly billing, and maintains the relationship with the merchant); and (g) the Independent Sales Organization (“ISO”) that enrolls merchants in the merchant acquirer’s services. CardConnect is a merchant acquirer and is also an ISO. Additionally, CardConnect deals with over 1100 third party sales agents to enroll merchants in its services.

5. The number of involved parties and moving pieces make it very difficult for small merchants to understand the process and/or how much it will cost.

6. Such front-end explanation and clarity is critical because merchants typically sign long-term deals for merchant services that are either non-cancellable or cancellable only with hefty early termination penalties. For example, CardConnect’s early termination fee may be \$750 or more.

7. Unfortunately, some ISOs and payment processors take advantage of their position. They induce “mom and pop” merchants to purchase merchant services without disclosing fees they know the merchant will be charged. They also set up contractual

relationships that bind the merchant but not themselves and bury unconscionable and self-serving provisions in the middle of their fine print form contracts.

8. ISOs engage in such tactics because they receive profits every month as long as they can keep customers from leaving to competitors.

9. As an ISO, CardConnect is on the front line as the direct contact with merchants and the intermediary between merchants and the payment processor and member bank. CardConnect deals with First Data as its payment processor and Wells Fargo Bank, N.A. as its primary member bank.

10. This case challenges CardConnect's business practices. Specifically, CardConnect induces merchants to enter business relationships with it and its member bank by promising it will charge merchants low, agreed-upon rates and fees for payment processing services. CardConnect then has merchants and a principal guarantor sign long-term, non-negotiable written contracts.

11. The fine print terms that CardConnect intends to largely govern the contractual relationship are set forth in a separate document. In this way merchants see and execute one document that prominently displays the agreed-upon rates and fees (the "Merchant Processing Application"), but are purportedly also bound by another document (the "Program Guide"). Through the separate, fine print Program Guide, CardConnect seeks to backtrack from the agreed-upon fees and rates that have actually been reviewed and approved by the merchants and immunize itself from liability if the merchant learns of CardConnect's overcharges. Such provisions are illusory, lack mutuality, violate public policy, and are unconscionable.

12. More fundamentally, however, neither CardConnect nor the member bank ever actually "accept" the contracts by signing them – an express condition precedent to their formation. What results is a state of contractual limbo that gives CardConnect the discretion to

disregard agreed-upon rates and charges that it never formally “accepted,” while at the same time purporting to hold merchants to fine print terms that are unfavorable to them.

13. After merchants and their principal guarantors sign the contracts and the parties begin to do business, CardConnect raises rates and imposes new, unanticipated payment processing fees. CardConnect is able to do so because it never “accepted” the contracts and is thus not limited to the fees and charges denoted therein. These practices, of course, constitute unjust enrichment and it would be improper for CardConnect to retain such excessive, unanticipated fees and charges.

14. Alternatively, if CardConnect and the member bank could be deemed to have “accepted” the contract (such that it had been formed), the excessive fees and charges imposed violate such contracts. Such fees are also violative of the covenant of good faith and fair dealing, which applies to such contracts under Pennsylvania law (which is made applicable by a term of CardConnect’s form contract).

15. Any argument by CardConnect that the excessive fees and charges are authorized by self-serving, adhesive contractual provisions referenced in paragraph 11, *supra*, are without merit because such terms are unenforceable.

PARTIES

16. Plaintiff Teh Shou Kao (“Mr. Kao”) is an individual and the principal owner of Plaintiff T S Kao, Inc. The purported CardConnect contract personally obligates Mr. Kao, who was forced by CardConnect to sign as a guarantor for Plaintiff T S Kao. Pursuant to numerous terms of Defendant’s contract, Mr. Kao may be bound to pay substantial monies to CardConnect.

17. Plaintiff T S Kao, Inc. is a Michigan corporation with its principal place of business at 1771 Washtenaw Road in Ypsilanti, Michigan, which is a Chinese food restaurant.

18. Defendant CardConnect Corp. is the new name of FinTech Acquisition, Corp. (“FinTech”). FinTech was formed in 2013 and went public in 2015, raising \$100 million to make acquisitions. It was required to close on such an acquisition by August of 2016, or the company was to be dissolved. In March 7, 2016, FinTech announced that it would acquire FTS Holding Corporation, the parent corporation for CardConnect LLC. The price was about \$350,000,000 in cash and stock. The deal closed on August 1, 2016. The combined companies are now included in CardConnect Corp., which is publicly traded on the NASDAQ Stock Market with ticker symbol “CCN.” Prior to the deal with FinTech, CardConnect grew rapidly through acquisitions, taking over nine other ISOs in the years leading up to its own sale. CardConnect services more than 65,000 merchants and processes in excess of \$21 billion in annual transactions.

JURISDICTION AND VENUE

19. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2) because there are more than 100 potential class members and the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest, fees, and costs, and some class members, including Plaintiffs, are citizens of states other than Pennsylvania.

20. This Court has personal jurisdiction over Defendant because it conducts substantial business within the District. Indeed, CardConnect’s headquarters are located in King of Prussia, Pennsylvania. As such, it has significant, continuous, and pervasive contacts in this District.

21. Venue lies within this judicial district under 28 U.S.C. § 1391 because Defendant has its headquarters here and conducts substantial business in this district, and a substantial portion of the events, omissions, and acts giving rise to the claims herein occurred in this district.

22. Venue and jurisdiction would also be proper in this Court pursuant to the purported terms of CardConnect's form contract, which states:

Venue. We have substantial facilities in the State of Pennsylvania and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Pennsylvania.

COMMON FACTUAL ALLEGATIONS

A. CardConnect Induces Merchants to Do Business with Promises of Low Cost Pricing.

23. CardConnect works with over 1,100 independent sales agents who sell CardConnect's services. These agents are not CardConnect employees. CardConnect also uses in-house sales people which are its employees.

24. Even sales people that are not CardConnect employees, however, are allowed to use a CardConnect email address, switchboard for phone calls, fax number, etc. These authorized agents are even encouraged to give themselves a title, such as "Sales Manager, CardConnect," even though they are not employed by the company. They are allowed to pick their own titles, without regard for their actual position – sale agent – for CardConnect. Once again, they also use CardConnect paperwork and contracts. In all respects, customers are given the false impression that the sales agents are part of a large publicly-traded corporation.

25. CardConnect has adopted form application paperwork which doubles as part of its contract with customers. This Application includes contractual language which purports to bind merchants. For example, it states "Client agrees to all the terms of this Merchant Services Application and Agreement."

26. The contract also purports to integrate a much larger document, the CardConnect Program Guide. Since it includes dozens of pages of small print legalese, it is understood that no merchant could ever read or understand the Program Guide.

27. The Application also requires a person to “unconditionally and irrevocably guarantee the full payment and performance of” the merchant.

28. The Application states that the deal “shall not take effect until Client has been approved and this Agreement has been accepted by CardConnect and Bank.” Bank is later defined to mean Wells Fargo Bank, N.A. CardConnect may substitute Synovus Bank (USA) as “Bank” in some versions of the contract, since the CardConnect website states that the company is also an ISO for Synovus.

29. The Application includes a section to be completed by CardConnect and the Bank. For CardConnect it states: “Accepted By Financial Transaction Services, LLC dba CardConnect” and includes a signature line, blank to fill in the signer’s title with the company, and a blank for the date. For “Bank” it states: “Accepted By Wells Fargo Bank, N.A., 1200 Montego Way, Walnut Creek, CA 94598” and includes a signature line, blank to fill in the signer’s title with Wells Fargo, and a blank for the date.

30. Neither CardConnect, nor Wells Fargo, ever sign the Application. As such, they have adopted a contracting system whereby they can always argue that merchants are bound by the terms of their contract, but they are never bound because no authorized officer of CardConnect or Wells Fargo has ever signed the contract. Indeed, pursuant to the plain terms, the contract “shall not take effect until . . . accepted by CardConnect and Bank.”

31. Of course, merchants are not aware of this trick. They believe they have a binding deal with CardConnect at the agreed-upon rates and fees prominently displayed in the Application. Indeed, merchants are attracted to CardConnect because the contract includes rates and fees that will allow them to save money by reducing the costs they will pay for payment processing services if they switch providers. This approach is very appealing to merchants because payment processing is a substantial business expense for them.

32. The CardConnect Application does not indicate that (a) the agreed-upon fees and rates will increase (nor would increases be expected since technology and competition has actually driven down costs for payment processing) or (b) new, un-disclosed fees and rates will be charged. Such terms unquestionably are important to merchants and would impact their decision to do business with CardConnect.

33. Instead of conspicuously setting forth such critical provisions in the Application, CardConnect buries them in the fine print, non-negotiated Program Guide. Multiple versions of the Program Guide have been in effect during the relevant period, but the material terms have been the same throughout.

B. CardConnect Buries Absurd Provisions in the Fine Print of the Program Guide that Purport to Allow It to Charge Whatever It Wants Without Fear of Legal Action.

34. The contract states that the merchant and personal guarantor obligate themselves to the terms set out in the Program Guide. Given the dense legalese of the Program Guide, which is spread over 44 pages of text (depending on the version and format), there is zero chance of a merchant (or the personal guarantor) actually having read or understood it.

35. The Program Guide is a boilerplate document that is not negotiable. It states: “[w]e will not accept any alterations or strike-outs to the Agreement and, if made, any such alterations or strike-outs shall not apply.”

36. Several terms set forth in the Program Guide represent a unilateral effort by CardConnect to (a) covertly backtrack from the rates and fees prominently set forth in the Application and (b) immunize itself from liability for improper practices.

37. The following terms may be relevant:

- a. Section 4.8 (or equivalent in other versions of the contract) allows CardConnect to assess a monthly PCI noncompliance fee 90 days after the contract becomes effective, if the merchant fails to complete certain data security training measures;

- b. Section 19.5 (or equivalent in other versions of the contract) states: “Subject to Section 24.3, we may also increase our fees or add new fees for Services for any reason at any time, by notifying you thirty (30) days’ [sic] prior to the effective date of any such change or addition.” “Services” is defined in the glossary as: “The activities undertaken by Processor and/or Bank, as applicable, to authorize, process and settle all United States Dollar denominated Visa, MasterCard, Discover Network and American Express transactions undertaken by Cardholders at Client’s location(s) in the United States, and all other activities necessary for Processor to perform the functions required by this Agreement for all other Cards covered by this Agreement.” Section 24.3 (or equivalent in other versions of the contract) provides: “In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 19.5, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, maintaining your merchant account, or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.”
- c. Section 21.4 (or equivalent in other versions of the contract) states: “OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.”
- d. Section 21.5 (or equivalent in other versions of the contract) states: “NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 24), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 17.4 AND 17.6, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS ONE PERCENT (1%).”
- e. Section 22.3 (or equivalent in other versions of the contract) states: “You will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by us or our agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales,

pricing, business plans and marketing strategies of Servicers, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person and your agents and representatives, which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure or (c) generally available to the public other than through any disclosure by or fault of you, your agents or representatives.” Further, Section 22.3.4 (or equivalent in other versions of the contract) provides: “Client acknowledges that breach of the restrictions on use or disclosure of any our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.”

- f. Section 24.2 (or equivalent in other versions of the contract) states: “The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall continue until we or you terminate this Agreement upon written notice to the other, or as otherwise authorized by this Agreement. Should you fail to notify us in writing of your request to terminate you acknowledge and agree you will continue to be charged fees pursuant to this Agreement notwithstanding non- use of your account. If you have an equipment lease, termination of this Agreement does not terminate that equipment lease.” Stunningly, a later portion of the contract purports to alter the length of the contract as follows: “Section 23.2 is replaced with the following: The initial term of this Agreement shall commence and shall continue in force for five years after it becomes effective. Thereafter, it shall continue until either party terminates the Agreement upon written notice to the other.” Notably, the contract replaces the wrong section so the contract includes two portions, each imposing a markedly different contractual duration.
- g. Section 34.1 (or equivalent in other versions of the contract) provides that the law of CardConnect’s home state applies: “**Choice of Law.** Our Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania (without regard to its choice of law provisions).” Further, Section 34.2 (or equivalent in other versions of the contract) states: “**Venue.** We have substantial facilities in the State of Pennsylvania and many of the services provided under this Agreement are

provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Pennsylvania.”

- h. Section 34.3 (or equivalent in other versions of the contract) states: **“Waiver of Jury Trial.** ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.”
- i. Section 35.3 (or equivalent in other versions of the contract) provides: **“Notices.** Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, if to you at your address appearing in the Application or by any electronic means, including but not limited to the e-mail address you have provided on the Application. If to us at our address appearing in Section A.6 of Part IV of this Agreement, with a copy to Attention: General Counsel’s Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to your last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement.” Notably the “General Counsel Office” address listed is for the legal department of First Data, the payment processor utilized by CardConnect, which is not even a party to the contract.
- j. Section 35.7 (or equivalent in other versions of the contract) provides: **“Amendment.** We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or ‘click-wrap’ notice intended to modify or amend this Agreement and which you check ‘I Accept’ or ‘I Agree’ or otherwise accept through an electronic process, shall constitute in writing as required herein. This Section 35.7 does not apply to fee changes, which are governed by Sections 19.4 and 19.5.”
- k. Part IV entitled “ADDITIONAL IMPORTANT INFORMATION FOR CARDS” (or equivalent in other versions of the contract) provides: “In the event that Client terminates this Agreement within five (5) years from the date of approval by CardConnect and Wells Fargo Bank, N.A., Client will be charged a fee for such early termination of \$750.00 per location (the

Early Termination Fee (“ETF”)) and Client shall remain responsible for all unpaid fees and other obligations arising under this Agreement. Client’s obligation with respect to the Monthly Minimum Processing Fee will end simultaneously with CardConnect’s receipt of the Early Termination Fee and payment and satisfaction of all unpaid fees and obligations. Client’s obligation with respect to the Monthly Minimum Processing Fee will end simultaneously with CardConnect’s receipt of Termination Fee.”

38. If the CardConnect contract is binding – despite Defendant’s and Wells Fargo’s failure to complete a condition precedent, by signing the contract – then several of the provisions highlighted above and others violate public policy, lack mutuality, are unconscionable, and are otherwise void and unenforceable. *E.g.*, Program Guide, §§ 19.4, 19.10, 21.4, 21.5, 22.3, 24.2, 34.3, 35.7.

39. More likely, since a binding agreement was never consummated given CardConnect and Wells Fargo’s willful scheme to never sign the contract, the Court should apply principles of quasi-contract, determine that CardConnect’s improper conduct has resulted in unjust enrichment, and order Defendant to reimburse its victims.

C. CardConnect Raises Fees and Rates and Imposes New Categories of Fees Not Reflected in the Contract.

40. After CardConnect starts providing merchant services, it charges fees and rates that are inconsistent with the fees and rates that are prominently set forth in the contract.

41. Indeed, it increases agreed-upon rates and fees and also adds new categories of fees that were not referenced in the contract.

INDIVIDUAL FACTUAL ALLEGATIONS

42. On April 5, 2016, Mr. Kao and TS Kao, Inc. were approached by an authorized sales representative for CardConnect.

43. CardConnect’s agent asked to review the most recent statement from Plaintiffs’ merchant services provider. Mr. Kao provided Mr. Histed with the requested statement, Mr.

Histed reviewed it, and he informed Mr. Kao he could save the restaurant over \$200 per month in payment processing costs if the restaurant would switch to CardConnect.

44. The agent presented Plaintiffs with a Merchant Processing Application which specifically identified the fees and rates they would be charged. Based on the fees and rates shown on this document, Mr. Kao expressed interest in switching to CardConnect.

45. By way of example, the Merchant Processing Application explained that Plaintiffs would be charged “cost-plus pricing.” Under this method of pricing, the interchange rates and the assessments set by the card networks are passed through to the merchant *at cost* and the merchant is separately charged an additional amount representing the payment processing fee (i.e., the interchange rates and assessments together comprise the “cost” in “cost-plus” pricing and the “plus” is CardConnect’s fee).

46. The Application reflects that Plaintiffs will pay the standard card network interchange rates and assessments plus a rate of 0.25% and \$0.07 per transaction.

47. By way of additional example, the Application disclosed that Plaintiffs would be charged specified recurring fees, including a \$5.00 debit access fee, a \$5.00 monthly statement fee, and a “Batch Fee” of \$0.35 per occurrence.

48. The agreed-upon payment processing rates and recurring fees found in the Application did not include recurring fees such as a “Pulse Fee” or a “Cardpointe Fee.”

49. The Application indicated that Plaintiffs would be charged a “PCI Non-compliance Fee” of \$19.95 per month, but the Program Guide specified such fee would not be assessed for the first 90 days of the contract term and then only if Plaintiffs failed to complete certain data security training measures.

50. Plaintiffs were satisfied with the terms, rates, and fees explicitly and prominently denoted on the Application and decided to do business with CardConnect.

51. On April 5, 2016, Plaintiffs signed the Application. A contract was never consummated, however, because neither CardConnect nor Wells Fargo (the member bank) ever accepted the contract by signing it. *See* ¶¶ 29-31, *supra*. Indeed, CardConnect recently forwarded Plaintiffs a copy of the Application that does not bear signatures of either CardConnect or Wells Fargo, even though the signatures are an express condition precedent of the contract.

52. Even without a binding written contract, the parties began to do business.

53. After the parties' relationship commenced, it soon became clear that the agreed upon pricing was not being followed.

54. On the very first monthly statement, CardConnect informed Plaintiffs that it would soon be adding fees and charges to which Plaintiffs did not agree, including an annual "Pulse Fee" of \$9.00. This fee was not identified in the contract (despite the fact that it was purportedly implemented in 2013) and Plaintiffs never agreed to pay it.

55. CardConnect also informed Plaintiffs that the \$5.00 monthly statement fee set forth in the contract would immediately be renamed a "Cardpointe Fee" and would now be \$15.00 per month. Although the Cardpointe program had been effective since July 2014, it was not identified in the Application and Plaintiffs never agreed to pay for it. Plaintiffs also never agreed to allow the \$5.00 monthly statement fee they agreed to pay to be increased to \$15.00.

56. On May 31, 2016, less than two months into their relationship, CardConnect charged Plaintiffs a \$19.95 monthly "PCI Non Comp Fee." CardConnect did so despite the parties' agreement that such fee would not be charged for the first 90 days of the term of the contract.

57. CardConnect direct-debited these and other unauthorized fees and charges from Plaintiffs' bank account.

58. These are not the only unauthorized fees and charges which CardConnect has taken from Plaintiffs. Indeed, CardConnect formats its statements so as to make it impossible for Plaintiffs to discover the nature and amount of all overcharges. For example, rather than break down each type of credit and debit card that was swiped during the prior month so Plaintiffs can verify whether CardConnect is inflating pass-through interchange fees, CardConnect simply includes the vague line item “Interchange” with a lump sum. Once Plaintiffs obtain the full level of detail needed to verify the legitimacy of the amounts they have been charged, they will detail the additional instances of overbilling.

59. CardConnect has also seized or kept additional funds from Plaintiffs’ account based upon improper fees, charges, assessments, and practices. Despite complaints from Plaintiffs and their representatives, Defendant has failed to provide a proper accounting of all funds which it has refused to properly credit to Plaintiffs account. The total extent of such amounts improperly retained by Defendant will not be known until discovery is undertaken.

60. CardConnect will likely attempt to defend its conduct by arguing that it had the contractual discretion to increase fees or impose new fee categories. However, even if there is a contract, the broad “change in terms” language is illusory, lacks mutuality, violates public policy, is unconscionable, and is thus unenforceable.

61. Moreover, good faith and fair dealing constrains CardConnect’s ability to use its discretion to add fees which were not contemplated by the parties. For example, although a contract may leave discretion to create a new fee, and thereby profit one party to the other party’s detriment, good faith and fair dealing precludes such improper conduct. Thus, even if its self-granted ability to mark up rates and create new fees is enforceable, Defendant is bound to exercise its contractual discretion in good faith. CardConnect’s manipulation of Plaintiffs’ fees

and charges was done for no other reason than to increase profits. This does not comport with good faith and fair dealing.

62. CardConnect may also argue that its billing manipulations are proper because it provided Plaintiffs with advance notice of such changes. However, Plaintiffs were not provided with advance notice of some of the fee increases and new charges they have suffered (e.g., the premature imposition of the charge for purported PCI noncompliance). Moreover, the form, format, and content of the statement notices given by CardConnect for some of the charges at issue did not provide the required 30 days notice and/or were insufficient to provide Plaintiffs with actual notice of the increases and were therefore ineffective.

63. Plaintiffs have other ongoing disputes with CardConnect, including problems with the nightly batching of transactions and payment terminals which has caused errors in customer transactions and caused Plaintiffs to lose transaction funds. If discovery shows similar widespread issues with such CardConnect services, Plaintiffs may seek leave to include claims as to these improper practices as well.

64. Plaintiffs' experiences with CardConnect are not isolated, but rather are illustrative of Defendant's improper business practices towards its customers.

CLASS ACTION ALLEGATIONS

65. Pursuant to Federal Rules of Civil Procedure 23(b)(2) and (3), Plaintiffs bring this class action on behalf of themselves and all those meeting the following class definition:

All United States persons or entities charged unauthorized amounts for payment processing services by CardConnect.

Plaintiffs reserve the right to modify or amend the definition of the proposed Class, or add other proposed classes or subclasses, before the Court determines whether certification is appropriate and as the Court may otherwise allow.

66. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

67. The time period for the Class is the number of years immediately preceding the date on which this Complaint is filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendant remedies the conduct complained of herein.

68. The proposed Class meets all requirements for class certification. The members of the Class are so numerous that joinder is impractical. The Class consists of, at the very least, thousands of members and the identity of those persons and entities is within the knowledge of Defendant and can be ascertained by resort to CardConnect's records.

69. The claims of the representative Plaintiffs are typical of the claims of the Class. Plaintiffs, like all other members, were victimized by CardConnect's improper practices. Moreover, Plaintiffs, like all members, have incurred monetary damages as a result of CardConnect's misconduct. Furthermore, the factual basis of Defendant's misconduct is common to members of the Class, and represents a common thread of conduct resulting in injury to all members of the Class.

70. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual Class members.

71. Among the questions of law and fact common to the Class are:

- a. Did CardConnect require merchants to enter the same or materially similar contracts during the Class Period;
- b. Whether CardConnect or Wells Fargo signed any customer contracts, thus accepting the terms as a condition precedent to the formation of a valid contract;

- c. When did CardConnect begin assessing or increasing each improper charge;
- d. Which of these charges are improper or unauthorized;
- e. Did merchants receive any tangible benefit from the improperly assessed charges;
- f. Was CardConnect unjustly enriched by its conduct;
- g. If a contract exists, did such contract include unconscionable or otherwise unenforceable provisions, including but not limited to those purporting to limit Defendant's liability, require early termination fees, require payment of Defendant's attorney's fees, and allow Defendant to disregard the agreed upon fees and charges;
- h. Did CardConnect breach contractual provisions in assessing improper charges; and
- i. Did CardConnect breach the covenant of good faith and fair dealing.

72. Other questions of law and fact common to the Class include:

- a. The proper method or methods by which to measure damages, and
- b. The declaratory or other equitable relief to which the Class may be entitled.

73. Plaintiffs' claims are typical of the claims of other members of the Class in that they arise out of the same wrongful policies and practices and the same or substantially similar unenforceable provisions of the unexecuted contracts and related documents. Plaintiffs have suffered the harm alleged and have no interests antagonistic to the interests of any other member of the Class.

74. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Class.

75. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is

small relative to the complexity of the litigation, and due to the financial resources of CardConnect, most Class members could not afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will be unable to obtain redress for their losses and Defendant's misconduct will have occurred without remedy.

76. Even if Class members themselves could afford such individual litigation, the court system could not. Individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

77. The prosecution of separate actions by individual Class members would create a risk of inconsistent and varying adjudications concerning the subject of this action, which adjudications could establish incompatible standards for Defendant.

78. Defendant has refused to correct its conduct and such inaction is generally applicable to the Class, thereby making appropriate injunctive relief or corresponding declaratory relief with respect to the Class as a whole. Specifically, CardConnect continues to knowingly overbill the Class and to enforce unconscionable or otherwise unenforceable contractual provisions. Class-wide declaratory and/or injunctive relief is appropriate to put an end to these illicit practices.

REQUESTS FOR RELIEF

COUNT ONE
DECLARATORY AND INJUNCTIVE RELIEF –
NO BINDING CONTRACT EXISTS

79. Plaintiffs repeat paragraphs 1 through 78 above.

80. Class-wide declaratory relief is appropriate where a Defendant has “acted or refused to act on grounds that apply generally to the class.”

81. Defendant has established a system through which it obtains merchant signatures on its form Applications but it does not itself sign (or have Wells Fargo sign) the contract. However, because the Application requires CardConnect and its member bank to both sign the Application before a contract can “take effect,” no contractual relationship is ever actually formed between the parties.

82. A judicial declaration as to whether a contract exists is necessary and appropriate so the parties may ascertain their rights, duties, and obligations with respect to one another.

83. The Court should use its equitable powers to declare that (1) the unexecuted contracts (consisting of Application and Program Guide purportedly incorporated by reference) are not binding contracts and (2) Plaintiffs and the Class are not bound by any of the terms set forth in the contract (including early termination fees).

COUNT TWO
UNJUST ENRICHMENT

84. Plaintiffs repeat paragraphs 1 through 83 above.

85. Plaintiffs assert a common law claim for unjust enrichment. Given the parties do not have an enforceable contractual relationship, unjust enrichment will dictate that Defendant disgorge all improperly assessed card fees.

86. As alleged herein, CardConnect was unjustly enriched at the expense of Plaintiffs and the other members of the Class, who were grossly and inequitably overcharged for payment processing services.

87. Plaintiffs and the other members of the Class were unjustly deprived of money obtained by Defendant as a result of the improper and excessive fees that CardConnect charged to and collected from Plaintiffs and the other Class members.

88. It would be inequitable and unconscionable for Defendant to retain the profit, benefit, and other compensation obtained from Plaintiffs and the other members of the Class as a result of their wrongful conduct alleged in this Complaint.

89. Plaintiffs and the other Class members are entitled to seek and do seek restitution from Defendant as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant by virtue of its wrongful conduct.

COUNT THREE
BREACH OF CONTRACT INCLUDING BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR DEALING

90. Plaintiffs repeat paragraphs 1 through 89 above.

91. This claim is brought in the alternative to Counts One and Two, *supra*. In the event the contract is found to be binding, the actions taken by CardConnect have materially violated the specific terms of such contracts. CardConnect is liable for the losses of Plaintiffs and the Class that have resulted from its breaches of contract.

92. CardConnect violated the contract by assessing improper charges not provided for in the contract, to include improperly inflated charges, additional fees not even mentioned in the contract, and charges which should have been waived, and by unilaterally marking up agreed-upon fees and charges without legal basis and without proper notice. Thus, CardConnect has materially breached the express terms of its own form contract.

93. Plaintiffs and the Class have performed all, or substantially all, of the obligations imposed on them under the contracts, or those obligations have been waived by CardConnect.

94. Plaintiffs and members of the Class sustained damages as a result of CardConnect's breaches of contract.

95. Given the contract's stipulation that Pennsylvania law applies, the elements of breach of contract are identical for all members of the Class.

96. Pennsylvania law also imposes upon each party to a contract the duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute violations of good faith and fair dealing in the performance of contracts.

97. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty.

98. By charging fees that are inconsistent with those laid out in the contract, including but not limited to increasing the amounts of agreed-upon fees and imposing new categories of fees not referenced in the contract, CardConnect has violated the spirit of the contract and breached the covenant of good faith and fair dealing. Even if CardConnect believed that it had given itself contractual discretion to increase markups and fees, or add new fees, such discretion is constrained by good faith and fair dealing under Pennsylvania law and Defendant's actions do not comport with this duty.

99. Plaintiffs and the Class have performed all, or substantially all, of the obligations imposed on them under the contract. There is no excuse or defense for CardConnect's conduct under Pennsylvania law.

100. Plaintiffs and members of the Class sustained damages as a result of CardConnect's direct breaches of the contract and Defendant's breaches of the covenant of good faith and fair dealing. As such, all elements for a successful claim under Pennsylvania law have been satisfied.

COUNT FOUR
DECLARATORY AND INJUNCTIVE RELIEF –
INVALIDITY OF CERTAIN CONTRACT TERMS

101. Plaintiffs repeat paragraphs 1 through 100 above.

102. Class-wide declaratory relief is appropriate where a Defendant has "acted or refused to act on grounds that apply generally to the class."

103. Defendant has increased agreed-upon fees and rates and attempted to immunize itself from liability for its practices by burying provisions in the adhesive contract that purport to make it virtually impossible for merchants to obtain relief from Defendant's overbilling practices. These provisions include but are not limited to the following sections of the Program Guide: 19.4, 19.10, 21.4, 21.5, 22.3, 24.2, 34.3, and 35.7.

104. Such provisions should be deemed unenforceable on multiple grounds, including because they are illusory, lack mutuality, and violate public policy.

105. Moreover, considering the great business acumen and experience of Defendant in relation to Plaintiffs and the members of the Class, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar

public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law. This is especially true with respect to Plaintiff Mr. Kao, an individual consumer. Mr. Kao is obligated to pay any obligations which the restaurant cannot cover.

106. Thus, a judicial declaration is necessary and appropriate so the parties may ascertain their rights, duties, and obligations with respect to these provisions.

107. The Court should use its equitable powers to declare these provisions to be unenforceable and enjoin their enforcement.

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, demand a jury trial on all claims so triable and judgment:

1. Certifying this case as a class action pursuant to Fed. R. Civ. P. 23;
2. Awarding declaratory and injunctive relief as requested herein;
3. Awarding restitution of all improper fees and charges paid to Defendants by Plaintiffs and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
4. Compelling disgorgement of the ill-gotten gains derived by Defendants from its misconduct;
5. Awarding actual damages in an amount according to proof;
6. Awarding compensatory, general, nominal, and punitive and exemplary damages, as allowed by law;
7. Awarding pre-judgment interest at the maximum rate permitted by applicable law;
8. Reimbursing all costs and disbursements accrued by Plaintiffs in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
9. Awarding such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury to the full extent permitted by law.

Respectfully submitted,

Dated: November 1, 2016

/s/ KJG2445

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Attorneys for Plaintiffs

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
Teh Shou Kao and TS Kao, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kenneth J. Grunfeld, Esquire, Golomb & Honik, P.C., 1515 Market Street, Suite 1100, Philadelphia, PA 19102, (215) 985-9177

DEFENDANTS
CardConnect Corp.

County of Residence of First Listed Defendant Montgomery
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)(2)

Brief description of cause:
Class Action against payment processing company.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ **5,000,000.00** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE **11/01/2016** SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1771 Washtenaw Road, Ypsilanti, MI 48197

Address of Defendant: 1000 Continental Drive, Suite 300, King of Prussia, PA 19406

Place of Accident, Incident or Transaction: (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No [checked]

Does this case involve multidistrict litigation possibilities? Yes No [checked]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No [checked]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No [checked]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes No [checked]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No [checked]

CIVIL: (Place [checked] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases (Please specify)

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Kenneth J. Grunfeld, counsel of record do hereby certify:

[checked] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

[] Relief other than monetary damages is sought.

DATE: 11/1/2016

[Signature] Attorney-at-Law

84121 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/1/2016

[Signature] Attorney-at-Law

84121 Attorney I.D.#

**Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See §1.02 (e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [CardConnect Corp. Swiped with Lawsuit Over Murky Merchant Contracts](#)
