

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

	)	
MOSES LUEMBA on behalf of himself	)	
and as representative of a proposed class,	)	Civil Action No. _____
	)	
Plaintiff,	)	Hon. _____
	)	
vs.	)	Electronic Filing
	)	
THE WESTERN UNION COMPANY,	)	
	)	
Defendant	)	
	)	

**COMPLAINT – CLASS ACTION**

Plaintiff Moses Luemba, on behalf of himself and the proposed class alleged herein, by his undersigned counsel, pleads as follows:

**I. INTRODUCTION**

1. This civil action seeks redress for illegal conduct by Defendant The Western Union Company (“Western Union” or “WU”) with respect to “remittance transfers.” *See generally* 15 U.S.C. § 1693o-1.
2. Western Union violated applicable federal statutes and regulations by: (i) paying an imposter the \$1,400 remittance transfer sent by Plaintiff rather than paying the money to the designated recipient; (ii) failing to reimburse Plaintiff for the funds he lost as a result of WU’s error; and (iii) failing to follow federally-mandated error resolution procedures and to provide an adequately-documented explanation for its refusal to reimburse Plaintiff for WU’s error.
3. Based on Western Union’s pattern of conduct in relation to Plaintiff, it is apparent that Western Union has failed to protect consumers against “fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient.” 12 C.F.R. §

1005.33(a)(5)(iii) (Official Interpretation). In light of these circumstances, in addition to seeking his own damages, Plaintiff brings this proposed class action seeking declaratory and injunctive relief on behalf of a proposed class.

## **II. PARTIES**

4. Plaintiff Moses Luemba (“Luemba” or “Plaintiff”) is a United States citizen and a resident of Allegheny County, Pennsylvania.

5. Western Union is a Delaware corporation with its principal place of business at 12500 East Belford Avenue, Englewood, Colorado 80112. Western Union transacts or has transacted business in Allegheny County, Pennsylvania as well as throughout Pennsylvania, the United States, and the world.

## **III. JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction because this action is brought pursuant to the Electronic Funds Transfer Act, as amended, 15 U.S.C. §§1693-1693r, which expressly provides a private right of action and authorizes class actions. *Id.* §1693m. The Court has supplemental jurisdiction over Plaintiff’s state law claim pursuant to 28 U.S.C. § 1367. Venue is proper as Plaintiff resides within the Western District of Pennsylvania, and Plaintiff purchased the subject remittance transfer through a Western Union facility located in the Western District of Pennsylvania.

## **IV. FACTS PERTAINING TO PLAINTIFF LUEMBA**

7. Plaintiff is a native of the Democratic Republic of the Congo (“DRC”) and for many years has used Western Union to send funds to his relatives in the DRC. Plaintiff chose to use Western Union because he understood the company provided a secure and reliable means of sending funds to his relatives in the DRC. Western Union encouraged such trust through its

marketing campaign which includes television advertisement, promotional fliers, and wide-spread presence in retail outlets such as Rite Aid and Giant Eagle.

8. On August 2, 2019, Plaintiff purchased a \$1,400 Western Union “Money Transfer” at the Rite Aid Store located at 802 Pennsylvania, Avenue in Pittsburgh, Pennsylvania.

9. Plaintiff purchased the Money Transfer by initially calling Western Union from a Western Union kiosk within the Rite Aid store. During the call, Plaintiff provided the Western Union representative on the call with the amount of the remittance he wished to send (\$1,400) and the name of the intended recipient (Plaintiff’s brother Elonga Elonga Francois<sup>1</sup>) and the place to which the funds were to be sent (DRC).

10. The Western Union representative on the call then provided Plaintiff a temporary password which Plaintiff then presented to the cashier at the Rite Aid store who, after Plaintiff tendered \$1,488 in cash (covering the amount of the remittance plus the processing fee) provided Plaintiff with a receipt for the transaction.

11. A true and correct copy of the receipt is attached hereto as Exhibit 1.

12. The receipt identified the “Final Receiver” of the transfer (Plaintiff’s brother), the “Expected Foreign Country Payout Location” (Democratic Republic of the Congo), and the applicable Western Union Tracking Number or “MTCN” Number (5830487814).

13. In order to accomplish a remittance transfer, it is necessary for the “sender” (Plaintiff) to communicate the MTCN number to the “Final Receiver” (Plaintiff’s brother) so that he or she can claim the funds in the Expected Payout Location (DRC). On the day he purchased the WU Money Transfer, August 2, 2019, Plaintiff sent his brother the MTCN number by the “What’s App” application. By the time that Plaintiff’s brother received the MTCN Number, it

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<sup>1</sup> Use of the same name as both the first and middle name is customary in the DRC.

was too late in the day in the DRC (because of the five-hour time difference) to go to a Western Union agent's office.

14. On August 3, 2019, Plaintiff's brother went to a Western Union agent's office in Kinshasa, DRC, provided his personal identification and the MTCN number, and requested payment of the Money Transfer.

15. Thereafter, the agent informed Plaintiff's brother that the MTCN number was not valid. Plaintiff's brother went to a second WU agency in Kinshasa at which the second agent again informed Plaintiff's brother that the MTCN number was not valid.

16. Upon receiving this information from his brother, Plaintiff was puzzled because he had paid for the transfer and obtained an MTCN number from Western Union. Plaintiff then checked on the status of the transfer both by visiting the "Track Transfer" link on WU's website and by talking to a WU customer service representative at WU's call center in the Philippines. The Transfer Link indicated that the transfer had been paid; the call center identified the WU agent (Kin Distribution) that had paid out the transfer.

17. Plaintiff and his brother determined (through discussions with the aforementioned second agent) that the MTCN number was being reported as being invalid because the funds had already been paid out by Kin Distribution.

18. On Monday, August 5, 2019, Plaintiff's brother made inquiries at Kin Distribution. Plaintiff's brother presented his identification card to WU's agent Kin Distribution at the time he made inquiry as to the status of the transfer. Plaintiff and his brother determined (by obtaining documentation relating to the payment from Kin Distribution) that the Money Transfer initiated by Plaintiff had been paid to an imposter who had provided the MTCN number and a forged identity document to Kin Distribution and received the proceeds. True and correct

copies of the documents provided by Kin Distribution are attached hereto as group Exhibit 2. A true and correct copy of an identification card showing Plaintiff's brother (and establishing that impostor status of the payee) is attached hereto as Exhibit 3. The payment documentation provided by Kin Distribution contained several facial irregularities: the first and last name of the sender (Plaintiff) were misspelled) and the amount paid out (\$1,488) included both the transfer amount (\$1,400) and the transfer fee (\$88) that should have been retained by WU.

19. Upon receiving the documentation from Kin Distribution, Plaintiff again called Western Union and informed the company that its agent had paid the wrong person and that the payment documentation included the aforementioned irregularities.

20. In the course of the call, pursuant to the instructions of the Western Union call center representative, Plaintiff initiated a claim requesting a refund and was assigned a claim number (68516390). The WU representative told Plaintiff that the company would conduct an investigation with respect to the claim.sThe WU representative told Plaintiff to call back after 24 hours, which plaintiff did for three days in a row.

21. When he called back on the third day, the Western Union representative who answered the call told Plaintiff that Western Union had determined that the money had been paid out to the correct person and therefore the claim was being closed. The WU representative told Plaintiff he could call the police. Plaintiff requested that Western Union provide the documentation it had collected in the course of the investigation but was told that the company would not provide the documentation to him.

22. Thereafter Western Union sent Plaintiff a written confirmation of the original money transfer (see Exhibit 4, correspondence dated August 8, 2019 attached hereto).

23. At no time did Western Union provide written confirmation of the existence of

the claim, its investigation or its disposition or closure.

24. After concluding his repeated attempts to obtain relief from Western Union, Plaintiff reviewed Western Union's website at [www.westernunion.com](http://www.westernunion.com) (Legal) and found a statement of "Terms and Conditions" which purported to provide that the remittance transfer was governed by Colorado law and require plaintiff to pursue arbitration and waive the right to pursue a class action unless he opted out of arbitration within thirty (30) days. On August 29, 2019 Plaintiff notified Western Union by phone and in writing that he chose to opt out of arbitration and reserved his right to pursue a class action.

25. The loss suffered by Plaintiff was foreseeable to Western Union. The Official Interpretation applicable to a "remittance transfer provider" such as Western Union, *see* 12 C.F.R. § 1005.30(f)(1), defines an "error" to include "the fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient." 12 C.F.R. § 1005.33(a)(5)(iii) (Supplement I). The applicable federal statute and regulations provide that a remittance transfer provider is liable for such an error "unless the failure to make the funds available resulted from . . . [e]xtraordinary circumstances that could not have been reasonably anticipated." 12 C.F.R. § 1005.33(a)(iv)(A). A "fraudulent pick-up" is not an extraordinary circumstance as this is a risk that is explicitly recognized in the Official Interpretation but is not included within the official definition of "extraordinary circumstance." *See* 12 C.F.R. §§ 1005.33(a)(4) & (6) (Supplement I). Upon information and belief, Western Union itself has long recognized the risk of fraudulent pick-up with respect to international remittance transfers. This is reflected in the letter sent by Western Union to the Board of Governors of the Federal Reserve System on July 22, 2011, which observes that "fraudulent pick-ups continue to be an issue . . . ."

#### IV. INDIVIDUAL CLAIMS FOR RELIEF

##### COUNT I

#### INDIVIDUAL CLAIM FOR DAMAGES UNDER ELECTRONIC FUNDS TRANSFER ACT

26. The allegations of paragraphs 1-25 are incorporated herein by reference as though stated at length herein.

27. Western Union is a “remittance transfer provider” (“RTP”) as is defined under the regulations to the EFTA. *See* 12 C.F.R. §1005.30.

28. Plaintiff Luemba is a “sender” as is defined under these same regulations to the EFTA.

29. The brother of Plaintiff (Elonga Elonga Francois) is a “designated recipient” as is defined under the regulations to EFTA.

30. The money sent by Luemba through Western Union constituted a “remittance transfer” as is also defined under these regulations to EFTA.

31. Luemba promptly and adequately informed Western Union of the fact that it had paid the remittance to a person other than the designated recipient.

32. The failure of Western Union (the RTP) to make a remittance transfer initiated by the sender (Luemba) to the designated recipient (Luemba’s brother Francois) constituted an “error” as the term is defined by 12 C.F.R. § 1005.33(a)(1)(iii).

33. Following Luemba’s report of the error, Western Union was obligated by the regulations to promptly perform an investigation with a written explanation of its findings supplied to Luemba, as well as notice of any remedies. *E.g.*, 12 C.F.R. § 1005.33(c). Western Union was further obligated to correct the error. *Id.* § 1005(c)(2)(i). Western Union failed to

perform the required investigation or provide to the required explanation and notice or to cure the error.

34. In fact, at no time did Western Union comply with any of the error resolution procedures set forth at 12 C.F.R. § 1005.33.

35. Instead, Western Union ignored the report of an error by Luemba and simply, in its telephonic communications with Luemba made to its call center, Western Union maintained (erroneously) that it had correctly paid the money to the designated recipient. Western Union adhered to this unfounded position in ensuing communications which failed even to explain the basis for the denial other than to assert that the transfer had been paid.

36. Under the statute and regulations, Western Union was legally obligated to compensate Plaintiff for its payment “error.” *E.g.*, 15 U.S.C. § 1693o-1; 12 C.F.R. § 1005.33(c).

37. Western Union breached its statutory and regulatory obligations by failing to compensate Plaintiff after receiving notice of the error.

38. As a result of Western Union’s conduct, Luemba needed to fund an additional wire transfer to his brother and pay additional costs and fees and experienced substantial inconvenience.

WHEREFORE, plaintiff Luemba prays that judgment be entered in his favor in the amount of damages to be determined in accordance with law, for an award the costs of this action including attorney’s fees and litigation expenses, and for such further and additional relief as the Court deems just.



## COUNT II

### INDIVIDUAL CLAIM FOR DAMAGES UNDER PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

39. The allegations of paragraphs 1-25 are incorporated herein by reference as though stated at length herein.

40. Western Union engaged in “unfair and deceptive acts or practices” in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 to 201-9.2 (“UTPCPL”).

41. Western Union engaged in unfair and deceptive practices by “falsely representing,” 73 P.S. § 201-2(vii), through its advertising campaign and other marketing activities, that WU’s remittance service provides a secure means of sending funds to recipients in the DRC and elsewhere. This representation as to protection provided to the consumer through its remittance service was misleading because WU failed to disclose a policy or practice of purporting to shift the risk of loss for fraudulent pick-ups to the consumer.

42. Western Union further engaged in unfair and deceptive practices by an overall pattern of “fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 P.S. § 201-2(4)(xxi). Western Union marketed itself as a reliable means of sending money internationally but failed to inform Luemba and other consumers that it would take the position that it places the risk of fraudulent pick-up on the consumer.

43. Plaintiff relied on the reputation for integrity that Western Union cultivated through its marketing activities in choosing to entrust his funds to Western Union.

44. Plaintiff suffered damages as a result of Western Union’s deceptive acts and practices as alleged herein.

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor in the amount of his damages, award him treble damages pursuant to the UTPCPL, award him the costs of this action including reasonable attorney's fees and litigation costs, and grant such further and additional relief as the Court deems just.

### **COUNT III**

#### **CLASS CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

##### **(CLASS ACTION STATEMENT (LCVR 23) INCLUDED)**

45. The allegations of paragraphs 1-38 are incorporated herein by reference as though stated at length herein.

46. Plaintiff brings this proposed class action pursuant to Fed. R. Civ. P. 23(b)(2).

47. The proposed "Class" is defined as follows: All consumers (except WU employees or agents) within the United States who send funds through Western Union remittance transfers.

48. The exact size of the Class is unknown but is estimated to include tens of thousands of consumers.

49. The issues of law and fact common to the Class are (i) whether Western Union is legally obligated to reimburse consumers for fraudulent pick-ups; and (ii) whether Western Union has adopted an error resolution practice or policy with respect to fraudulent pick-ups that violates EFTA.

50. The claim of Plaintiff is typical of the members of the Plaintiff Class because by its conduct Western Union purported (in violation of EFTA) to shift the risk of loss for fraudulent pick-up to Plaintiff, and, as reflected in its call center operations, Western Union has adopted a claims processing system as to fraudulent pick-ups that violates the error

resolution procedures mandated by EFTA.

51. Plaintiff has a continuing need to send international money transfers. His claims for damages (Counts I and II) are merely incidental to his claims for declaratory and injunctive relief on behalf of himself and the proposed Class.

52. A case or controversy exists as to whether Western Union's policy and practice is lawful or unlawful. Western Union's policy and practice with respect to fraudulent pick-ups presents a continuing issue for all consumers that send remittance transfers through Western Union including but not limited to Plaintiff Luemba.

53. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2001 *et seq.*, the Court should issue a declaratory judgment in favor of Plaintiff and the members of the proposed Class ruling that, in the case of fraudulent pick-ups, Western Union bears the risk of loss For failing to deliver remittance transfers to the actual designated recipients.

54. In the event that evidence is adduced in this proceeding showing that Western Union has engaged in a continuing pattern of processing consumer complaints of fraudulent pick-ups in the manner experienced by Plaintiff, the Court should enter an injunction compelling Western Union to refrain from violating the error resolution provisions of EFTA with respect to fraudulent pick-ups.

WHEREFORE, plaintiff requests that the Court certify this case as a class action, appoint Plaintiff as class representative, appoint the undersigned counsel as class counsel, issue a declaratory judgment as sought herein, issue an injunction if deemed appropriate by the Court

after consideration of the evidence, award Plaintiff incentive compensation as class representative to the extent allowed by law, award attorney's fees and litigation costs to the extent provided by law, and grant such further and additional relief as the Court deems just.

Respectfully submitted,

Dated: September 27, 2019

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Western Union Fails to Properly Investigate Fraudulent Money Transfers, Class Action Alleges](#)

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