

1 Eugene Y. Turin (IL Bar No. 6317282)
2 (*pro hac vice to be submitted*)
3 eturin@mcgpc.com
4 MCGUIRE LAW, P.C.
5 55 W. Wacker Dr., 9th Floor
6 Chicago, IL 60601
7 Tel: (312) 893-7002
8 Fax: (312) 275-7895

7 James A. Tabb (CA Bar No. 208188)
8 jimmy@zaveritabb.com
9 ZAVERI TABB, APC
10 402 West Broadway, Suite 1950
11 San Diego, CA 92101
12 Tel: (619) 831-6987
13 Fax: (619) 239-7800

12 *Attorneys for Plaintiff and the Putative Class*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 ANTHONY OLIVER, individually and
16 on behalf of a class of similarly situated
17 individuals,

18 Plaintiff,

19 v.

21 FIRST CENTURY BANK, N.A., and
22 STORED VALUE CARDS, INC.
23 (d/b/a NUMI FINANCIAL),

24 Defendants.

) Case No. '17CV0620 MMAKSC
)
) **CLASS ACTION**
) **COMPLAINT FOR**
) **DAMAGES AND**
) **INJUNCTIVE RELIEF**
)
) 1) Violation of the Fifth
) Amended pursuant to 42 U.S.C.
) § 1983
) 2) Conversion
) 3) Unjust Enrichment
) 4) Violation of Cal. Bus. &
) Prof. Code § 17200
)
) **DEMAND FOR JURY TRIAL**
)
)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLASS ACTION COMPLAINT

Plaintiff Anthony Oliver (“Plaintiff”) brings this class action complaint against Defendants First Century Bank, N.A. (“First Century”) and Stored Value Cards, Inc. (d/b/a Numi Financial) (“Numi Financial”) (together “Defendants”), on behalf of himself and a nationwide class of individuals seeking redress from Defendants for their unlawful practice of deducting unauthorized fees from funds due back to individuals who were taken into custody by law enforcement officials. Defendants’ practice of deducting unauthorized fees from funds that were taken from detained individuals is well documented as being an unjust and abusive practice. *See, e.g.,* www.nbcnews.com/business/consumer/inmates-charged-fee-after-leaving-jail-n329151. However, Defendants have not done anything to remedy their actions or refund monies that they unlawfully took from funds that they were charged with disbursing back to the rightful owners upon release from custody. On behalf of himself and the proposed class of individuals who had unauthorized fees deducted by Defendants from funds that they were entitled to receive back in full, Plaintiff seeks damages, punitive damages, restitution, and injunctive relief against Defendants for their unlawful practices. For his class action complaint, Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and as to all other matters, upon information and belief, including investigation conducted by his attorneys.

JURISDICTION AND VENUE

1. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) and (d), because: (i) at least one member of the putative class is a citizen of a state different from any Defendant; (ii) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs; and (iii) none of the exceptions under that subsection applies to the instant action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMMON ALLEGATIONS OF FACT

7. The significant profits raised by corporations from prisons and the ever-growing prisoner population in the United States is a well-documented source of concern. While privately-run correctional facilities that obtain large government contracts and avoid compliance with state and federal regulations are the most well-known example of this, a number of companies have recently pursued other business ventures that also seek to profit directly from individuals who are being held in the custody of law enforcement agencies.

8. For example, a number of prisons now contract with private companies that charge inmates substantial fees to contact their family members or attorneys by email. *See, e.g.*, <http://www.ibtimes.com/prisons-are-making-inmates-pay-email-their-families-lawyers-2281016>.

9. Critical to how such for-profit companies have come to operate in hundreds of prisons across the country is that, despite correctional facilities and detention centers typically being operated by the state for the benefit of the public and its safety, the for-profit entities offer contracts that provide for significant compensation to these facilities, usually in the form of a set percentage of the total revenue collected by the entity, in addition to any costs-savings realized by the facility by utilizing the service.

10. Seeing a similar opportunity to profit from a previously untapped source of revenue – the processing of confiscated funds when an individual is taken into custody and subsequently released – Defendants developed a debit card scheme that they marketed to hundreds of detention facilities across the country.

11. Specifically, whenever an individual is taken into custody for any period of time, regardless of the type or severity of the charged crime, and regardless of whether they are later released or found innocent, they go through

1 a booking process whereby their property, including any clothes, money, and
2 other possessions on their persons, are taken from them and stored until their
3 release.

4 12. Until very recently, most local jails and larger correctional facilities
5 would collect any cash money that an individual had on them, and upon release
6 would either provide that same exact amount back in either cash or a check to be
7 cashed.

8 13. Defendants' service purports to offer law enforcement officials a
9 more streamlined process for processing inmate funds by automatically providing
10 a pre-activated debit card containing all of the funds owed back to the inmate
11 upon his/her release.

12 14. When an individual is booked at a detention facility utilizing
13 Defendants' service, they are required to deposit all of their cash money into an
14 ATM machine on premises.

15 15. Once the individual's funds are deposited they are transferred to an
16 inmate trust account maintained on their behalf which they can use during their
17 time in custody to buy certain items, make telephone calls, or send emails.
18 Inmates are also permitted to add funds to their inmate trust account while in
19 custody.

20 16. Upon release, whatever funds are remaining in their inmate trust
21 account are deposited onto a "pre-paid" debit card issued by Defendants.

22 17. However, unlike prior methods for disbursing individuals' funds by
23 cash or check, the debit cards provided by Defendants come with an array of fees
24 and other charges – including ATM fees, maintenance fees, and purchase
25 transaction fees – that are automatically deducted by Defendants without the
26 individual's consent.

1 18. These fees are specifically negotiated with and approved by the
2 correctional and detention facilities that utilize Defendants' service and can vary
3 in the amounts deducted from the inmate trust account funds deposited onto the
4 card. Typical fees automatically deducted by Defendants can include a \$2.50
5 *weekly* service fee, a \$0.95 fee for each declined transaction, as well as
6 transaction fees as high as \$2.95 for *each* purchase made with the pre-paid debit
7 card.

8 19. Most importantly, individuals detained at the local jails, correctional
9 facilities, and other institutions that utilize Defendants' debit card service are not
10 given any alternative option other than receiving their funds back in the form of
11 a pre-paid debit card issued by Defendants and are effectively coerced into
12 accepting the pre-paid debit cards without their consent.

13 20. Accordingly, individuals are put in the unenviable position of
14 having unauthorized, excessive maintenance, service, and other fees
15 automatically taken from their own funds, even though such individuals have not
16 entered into any contract with Defendants and have not voluntarily deposited
17 their funds with Defendants.

18 21. Defendants' debit card service is used by hundreds of jails and other
19 detention facilities across the country, and Defendants provide tens of thousands
20 of pre-paid cards a year to individuals detained at their customers' facilities.

21 **FACTS SPECIFIC TO PLAINTIFF**

22 22. Mr. Oliver resided in Savannah, Georgia on or about October 28,
23 2016 when he was arrested.

24 23. Mr. Oliver was taken into custody and booked at the Chatham
25 County Jail in Savannah, Georgia that same day.

26 24. In the process of being booked, law enforcement officers
27 confiscated all cash funds that were on Mr. Oliver's person.

1 25. The law enforcement officials at the Chatham County Jail then had
2 Mr. Oliver take all of his cash funds and deposit them into an ATM machine. Mr.
3 Oliver was not given a choice as to whether he could have the money returned to
4 him as a check upon being released, or simply have it returned as cash. Nor was
5 Mr. Oliver given any paperwork to complete or sign, and he was not even allowed
6 to keep the receipt generated by the ATM for the transaction.

7 26. The funds deposited by Mr. Oliver into the ATM were then put in
8 his inmate trust account, which he could use to buy certain items in the jail, as
9 well as to pay for placing phone calls and transmitting emails.

10 27. Mr. Oliver was released from Chatham County Jail on or about
11 December 22, 2016.

12 28. At the time of his release, Mr. Oliver had approximately \$985.00
13 remaining in his inmate trust account. In the process of having the property that
14 was confiscated from him returned, Mr. Oliver was handed a “Numi Financial”
15 pre-paid debit card issued by Defendants. The law enforcement officials
16 represented to Mr. Oliver that Defendants’ pre-paid debit card contained the full
17 amount of his remaining inmate account funds.

18 29. Mr. Oliver was not provided any paperwork regarding the terms and
19 conditions governing his use of Defendants’ debit card, all of the fees and charges
20 associated with the card, a history of his purchases made while in custody, or any
21 other information except for the ATM pin code necessary to use the card.

22 30. Upon being released, Mr. Oliver visited a local fast-food restaurant,
23 where he used his card to purchase a meal. However, as Plaintiff later found out,
24 Defendants deducted a \$1.50 fee from his account as part of the transaction.

25 31. Afterwards, that same day, Mr. Oliver visited a Verizon store to pay
26 for his cellular telephone bill. As Plaintiff eventually discovered, Defendants
27 again deducted an additional \$2.95 fee from his funds as part of the transaction.

1 32. The next day, on or about December 23, 2016, Mr. Oliver visited a
2 Wells Fargo ATM to withdraw cash funds from the account. On top of the ATM
3 transaction fee, Defendants deducted another \$2.95 fee from his account for the
4 withdrawal.

5 33. In addition to the transaction fees deducted by Defendants with
6 every purchase from Plaintiff’s account without his consent, Defendants also
7 charged an unauthorized \$2.50 *weekly* “maintenance” fee, beginning just 2 days
8 after the card’s activation—on or about December 24, 2016.

9 34. After taking out most of the funds in cash over the course of the
10 week following his release, Mr. Oliver had approximately \$20 left on the debit
11 card.

12 35. Even though Mr. Oliver did not make any additional purchases or
13 transactions using the debit card, when he called the 1-800 number listed on the
14 back of the card several weeks later to check his account balance, he was
15 informed that there were no funds remaining on the account. Upon hearing this
16 information, Mr. Oliver attempted to log onto Defendants’ website to check his
17 account history and determine what fees Defendants had withdrawn from his
18 account. However, Mr. Oliver was not allowed to log in because the card was
19 now labeled as being “inactive.”

20 36. Thus, not only was Mr. Oliver prohibited from checking the account
21 history on his debit card to determine what fees Defendants had withdrawn from
22 his account that led to the zero sum account balance, but he could not even access
23 his prior transaction history.

24 37. Similarly, when Mr. Oliver was taken back into custody at the
25 Chatham County Jail on or about February 2, 2017, he again was forced to deposit
26 all of the cash funds that were on his person into an ATM machine.

1 38. Upon his release on or about February 17, 2017, Mr. Oliver had
2 \$164.06 remaining in his inmate trust account which was again deposited without
3 his knowledge or consent onto an identical “Numi Financial” pre-paid debit card
4 issued by Defendants.

5 39. As with the other Numi Financial debit card that was issued to him,
6 Plaintiff was charged unauthorized, excessive service fees for withdrawing funds
7 from the card, including two sur-charges of \$2.95 for withdrawing funds from an
8 ATM – separate and in addition to any ATM transaction fees – and a \$2.95
9 “weekly” “service charge” fee that started just four days after the card was
10 activated.

11 40. Plaintiff never consented to any fees being deducted from his funds
12 and was never given prior notice of all the fees and charges that applied to the
13 pre-paid debit cards issued by Defendants.

14 41. Had Mr. Oliver been given a choice as to how he could receive his
15 funds at the time of his release, he would have never chosen to have them
16 deposited by Defendants on their pre-paid debit cards given the excessive service
17 and transaction fees Defendants automatically deducted without his consent.

18 **CLASS ACTION ALLEGATIONS**

19 42. Plaintiff brings this action on behalf of himself and a nationwide
20 class (the “Class”) defined as follows: all persons in the United States and its
21 Territories who were taken into custody at a jail, correctional facility, detainment
22 center, or any other law enforcement facility, and upon release were given a
23 “Numi Financial” pre-paid debit card containing any funds remaining on their
24 inmate trust account and from which Defendants deducted any fees within four
25 years prior to the filing of the original Complaint in this action.

26 43. Plaintiff will fairly and adequately represent and protect the interests
27 of the other members of the Class. Plaintiff has retained counsel with substantial

1 experience in prosecuting complex litigation and class actions. Plaintiff and his
2 counsel are committed to vigorously prosecuting this action on behalf of the other
3 members of the Class, and have the financial resources to do so. Neither Plaintiff
4 nor his counsel has any interest adverse to those of the other members of the
5 Class.

6 44. Absent a class action, most members of the Class would find the
7 cost of litigating their claims to be prohibitive and would have no effective
8 remedy. The class treatment of common questions of law and fact is also superior
9 to multiple individual actions or piecemeal litigation in that it conserves the
10 resources of the courts and the litigants, and promotes consistency and efficiency
11 of adjudication.

12 45. Defendants have acted and failed to act on grounds generally
13 applicable to Plaintiff and the other members of the Class, requiring the Court's
14 imposition of uniform relief to ensure compatible standards of conduct toward
15 the members of the Class, and making injunctive or corresponding declaratory
16 relief appropriate for the Class as a whole.

17 46. The factual and legal bases of Defendants' liability to Plaintiff and
18 to the other members of the Class are the same, resulting in injury to Plaintiff and
19 to all of the other members of the Class. Plaintiff and the other members of the
20 Class have all suffered harm and damages as a result of Defendants' unlawful
21 and wrongful conduct.

22 47. Defendants' pre-paid debit card service is used by hundreds of jails
23 and other detention facilities across the country, and Defendants provide tens of
24 thousands of pre-paid debit cards to released individuals every year.
25 Accordingly, upon information and belief, there are at least tens of thousands of
26 members of the Class, such that joinder of all members is impracticable.

1 51. Pursuant to the “takings clause” of the Fifth Amendment, Chatham
2 County Jail, as well as all other state and federal correctional facilities that
3 utilized Defendants’ debit card service, were required to return all funds that were
4 confiscated from detained individuals and maintained in their inmate trust
5 accounts upon their release.

6 52. Chatham County Jail, as well as the other correctional facilities
7 where Class Members were detained, contracted with and directed Defendants to
8 handle and manage disbursement of all inmate trust account funds.

9 53. Accordingly, at all times relevant hereto, Defendants operated their
10 debit card service under the color of law. As such, Defendants were at all times
11 required to abide by the takings clause of the Fifth Amendment and return all of
12 the inmate trust account funds deposited with them.

13 54. However, Defendants have violated the Fifth Amendment rights of
14 Plaintiff and the other Class Members, and deprived them of their
15 Constitutionally-protected interest in the cash funds maintained in their inmate
16 trust accounts, by depositing such funds onto pre-paid debit cards and thereafter
17 deducting unauthorized fees.

18 55. The fees deducted from Plaintiff’s and the other Class Member’s
19 funds were specifically negotiated between Defendants and the Chatham County
20 Jail – and their other customers where other Class Members were detained – and
21 were implemented only with the guidance and approval of the federal and state
22 entities that managed and operated these facilities.

23 56. As a result of Defendants’ unlawful conduct, Plaintiff and the other
24 Class Members have suffered actual damages in the amounts of the unlawful fees
25 deducted from their funds, and pursuant to 42 U.S.C. § 1988(b) are also entitled
26 to their reasonable attorneys’ fees in prosecuting this claim.

THIRD CAUSE OF ACTION

Unjust Enrichment

(against Defendants First Century and Numi Financial)

1
2
3
4 64. Plaintiff incorporates by reference the foregoing allegations as if
5 fully set forth herein.

6 65. Upon being taken into custody Plaintiff and the other Class
7 Members had any cash funds in their possession deposited into an inmate trust
8 account for safe keeping.

9 66. Upon release Plaintiff and the other Class Members were forced to
10 have any funds maintained in their inmate trust account deposited onto
11 Defendants' pre-paid debit cards for disbursement.

12 67. Even though Plaintiff and the other Class Members had never
13 entered into any contract with Defendants, never consented to have their funds
14 deposited with Defendants, and never agreed to any fees being deducted from
15 their funds by Defendants, Defendants nonetheless deducted unauthorized fees
16 from Plaintiff's and the other Class Members' inmate trust account funds that
17 were deposited with them.

18 68. Because Defendants deducted fees from Plaintiff's and the other
19 Class Members' funds without any consent or authorization, exploited their
20 position of advantage over such individuals who had no choice but to have their
21 funds deposited with Defendants for disbursement, and violated their Fifth
22 Amendment rights, it would be inequitable and unjust for Defendants to retain
23 these wrongfully-obtained funds.

24 69. Plaintiff and the other Class Members have been harmed as a result
25 of Defendants' unlawful and inequitable conduct, and are entitled to restitution
26 in the amounts of the unauthorized fees taken by Defendants.

FOURTH CAUSE OF ACTION

**Violation of the California Unfair Competition Law
Cal. Bus. & Prof. Code § 17200 *et seq.***

(against Defendants First Century and Numi Financial)

1
2
3
4 70. Plaintiff incorporates by reference the foregoing allegations as if
5 fully set forth herein.

6 71. Defendant Numi Financial is a California corporation with its
7 headquarters located in California.

8 72. Defendant First Century similarly maintains offices in California
9 and is registered and does business in California.

10 73. Upon information and belief, Defendants' business practices,
11 including policies related to fees deducted from inmate trust account funds
12 deposited onto Defendants' pre-paid debit cards, are created and implemented
13 from Numi Financial's national headquarters in California, and apply to all of
14 Defendants' pre-paid debit cards that are issued across the country.

15 74. California Business and Professions Code section 17200 *et seq.* (the
16 "UCL") prohibits any "unlawful [or] unfair business act or practices."

17 75. Defendants have violated the unlawful prong of the UCL because
18 they acted under the color of law when they deducted unauthorized and excessive
19 fees from Plaintiff's and the other Class Members' funds in violation of their
20 Fifth Amendment rights, and in violation of laws against conversion.

21 76. Defendants' conduct also violated the unfair prong of the UCL
22 because Plaintiff and the other Class Members never entered into any contract
23 with Defendants, never authorized Defendants to deduct any maintenance or
24 service fees from their funds, and most importantly, did not voluntarily deposit
25 their funds with Defendants. Defendants unfairly took advantage of Plaintiff's
26 and the other Class Members' lack of options and exploited their position of
27 power to their benefit and profit. Given that the funds were placed in a trust for

1 the benefit of Plaintiff and the other Class Members, such conduct may also
2 constitute a breach of fiduciary duty owed by Defendants.

3 78. Plaintiff and the other members of the Class have lost money as a
4 result of Defendants' unlawful and unfair conduct in the amounts of the fees
5 deducted from their inmate trust account funds that were deposited with
6 Defendants for disbursement. Plaintiff requests that this Court enter such orders
7 or judgments as necessary to enjoin Defendants from continuing their unlawful
8 and unfair practices and to restore to Plaintiff and the other Class Members all
9 monies Defendants acquired through such conduct, pursuant to Cal. Bus. & Prof.
10 Code § 17203.

11 WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for the
12 following relief:

- 13 1. An order certifying the Class as defined above;
- 14 2. A determination that Defendants' conduct as alleged herein is
15 unlawful and/or unfair;
- 16 3. An award to Plaintiff and the Class of actual, compensatory,
17 and punitive damages, as proven at trial;
- 18 4. An award to Plaintiff and the Class of restitution of all monies
19 deducted by Defendants as a result of their unlawful and/or
20 unfair business practices;
- 21 5. An order enjoining Defendants from engaging in the unlawful
22 and/or unfair business practices described herein;
- 23 6. An award to Plaintiff and the Class of reasonable attorneys'
24 fees, costs, and pre- and post-judgment interest; and
- 25 7. Such further and other relief the Court deems reasonable and
26 just.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: March 28, 2017

Respectfully submitted,

MCGUIRE LAW, P.C.
ZAVERI TABB, APC

By: s/ James A. Tabb
James A. Tabb

*Attorneys for Plaintiff Anthony Oliver
and the Putative Class*

Email: jimmy@zaveritabb.com

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
ANTHONY OLIVER, individually and on behalf of a class of similarly situated individuals.
(b) County of Residence of First Listed Plaintiff Chatham County, GA
(c) Attorneys (Firm Name, Address, and Telephone Number)
McGuire Law, P.C. Zaveri Tabb, APC
55 W. Wacker Dr., 9th Fl. 402 W. Broadway, Suite 1950
Chicago, IL 60601 San Diego, CA 92101

DEFENDANTS
STORED VALUE CARDS, INC. (d/b/a NUMI FINANCIAL);
FIRST CENTURY BANK, N.A.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Unknown

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
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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):
42 U.S.C. § 1983
Brief description of cause:
Conversion of unauthorized fees deducted from class members' funds by Defendants acting under color of law.

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: X Yes [] No

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

DATE 03/28/2017 SIGNATURE OF ATTORNEY OF RECORD s/ James A. Tabb

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [First Century Bank Sued Over Fees on Inmate Accounts](#)
