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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAULA SPARKMAN, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

COMERICA BANK, a foreign corporation,
CONDUENT BUSINESS SERVICES, LLC, a
foreign limited liability corporation,

Defendants.

No. 4:23-cv-02028-DMR

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

I. NATURE OF ACTION

1. Plaintiff Paula Sparkman is a single mother who relies on the child support funds she receives through California's "Way2Go Card" program to care for her daughter. The Way2Go Card is a prepaid debit card issued by Defendants Comerica Bank and Conduent Business Services. When Ms. Sparkman's card was stolen and a series of unauthorized charges drained more than a \$1,000 from her account, Defendants refused to help.

2. Defendants Comerica Bank and Conduent Business Services are required by federal law to return funds taken from a consumer in unauthorized transactions. Defendants also promised that "Mastercard's Zero Liability Protection assures you do not lose any funds if your Card is lost or stolen."

3. When Ms. Sparkman promptly reported her card stolen, Defendants denied her claim because they could not "confirm that fraud occurred" and claimed to have received "conflicting information." Defendants have not credited any of the stolen funds back to Ms. Sparkman's account.

4. Defendants also nickel and dined Ms. Sparkman and other parents receiving child support funds on California Way2Go Cards by charging them a \$0.50 fee for using Defendants' automated voice (IVR) telephone system to report account errors or check their balance.

5. Ms. Sparkman brings this action on behalf of herself and other Californians who have reported unauthorized transactions but have not received those funds back because Defendants could not confirm the fraud occurred based on shoddy investigation practices and failure to communicate effectively with account holders who dispute unauthorized charges and other Californians charged Defendants' fees to use their IVR phone system.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. § 1693m(g) because Ms. Sparkman's Electronic Funds Transfer Act Claim arises under federal law.

7. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 to resolve Ms. Sparkman's claims arising under California law for breach contract and statutory violations.

1 8. This is the proper venue because a substantial part of the events or omissions
2 giving rise to Ms. Sparkman's and the Class's claims occurred in this district. 28 U.S.C.
3 § 1391(b)(2). Defendant Comerica Bank also operates numerous branches within this district.

4 **III. PARTIES**

5 9. Plaintiff Paula Sparkman is a natural person domiciled in Tehama County,
6 California.

7 10. Defendant Comerica Bank is a Texas state chartered commercial bank with its
8 corporate headquarters in Dallas, Texas.

9 11. Defendant Conduent Business Services, LLC is a Delaware limited liability
10 corporation with its corporate headquarters in Florham Park, New Jersey.

11 **IV. FACTUAL ALLEGATIONS**

12 12. Paula Sparkman is a single mother who lives with her daughter in Red Bluff,
13 California.

14 13. All child support payments in California are made through California Child
15 Support Services. California Child Support Services contracts with Defendants to disburse child
16 support payments to recipients through prepaid debit cards.

17 14. Ms. Sparkman receives court ordered child support from her child's father
18 through California's Way2Go Card® Prepaid Mastercard.® Ms. Sparkman has had a Way2Go
19 Card since approximately 2020 when California Child Support Services contracted with
20 Defendants to issue payments by prepaid debit card. Ms. Sparkman has used a prepaid debit card
21 to access child support funds since 2015.

22 15. Defendants' Way2Go Card informational sheet promises: "Mastercard's Zero
23 Liability Protection assures you do not lose any funds if your Card is lost or stolen."

24 16. Defendants' Terms of Use also say that if the account holder notifies Defendants
25 within two business days after learning that a card was lost or stolen, a PIN was compromised, or
26 unauthorized transactions were made then "you can lose no more than \$50."

27 17. Defendants' Terms of Use further provide that if the account holder notifies
28 Defendants more than two days after learning of the loss, theft, or unauthorized use of the

1 account holder's Way2Go Card, and Defendants can show that they could have stopped the
2 unauthorized transactions if they had been informed sooner, then the account holder "could lose
3 as much as \$500," but not more.

4 18. Defendants' Terms of Use further provide that the account holder "will not be
5 responsible for unauthorized use of your Card."

6 19. On November 29 or 30, 2022, Ms. Sparkman's Way2Go Card was stolen out of
7 her parked car.

8 20. Ms. Sparkman called the Way2Go Card Program on December 1, 2022, and
9 reported the card stolen. Defendants assigned Ms. Sparkman's claim the following Tracking ID:
10 1-6950303458. Defendants' agent told Ms. Sparkman that Defendants could not stop the
11 unauthorized charges from going through and that Ms. Sparkman could not dispute the
12 fraudulent charges until they went through.

13 21. Defendants issued Ms. Sparkman a replacement Way2Go Card within 5-7 days
14 after she reported her card stolen.

15 22. Defendants' agent told Ms. Sparkman would receive paperwork to dispute the
16 unauthorized transactions within ten days. She never received the paperwork.

17 23. Ms. Sparkman followed up with Defendants by phone many times, including on
18 December 9, 2022, when Defendants directed her to hand write out the list of charges she
19 disputed.

20 24. On approximately December 13, 2022, Ms. Sparkman emailed to Defendants a
21 handwritten list of 21 disputed charges made using her card on November 30 and December 1,
22 2022. The charges total more than \$1,000. She sent a photo of the handwritten list via email as
23 directed by one of Defendants' agents.

24 25. The unauthorized charges on Ms. Sparkman's account were made without entry
25 of a PIN. They were instead processed as credit transactions with a signature.

26 26. Ms. Sparkman always uses her PIN to make purchases with her Way2Go Card.
27 She never signs for charges on the card.
28

1 27. Ms. Sparkman filed a police report with the Red Bluff Police Department
2 reporting the stolen card and fraudulent charges.

3 28. Ms. Sparkman received no paperwork from Defendants until after she made
4 repeated follow up calls and was eventually told that Defendants had already denied her claim
5 for reimbursement of the disputed charges.

6 29. On approximately January 5, 2023, Defendants mailed Ms. Sparkman a packet of
7 information that included reprinted copies of letters dated December 1, 2022 and December 14,
8 2022. Ms. Sparkman had not previously received either letter from Defendants.

9 30. Defendants' letter dated December 1, 2022 acknowledged receipt of Ms.
10 Sparkman's complaint the same date. Defendants' other records confirm that Defendants opened
11 her dispute claim on December 1, 2022, the day after she discovered the card was stolen.

12 31. Defendants' letter to Ms. Sparkman dated December 14, 2022, is on letterhead
13 from the Go Program Fraud Services Department. The letter denies Ms. Sparkman's claim for
14 reimbursement for the unauthorized transactions. The letter states the following grounds for the
15 denial (1) "we found a conflict in the information provided by you and the information resulting
16 from our research"; and (2) "we cannot confirm that fraud occurred."

17 32. The December 14 letter appears to be form letter and includes in the lower left
18 corner the following identifying code: "FRD7-GO-v01."

19 33. Ms. Sparkman continued to follow up with Defendants by phone and email,
20 including by submitting an appeal of Defendants' decision not to reimburse the stolen funds.
21 Defendants have not credited the stolen funds to Ms. Sparkman's account.

22 34. Ms. Sparkman was shocked and upset to learn that Defendants did not promptly
23 cancel the pending transactions or credit her account after she reported her card stolen. Without
24 the missing funds, Ms. Sparkman could not afford to host her daughter's birthday party—despite
25 invitations already having been sent before the theft. Ms. Sparkman was also unable to purchase
26 a Christmas tree or many gifts. She has suffered anxiety, humiliation, and worry as a result of
27 Defendants' conduct.
28

1 35. Despite their obligation under the Electronic Fund Transfer Act (“EFTA”),
2 15 U.S.C. § 1693, *et seq.*, to promptly credit Ms. Sparkman’s account, and their contractual
3 promises that she would not lose money or would lose only a small amount if her card was
4 stolen, Defendants refused to credit the amounts of the stolen funds.

5 36. On June 26, 2023, Ms. Sparkman discovered a hold on funds on her Way2Go
6 card account related to a cancelled charge at a gas station.

7 37. Ms. Sparkman tried to called Defendants at 844-318-0740 at approximately 2:31
8 p.m. to resolve this issue. The call was disconnected.

9 38. Ms. Sparkman called Defendants back at 844-318-0740 approximately 4 minutes
10 later and was told the gas station was holding her funds and she need to address the issue with
11 the gas station.

12 39. Ms. Sparkman called the gas station and learned that it was not holding the funds.
13 At approximately 2:46 p.m., Ms. Sparkman called Defendants at 844-318-0740. This call was
14 also disconnected.

15 40. Ms. Sparkman called back at 2:49 p.m. and spoke with one of Defendants’
16 customer service agents.

17 41. Ms. Sparkman made no other calls to Defendants at 844-318-0740 during the
18 month of June 2023.

19 42. Defendants’ Terms of Use disclose a \$0.50 “per call” charge for “customer
20 service” calls to their IVR line. But the terms state “You are allowed three (3) calls to the IVR
21 per month for no fee. There is no additional fee for transferring to a live customer service agent.”

22 43. Defendants charged Ms. Sparkman’s Way2Go account two \$0.50 fees (total of
23 \$1.00), for calls to their IVR line on June 26, 2023, even though she had made only two calls to
24 the Defendants’ toll free number—the other two having been disconnected. Even if the two
25 disconnected calls are counted, Defendants charged Ms. Sparkman for at least one call that they
26 promised would be free. Moreover, the practice of charging consumers a junk fee to call an
27 automated phone system is unfair.
28

V. CLASS ALLEGATIONS

44. Ms. Sparkman brings this case as a proposed class action under Federal Rule of Civil Procedure 23. The proposed Classes and Sub-Classes are defined as follows:

Class: All persons issued a California Way2Go Card® Prepaid Mastercard® who (1) notified Defendants that one or more charges on their account were unauthorized or disputed; and (2) were denied reimbursement on the grounds that Defendants (i) could not confirm fraud occurred; or (ii) found a conflict in information provided during an investigation, through the date of any class certification order in this action.

EFTA Sub-Class: All persons in the Class who (1) were denied on or after April 27, 2022 through the date of any class certification order in this action and (2) whose denial was with regard to a disputed charge (or charges) totaling more than \$50.

IVR Surcharge Class: All persons issued a California Way2Go Card® Prepaid Mastercard® whose accounts Defendants charged at least one \$0.50 fee for calling Defendants' IVR telephone system.

IVR Surcharge Sub-Class: All members of the IVR Surcharge Class whose accounts Defendants charged at least one \$0.50 fee for calling Defendants' IVR telephone system without allowing the consumer at least three free calls in a month before imposing the charge.

45. Plaintiff reserves the right to amend or modify the proposed class and sub-class definitions or add other proposed subclasses based on information obtained after the filing of this Complaint.

46. **Numerosity** under Federal Rule 23(a)(1) is satisfied.

47. There are at least thousands of Californians who receive payments on California Way2Go Cards issued by Defendants. At least 40 of those Californians have been charged Defendants' IVR surcharge.

48. Unauthorized charges resulting from theft, loss of cards, and fraud is common and Defendants' standard practices for investigating and denying reimbursement of funds to fraud victims therefore injured at least 40 other people. As a result, the class is sufficiently numerous that joinder of all members is impracticable.

49. The number of class members, their identities, and their contact information can be found in Defendants' records.

1 50. There are **questions of law and fact common** to the class members under Rule
2 23(a)(2), including:

3 a) Whether Defendants have a standardized practice of denying
4 reimbursement for transactions disputed by consumers unless the consumer establishes the
5 transactions were not authorized;

6 b) Whether Defendants' denial of disputes on the grounds that they could not
7 confirm fraud occurred is unlawful under the EFTA;

8 c) Whether Defendants' denial of disputes on the grounds that they found a
9 conflict information during their investigation is unlawful under the EFTA;

10 d) Whether Defendants' denial of disputes on the grounds that they could not
11 confirm fraud occurred breaches Defendants' contractual promises;

12 e) Whether Defendants' denial of disputes on the grounds that they found a
13 conflict information during their investigation breaches Defendants' contractual promises;

14 f) Whether Defendants' investigations of disputed transactions are
15 inadequate, unreasonable, or unfair;

16 g) Whether Defendants' Terms of Use contain unconscionable, illegal, void,
17 or unenforceable provisions pertaining to choice of law, waiver of jury trial rights, and waiver of
18 rights under Rule 23;

19 h) Whether Defendants have a pattern or practice of charging Way2Go card
20 holders fees for using their IVR telephone system without allowing the consumer at least three
21 no charge calls to the IVR line within a single month.

22 i) Whether Defendants practice of charging consumers a \$0.50 fee to using
23 Defendants' IVR telephone system is unfair.

24 j) Whether Defendants business practices were unlawful or unfair under
25 California's Unfair Competition Law; and

26 k) The remedies available to Plaintiff and the Class.

27 51. Ms. Sparkman's claims are **typical** of the proposed Class members claims under
28 Rule 23(a)(3). Ms. Sparkman disputed unauthorized charges and Defendants denied her claim for

1 reimbursement of the disputed charges on the grounds that Defendants received conflicting in
2 information during their investigation and could not confirm that fraud occurred.

3 52. Ms. Sparkman is an **adequate** class representative under Rule 23(a)(3) because
4 she will fairly and adequately the interests of the Class members. She has no interests that
5 conflict with interests of other Class members. She has retained counsel who are experienced
6 trial lawyers, have prosecuted many consumer class actions, and have the resources to vigorously
7 prosecute the action.

8 53. The common questions outlined above **predominate** over any individual issues
9 under Rule 23(b)(3).

10 54. A class action is **superior** to individual actions under Rule 23(b)(3) because the
11 damages suffered by each Class member are likely to be relatively small and absent class
12 litigation, many members of the proposed Class would likely receive no relief at all.

13 55. The Class's claims for injunctive relief can be certified under Federal Rule of
14 Civil Procedure 23(b)(2) because Defendants act on grounds generally applicable to the Class
15 such that declaratory and injunctive relief with respect to the Class as a whole is appropriate.

16 **FIRST CAUSE OF ACTION**
17 **(Violations of Electronic Funds Transfer Act, 15 U.S.C. § 1693g(a), (b), and 1693f)**
18 **(On behalf of the EFTA Sub-Class)**

19 56. Ms. Sparkman incorporates by reference all preceding allegations.

20 57. Defendants' California Way2Go Cards are access devices within the meaning of
21 the EFTA and Regulation E. 12 C.F.R. § 205.2(a).

22 58. The EFTA and Regulation E place sharp limitations on consumer liability for
23 unauthorized transactions. *See* 15 U.S.C. § 1693g ("Consumer liability"); 12 C.F.R. § 1005.6
24 ("Liability of consumer for unauthorized transfers").

25 59. The EFTA requires that financial institutions limit consumer liability for
26 unauthorized electronic funds transfers to \$50 if the consumer notifies the bank within two
27 business days after learning of the loss or theft of an access device such as a prepaid debit card.
28 12 C.F.R. § 205.6(b)(1).

60. The EFTA places the burden of proof on the financial institution to demonstrate that challenged transfers were authorized or, if they were unauthorized, that the consumer can be held liable for them. 15 U.S.C. § 1693g(b).

61. Specifically, under Section 1693g(b), Defendants' must show that the disputed transfer was authorized:

BURDEN OF PROOF.--In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) have been met, and, if the transfer was initiated after the effective date of section 905, that the disclosures required to be made to the consumer under section 905(a)(1) and (2) were in fact made in accordance with such section.

62. As a Federal Reserve Board Examiner has explained, "When the alleged error is an unauthorized EFT, the EFTA places the burden of proof on the financial institution to establish the transaction was authorized. Therefore, if the institution cannot establish the disputed EFT transaction was authorized, the institution must credit the consumer's account."¹

63. Defendants explicitly reverse that burden, regularly denying claims on grounds that they "cannot confirm that fraud occurred" or found "conflicting information."

64. Defendants acts and omissions set forth above violate the EFTA.

65. As a direct and proximate result of Defendants' violations of the EFTA, Ms. Sparkman and members of the EFTA Sub-Class are entitled to an award of statutory and actual damages as well as attorney's fees and costs.

¹ Scott Sonbuchner, *Error Resolution and Liability Limitations Under Regulations E and Z: Regulatory Requirements, Common Violations, and Sound Practices*, Consumer Compliance Outlook (2021), available at <https://www.consumercomplianceoutlook.org/2021/second-issue/error-resolution-and-liability-limitations-under-regulations-e-and-z/>. See also, *Exarhos v. JPMorgan Chase Bank, N.A.*, 2021 U.S. Dist. LEXIS 135292, at *5-6 (N.D. Ill. July 20, 2021); *Acafrao v. United States Century Bank*, 2010 U.S. Dist. LEXIS 162849, at *22 (S.D. Fla. Aug. 9, 2010); *Brown v. Bank of Am., N.A.*, 2022 U.S. Dist. LEXIS 108749, at *4 (D. Md. June 17, 2022).

1 66. Defendants' inadequate investigations and imposition of the burden of proof on
2 the consumer contrary to the statute is a violation of 1693f(e), entitling Ms. Sparkman and all
3 EFTA Sub-Class members to treble damages.

4 **SECOND CAUSE OF ACTION**
5 **(Violations of Electronic Funds Transfer Act, 15 U.S.C. § 1693f)**
6 **(On behalf of the EFTA Sub-Class)**

7 67. Ms. Sparkman incorporates by reference all preceding allegations.

8 68. The EFTA prohibits financial institutions from using accountholder agreements
9 that waive any rights conferred by the statute. 15 U.S.C. § 1693f.

10 69. Defendants' Terms of Use purport to allow Defendants to deny claims for
11 unauthorized transactions when Defendants "conclude that the facts do not reasonably support a
12 claim of unauthorized use." Defendants assert that the Terms of Use provide them "with 'great
13 flexibility' in concluding when transactions are unauthorized" and contend that that the conduct
14 alleged herein, such as failing to show their reasons for concluding a transactions was not
15 unauthorized, is permitted by the Terms of Use.

16 70. As described more fully above, the EFTA requires financial institutions "to show
17 that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized,
18 then the burden of proof is upon the financial institution to establish that the conditions of liability set
19 forth in subsection (a) have been met . . ."

20 71. Defendants' Terms of Use, as interpreted by Defendants, require consumers to
21 waive these rights conferred by the EFTA and therefore violate the EFTA.

22 72. As a direct and proximate result of Defendants' violations of the EFTA, Ms.
23 Sparkman and members of the EFTA Sub-Class are entitled to an award of statutory and actual
24 damages as well as attorney's fees and costs.
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THIRD CAUSE OF ACTION
(Breach of Contract)
(On behalf of the Class)

73. Ms. Sparkman incorporates by reference all preceding allegations.

74. Defendants promised that, under “Mastercard’s Zero Liability Protection,” Ms. Sparkman and members of the Class would “not lose any funds if your Card is lost or stolen.”

75. This is an enforceable contract between Defendants and California Way2GO cardholders.

76. Defendants breached their promises by failing to reimburse California Way2Go card holders for unauthorized transactions and denying valid claims on the basis of unidentified “conflicting” information.

77. Ms. Sparkman and the Class were harmed in the amount of the sums not credited back to their accounts as Defendants promised.

78. As a direct and proximate result of Defendant’s breach Ms. Sparkman and members of the Class are entitled to an award of nominal and actual damages.

FOURTH CAUSE OF ACTION
(Breach of Contract)
(On behalf of the IVR Surcharge Sub-Class)

79. Ms. Sparkman incorporates by reference all preceding allegations

80. Under Defendants’ Terms of Use, Ms. Sparkman and the IVR Surcharge Sub-Class are entitled to call Defendant’s IVR customer service line three times in a month without incurring a fee.

81. Defendant breached the agreement by charging Ms. Sparkman and the IVR Surcharge Class \$0.50 surcharges for such phone calls before the customer had exhausted the three-call allowance for a single month.

82. Ms. Sparkman and the IVR Surcharge Class were harmed by incurring and paying IVR surcharges that should not have been charged under the Terms of Use.

83. As a direct and proximate result of Defendant’s breach Ms. Sparkman and members of the Class are entitled to an award of nominal and actual damages.

FIFTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)
(On behalf of the Class)

84. Ms. Sparkman incorporates by reference all preceding allegations.

85. Defendants' Terms of Use is a form contract of adhesion drafted by Defendants and presented to Ms. Sparkman and the Class with no opportunity for negotiation.

86. Defendants Terms of Use provide that if the account holder notifies Defendants within two business days after learning that a card was lost or stolen, a PIN was compromised, or unauthorized transactions were made, then "you can lose no more than \$50 if someone used your Card or PIN without your permission."

87. Defendants further promised in the Terms of Use that if the account holder notifies Defendants more than two days after learning of the loss, theft, or unauthorized use of the account holder's Way2Go Card, and Defendants can show that they could have stopped the unauthorized transactions if they had been informed sooner, then the account holder "could lose as much as \$500," but not more.

88. The Terms of Use promise that the account holder "will not be responsible for unauthorized use of your Card." Defendants further defined an "unauthorized use" of the card as "a withdrawal or transaction that you or someone you authorized did not transact."

89. The Terms of Use provide that Defendants will respond to requests for correction of errors within 10 days and "will correct any error promptly." Defendants promised that if they take longer than 10 days to investigate an error on a card holder's account, they will credit the card holder's account while investigating the error.

90. Defendants further promised in the Terms of Use that they would deny reimbursement of transactions a consumer asserts are unauthorized amounts only if the consumer gave their card or PIN to someone else to use or Defendants "conclude that the facts do not reasonably support a claim of unauthorized use."

91. Together, these promises provide Plaintiff and the Class with the right to a comprehensive investigation of any reported errors or unauthorized charges.

92. The implied promise of good faith and fair dealing in the Terms of Use required Defendant to conduct such investigations in good faith and to come to reasonable conclusions in good faith.

93. Defendant breached the implied promise of good faith and fair dealing in the Terms of Use by failing to conduct investigations of any reported errors or unauthorized charges in good faith, putting the onus on consumers to establish that fraud occurred, and denying valid claims on the basis of unidentified “conflicting” information. Defendants’ conduct denied Plaintiff and the Class of benefits they were entitled to under the Terms of Use.

94. Defendants lack of good faith is evidenced by the facts alleged herein. No person conducting a comprehensive investigation of the facts, could conclude in good faith that the facts did not reasonably support Ms. Sparkman’s claim of unauthorized use.

95. As a result of Defendants’ breaches of the implied covenant, Defendants wrongly failed to reimburse California Way2Go card holders for unauthorized transactions.

96. Ms. Sparkman and the Class were harmed in the amount of the sums not credited back to their accounts as Defendants promised and wasted time spent reporting claims for errors and unauthorized transactions that were not handled by Defendants in good faith.

97. As a direct and proximate result of Defendant’s breach Ms. Sparkman and members of the Class are entitled to an award of nominal and actual damages.

SIXTH CAUSE OF ACTION
(Unlawful Business Practices in Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*)
(On behalf of the Class)

98. Ms. Sparkman incorporates by reference all preceding allegations.

99. California’s Unfair Competition Law (UCL) prohibits any “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200 *et seq.*

100. Defendants’ business practices fail to comply with the requirements of the EFTA and Regulation E and are therefore unlawful under the UCL.

1 101. The EFTA places sharp limitations on consumer liability for unauthorized
2 transactions. *See* 15 U.S.C. § 1693g (“Consumer liability”); 12 C.F.R. § 1005.6 (“Liability of
3 consumer for unauthorized transfers”).

4 102. The EFTA requires that financial institutions limit consumer liability for
5 unauthorized electronic funds transfers to \$50 if the consumer notifies the bank within two
6 business days after learning of the loss or theft of an access device such as a prepaid debit card.
7 12 C.F.R. § 205.6(b)(1). As a result, Ms. Sparkman had a vested interest in money in
8 Defendants’ possession that the law requires Defendants use to reimburse her account for all
9 amounts above \$50 stolen from her account.

10 103. The EFTA places the burden of proof on the financial institution to demonstrate
11 that challenged transfers were authorized or, if they were unauthorized, that the consumer can be
12 held liable for them. 15 U.S.C. § 1693g(b).

13 104. Defendants failed to comply with the requirements of the EFTA and Regulation
14 E.

15 105. Under the UCL, Ms. Sparkman and the Class may enjoin these acts and practices
16 and obtain restitution of all funds retained by Defendants by reason of or through the use of these
17 unlawful acts or practices. The funds improperly retained by Defendants are the amounts above
18 \$50 or \$500 Defendants would have used to reimburse Ms. Sparkman and the Class for
19 unauthorized transfers if Defendants had complied with the EFTA and their contractual
20 obligations. Ms. Sparkman and the Class have a legally protected and vested interest in these
21 amounts.

22 106. Ms. Sparkman individually and on behalf of all members of the general public
23 who are, have been, or may be subjected to Defendants’ unlawful business acts and practices are
24 entitled to declaratory and preliminary and permanent injunctive relief prohibiting such practices
25 in the future, and other orders as may be necessary to restore to any person in interest, any
26 money or property, Defendants retained by means of such unlawful business practices. Because
27 consumers who receive payments through California’s Child Support Services and other
28

California programs cannot choose a different prepaid debit card program, they are likely to be injured by Defendants' conduct in the future.

107. In addition, Ms. Sparkman and the Class may recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action under California Code of Civil Procedure § 1021.5.

**SEVENTH CAUSE OF ACTION
(Unfair Business Practices in Violation of California Unfair Competition Law,
Cal. Bus. & Prof. Code § 17200)
(On behalf of the Class)**

108. Ms. Sparkman incorporates by reference all preceding allegations.

109. Defendants' acts or practices, including failure to properly investigate cardholder's disputes, placement of the onus on cardholder to prove that transactions are fraudulent, and failure to promptly credit cardholder's accounts for fraudulent transactions despite both legal obligations and promises to do so, are unfair.

110. The EFTA requires that financial institutions limit consumer liability for unauthorized electronic funds transfers to \$50 if the consumer notifies the bank within two business days after learning of the loss or theft of an access device such as a prepaid debit card. 12 C.F.R. § 205.6(b)(1). Ms. Sparkman had a vested interest in money in Defendants' possession that the law and Defendants' Terms of Use require Defendants use to reimburse her account for all amounts above \$50 stolen from her account and seeks restitution of those amounts. Under the UCL, Ms. Sparkman and the Class may enjoin these acts and practices and obtain restitution of all funds retained by Defendants by reason of and through the use of these unlawful acts and practices. The funds improperly retained by Defendants are the amounts above \$50 or \$500 Defendants would have used to reimburse Ms. Sparkman and the Class for unauthorized transfers if Defendants had complied with the EFTA and their contractual obligations. Ms. Sparkman and the Class have a legally protected and vested interest in these amounts and seek restitution of them.

111. Ms. Sparkman individually and on behalf of all members of the general public who are, have been, or may be subjected to Defendants' unfair business acts and practices are

entitled to declaratory and injunctive relief prohibiting such practices in the future, and other orders as may be necessary to restore to any person in interest, any money or property, Defendants retained by means of such unfair business practices. Because consumers who receive payments through California's Child Support Services and other California programs cannot choose a different prepaid debit card program, they are likely to be injured by Defendants' conduct in the future.

112. Ms. Sparkman and the Class may recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action under California Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
(Unfair Business Practices in Violation of California Unfair Competition Law,
Cal. Bus. & Prof. Code § 17200)
(On behalf of the IVR Surcharge Class and Sub-Class)

113. Ms. Sparkman incorporates by reference all preceding allegations.

114. Defendants' acts or practices, including charging California Way2Go card holders a \$0.50 for calling an automated voice "customer service" system, and charging the \$0.50 fees for using Defendants' IVR telephone system are unfair.

115. Defendants' acts or practices, including charging California Way2Go card holders a \$0.50 for calling an automated voice "customer service" system, and charging the \$0.50 fees for using Defendants' IVR telephone system without allowing them their promised three free calls within in a month are unfair.

116. Such charges are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and have caused harm to Ms. Sparkman and member of the IVR Surcharge Class.

117. The charges cannot be reasonably avoided. Way2Go holders must use the IVR customer service line to correct mistakes made on their accounts, often due to Defendants' conduct, and to ensure that their accounts accurately reflect transactions and payments. Defendant profited from imposing the unfair charges on Way2Go card holders without incurring any costs itself as the IVR line is automated.

1 118. Under the UCL, Ms. Sparkman and the IVR Surcharge Class and Sub-Class may
 2 enjoin these acts and practices and obtain restitution of all funds Defendants deducted from their
 3 CaliforniaWay2Go accounts by reason of and through the use of these unlawful acts and
 4 practices.

5 119. Ms. Sparkman individually and on behalf of all members of the general public
 6 who are, have been, or may be subjected to Defendants' unfair business acts and practices are
 7 entitled to declaratory and injunctive relief prohibiting such practices in the future, and other
 8 orders as may be necessary to restore to any person in interest, any money or property,
 9 Defendants retained by means of such unfair business practices. Because consumers who receive
 10 payments though California's Child Support Services and other California programs cannot
 11 choose a different prepaid debit card program, they are likely to be injured by Defendants'
 12 conduct in the future.

13 120. Ms. Sparkman and the IVR Surcharge Class and Sub-Class may recover
 14 reasonable attorneys' fees, costs, and expenses incurred in bringing this action under California
 15 Code of Civil Procedure § 1021.5.

16 **VI. PRAYER FOR RELIEF**

17 Ms. Sparkman seeks judgment in her favor and damages against Defendants, and:

18 A. An order certifying this case as a class action under Federal Rule of Civil
 19 Procedure 23 appointing Ms. Sparkman as Class Representative and her attorneys as Class
 20 Counsel;

21 B. An award of all damages to which Ms. Sparkman and the Class are entitled
 22 including actual damages, treble damages, statutory damages, nominal damages;

23 C. Restitution;

24 D. Prejudgment interest;

25 E. An award of attorneys' fees and costs; and

26 F. Injunctive relief precluding Defendants from continuing to engage in the acts or
 27 practices described throughout this complaint when handling disputes received from California
 28 Way2Go Card cardholders.

VII. DEMAND FOR JURY TRIAL

Ms. Sparkman demands a trial by jury on all claims so triable.

RESPECTFULLY SUBMITTED AND DATED this 18th day of August, 2023.

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