

1 Mitchell Turbenson (346024)
turbensonm@ballardspahr.com
2 BALLARD SPAHR LLP
2029 Century Park East, Suite 1400
3 Los Angeles, CA 90067-2909
Telephone: 424.204.4400

4 [Additional counsel listed on the signature
5 page]

6 *Attorneys for Defendants Conduent
Business Services, LLC and Comerica Bank*

7
8 THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

11 Plaintiff,

12 vs.

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

15 Defendants.

NO. 4:23-CV-02028

**DEFENDANTS CONDUENT BUSINESS
SERVICES, LLC'S AND COMERICA
BANK'S NOTICE OF MOTION AND
MOTION TO DISMISS PLAINTIFF'S
CLASS ACTION COMPLAINT
PURSUANT TO FEDERAL RULE
12(B)(6)**

Hearing Date: Thursday, July 27, 2023
Hearing Time: 1:00 P.M.

Hon. Donna M. Ryu
Courtroom 4
United States Courthouse
1301 Clay Street
Oakland, CA 94612

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on Thursday, July 20, 2023 at 1:00 P.M., or as soon thereafter as the matter may be heard, in Courtroom 4, Honorable Donna M. Ryu presiding, located at the United States Courthouse, 1301 Clay Street, Oakland, CA 94612, Defendants Comerica Bank and Conduent Business Services, LLC (collectively, “Defendants”) will and hereby do move this Honorable Court, to dismiss the Class Action Complaint, which asserts claims for (1) violation of Electronic Funds Transfer Act, 15 U.S.C. § 1693; (2) breach of contract; (3) unlawful business practices in violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200; and (4) unfair business practices in violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200.

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Janell Solis, supporting exhibits, the pleadings and papers on file herein, and any further material and argument presented to the Court at the time of the hearing.

Statement of Issues to Be Decided

Pursuant to Civil Local Rule 7-4(a)(3), Defendants set forth the following statement of issues to be decided.

1. Whether Plaintiff’s Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) as to all counts for failure to state a claim upon which relief may be granted?

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

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DATED this 12th day of June, 2023.

BALLARD SPAHR LLP

By: /s/ Mitchell Turbenson

Mitchell Turbenson
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909

John C. Grugan (*pro hac vice* to be filed)
Jenny N. Perkins (*pro hac vice* to be filed)
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
*Attorneys for Defendants Conduent
Business Services, LLC and Comerica Bank*

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

Ballard Spahr LLP
 2029 Century Park East, Suite 1400
 Los Angeles, CA 90067-2909
 Telephone: 424.204.4400

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<i>Baba v. Hewlett-Packard Co.</i> , No. C 09-05946 RS, 2010 U.S. Dist. LEXIS 59747 (N.D. Cal. June 16, 2010)	14
<i>In re Bank of Am. Cal. Unemployment Benefits Litig.</i> , No. 21-md-2992-LAB-MSB, 2023 U.S. Dist. LEXIS 92232 (S.D. Cal. May 25, 2023).....	7, 8, 9, 13
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<i>Cel-Tech Comms. Inc. v. L.A. Cellular Tel. Co.</i> , 20 Cal.4th 163 (1999)	14
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<i>Chen v. Bank of Am., N.A.</i> , No. CV 19-6941-MWF-SK, 2019 U.S. Dist. LEXIS 232745 (C.D. Cal. Oct. 29, 2019).....	10
<i>Chore-Time Equip., Inc. v. Cumberland Corp.</i> , 713 F.2d 774 (Fed. Cir. 1983).....	9
<i>Chuidian v. Philippine Nat’l Bank</i> , 976 F.2d 561 (9th Cir. 1992).....	5
<i>In re CMR Mortg. Fund, LLC</i> , 416 B.R. 720 (N.D. Cal. Bankr. 2009).....	6
<i>Cohen v. Capital One, N.A.</i> , No. CV 14-6319 PSG (Ex), 2015 U.S. Dist. LEXIS 188249 (C.D. Cal. June 1, 2015)	13
<i>Cont’l Airlines, Inc. v. Mundo Travel Corp.</i> , 412 F. Supp. 2d 1059 (E.D. Cal. 2006).....	11
<i>Daniels-Hall v. Nat’l Educ. Ass’n</i> , 629 F.3d 992 (9th Cir. 2010).....	3
<i>Davis v. HSBC Bank Nev., N.A.</i> , 691 F.3d 1152 (9th Cir. 2012).....	11, 15

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 2029 Century Park East, Suite 1400
 Los Angeles, CA 90067-2909
 Telephone: 424.204.4400

Ballard Spahr LLP
 2029 Century Park East, Suite 1400
 Los Angeles, CA 90067-2909
 Telephone: 424.204.4400

1 *DeWitt v. Cal. Citizens Redistricting Comm’n*,
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 2 31, 2016), *aff’d* 705 F. App’x 594 (9th Cir. 2017) 10

3 *Diab v. Textron, Inc.*,
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 4

5 *Epstein v. Wash. Energy Co.*,
 83 F.3d 1136 (9th Cir. 1996)..... 4

6 *Ghalchi v. U.S. Bank, N.A.*,
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 7 2015) 10

8 *Gibson v. Jaguar Land Rover N. Am., LLC*,
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 9 9, 2020) 13

10 *Hardin v. Bank of Am., N.A.*,
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 11 18, 2022) 10

12 *Herskowitz v. Apple, Inc.*,
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 13

14 *Huynh v. Quora, Inc.*,
 508 F. Supp. 3d 663 (N.D. Cal. 2020) 12

15 *Hyp3r Inc. v. Mogimo Inc.*,
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 16 8, 2017) 12

17 *Kanji v. Bank of Am., N.A.*,
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 18 Aug. 25, 2020)..... 14

19 *Klaehn v. Cali Bamboo, LLC*,
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 20 July 13, 2020)..... 15

21 *Korea Supply Co. v. Lockheed Martin Corp.*,
 29 Cal. 4th 1134 (2003) 13, 14
 22

23 *Lagrone v. Advanced Call Ctr. Techs., LLC*,
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 24 2014) 5

25 *Lien Huynh v. Chase Manhattan Bank*,
 465 F.3d 992 (9th Cir. 2006)..... 5, 12

26 *Major v. Wells Fargo Bank, N.A.*,
 No. 14-CV-998-LAB-RBB, 2014 U.S. Dist. LEXIS 114977 (S.D. Cal.
 27 Aug. 18, 2014)..... 14

28

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 2029 Century Park East, Suite 1400
 Los Angeles, CA 90067-2909
 Telephone: 424.204.4400

1 *McDonald v. Farm Bureau Ins. Co.*,
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2

3 *Medimatch, Inc. v. Lucent Techs., Inc.*,
 120 F. Supp. 2d 842 (N.D. Cal. 2000) 11

4 *Sharma v. Volkswagen AG*,
 524 F. Supp. 3d 891 (N.D. Cal. 2021) 13

5

6 *Sonner v. Premier Nutrition Corp.*,
 971 F.3d 834 (9th Cir. 2020)..... 12

7 *Steinle v. City & County of San Francisco*,
 919 F.3d 1154 (9th Cir. 2019)..... 2

8

9 *WholeRx Inc. v. Cardinal Health, Inc.*,
 No. 2:22-cv-04498-AB-KS, 2023 U.S. Dist. LEXIS 22602 (C.D. Cal.
 Feb. 8, 2023) 11

10

11 *Young v. Int’l Union, UAW, Local 651*,
 148 F. Supp. 3d 602 (E.D. Mich. 2015)..... 6

12 **Statutes**

13 15 U.S.C. § 1693f 3, 9

14 15 U.S.C. § 1693f(a)..... 8, 10

15 15 U.S.C. § 1693g..... 9

16 28 U.S.C. § 1331..... 5

17 California Unfair Competition Law *passim*

18 **Other Authorities**

19 12 C.F.R. § 1005.6..... 9

20 12 C.F.R. § 1005.11 *passim*

21 Comerica, Ariz. Dep’t of Econ. Sec., [https://des.az.gov/sites/default/files/
 media/Way2Go-Card-Fee-Schedule.pdf](https://des.az.gov/sites/default/files/media/Way2Go-Card-Fee-Schedule.pdf) (accessed June 5, 2023)..... 3

22

23 Electronic Payment FAQs, Michigan Department of Health & Human
 Servs., [https://www.michigan.gov/mdhhs/adult-child-serv/child-
 sup/how-do-i-make-a-payment/electronic-payment-faqs](https://www.michigan.gov/mdhhs/adult-child-serv/child-sup/how-do-i-make-a-payment/electronic-payment-faqs) (accessed June
 24 5, 2023) 3

25 Frequently Asked Questions Regarding the Debit Card, Tennessee
 Department of Labor & Workforce Development,
 26 [https://www.tn.gov/content/dam/tn/human-services/documents/
 Frequently_Asked_Questions_Regarding_the_Debit_Card.pdf](https://www.tn.gov/content/dam/tn/human-services/documents/Frequently_Asked_Questions_Regarding_the_Debit_Card.pdf)
 27 (accessed June 5, 2023)..... 3

28 Restatement (Second) of Conflict of Laws Section 187 5, 6, 12

1 Unemployment Insurance Way2Go Card™ Frequently Asked Questions,
2 North Dakota Job Service, [https://www.jobsnd.com/sites/www/files/
3 documents/jsnd-documents/uiway2gocardfaqjsnd4058.pdf](https://www.jobsnd.com/sites/www/files/documents/jsnd-documents/uiway2gocardfaqjsnd4058.pdf) (accessed
4 June 5, 2023) 3
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Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiff Paula Sparkman (“Plaintiff”) brings this putative class action against
4 Defendants Comerica Bank (“Comerica”) and Conduent Business Services, LLC
5 (“Conduent” and, collectively, “Defendants”) in connection with Defendants’ California
6 Way2Go prepaid debit card program, through which Defendants contracted with the State
7 of California to distribute child support payments to Californians, including Plaintiff.
8 Plaintiff filed her putative class action based on her disagreement with the result of
9 Defendants’ two-week investigation into whether approximately \$1,000 in transactions
10 were unauthorized. But Plaintiff has not—and cannot—allege that Defendants veered
11 away from their contractual and statutory obligations. The governing agreement between
12 Plaintiff and Defendants (the “Terms of Use”), as well as statutes like the Electronic Fund
13 Transfer Act (“EFTA”), recognize that Defendants are permitted to perform investigations
14 before reimbursing cardholders for transactions that cardholders self-report as
15 unauthorized and, once performed, may act consistent with their determinations. Indeed,
16 the Terms of Use recognizes that Defendants may deny reimbursement if “we conclude
17 that the facts do not reasonably support a claim of unauthorized use.” (Decl. of Janell Solis,
18 Ex. A § 10). At best, Plaintiff alleges in conclusory fashion that Defendants inadequately
19 investigated her report of allegedly unauthorized transactions based solely on her
20 disagreement with the results of the investigation. Such conclusory allegations are
21 insufficient to state a claim under the causes of action pled by Plaintiff.

22 The Court should dismiss Plaintiff’s breach of contract, EFTA, and California
23 Unfair Competition Law (“UCL”) claims. First, Plaintiff does not allege any facts that
24 could plausibly support a finding that Defendants violated their contractual or statutory
25 obligations. Plaintiff contractually agreed that Defendants were permitted to deny
26 reimbursement when Defendants conclude that the facts do not reasonably support a claim
27 of unauthorized use. As other courts have recognized, that conclusion cannot be the basis
28

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

1 for a cause of action without specific allegations about the insufficiency of the investigation
2 that led to that conclusion.

3 Next, the Court should dismiss Plaintiff’s UCL claims for a host of reasons. The
4 Terms of Use contains a binding Michigan choice of law provision and, thus, Plaintiff
5 cannot assert UCL claims arising from what Plaintiff alleges is a breach of the Terms of
6 Use. Separately, the UCL permits only equitable relief, but Plaintiff’s own allegations
7 underscore that equitable relief is inappropriate because Plaintiff has adequate legal
8 remedies. Finally, Plaintiff has not identified any conduct attributable to Defendants that
9 is either unlawful or unfair.

10 In short, each of Plaintiff’s claims fail for lack of legal and factual support, as
11 Plaintiff seeks to impose legal duties on Defendants that go far beyond any law or contract,
12 and she has not provided the factual bases for any of her asserted claims. The Court should
13 dismiss the Complaint with prejudice.

14 **BACKGROUND**

15 **I. The Way2Go Card Program and the Terms of Use**

16 California Child Support Services (“CCSS”) and Defendants contract to disburse
17 child support payments through prepaid debit Way2Go cards. (Complaint ¶¶ 12, 13). In
18 turn, Defendants issue the Way2Go cards to Californians that are governed by the Terms
19 of Use.¹ (See Complaint ¶¶ 15–18).

20 The Terms of Use do not guarantee reimbursement every time a Way2Go
21 cardholder reports an unauthorized transaction. Instead, consistent with the requirements
22 of the EFTA, the Terms of Use obligate Defendants to investigate claims of fraud or
23 unauthorized transactions. (Decl. of Solis, Ex. A § 10). Claims of unauthorized
24 transactions may be denied if Defendants “conclude that the facts do not reasonably support

25 _____
26 ¹ The Complaint references the Terms of Use (see Complaint ¶¶ 15–17),
27 which is Exhibit A to the Declaration of Janell Solis in Support of Defendants’
28 Motion to Dismiss the Complaint. See *Steinle v. City & County of San Francisco*,
919 F.3d 1154, 1162–63 (9th Cir. 2019) (when considering a motion to dismiss, a
court may “consider a document if the plaintiff refers extensively to the document
or the document forms the basis of the plaintiff’s claim”).

1 a claim of unauthorized use.” (Decl. of Solis, Ex. A § 10). Where Defendants approve a
 2 cardholder’s claim (i.e., conclude a cardholder’s claims of unauthorized use are reasonably
 3 supported by the facts), the Terms of Use provides that a cardholder can lose no more than
 4 \$50 arising from unauthorized transactions if the cardholder notifies Defendants within
 5 two business days of learning of the theft or loss of the Way2Go card. (Decl. of Solis, Ex.
 6 A § 10). If a cardholder does not notify Defendants within two business days of learning
 7 of the theft or loss of the Way2Go card, the cardholder could be responsible for up to \$500
 8 caused by unauthorized transactions. (Decl. of Solis, Ex. A § 10).

9 The obligations delineated in the Terms of Use largely mirror Defendants’
 10 obligations under EFTA and Regulation E (“Reg E”), which implements EFTA. *See* 15
 11 U.S.C. § 1693f; 12 C.F.R. § 1005.11, *et seq.*

12 While the Way2Go Program is offered in California, it is also offered to residents
 13 of many other states.² Michigan law governs the Terms of Use. (Decl. of Solis, Ex. A
 14 § 20).

15 **II. Plaintiff’s Allegations**

16 Plaintiff alleges that she has been a Way2Go cardholder since 2020 and is subject
 17 to the Terms of Use. (Complaint ¶¶ 13–17). Plaintiff alleges that her Way2Go card was
 18 stolen from her car on either November 29, 2022 or November 30, 2022. (Complaint ¶ 18).
 19 After Plaintiff notified Defendants on December 1, 2022 that her card was stolen,
 20

21 ² *See, e.g.*, Arizona Department of Economic Security Way2Go Card® issued
 22 by Comerica, Ariz. Dep’t of Econ. Sec., [https://des.az.gov/sites/default/files/
 23 media/Way2Go-Card-Fee-Schedule.pdf](https://des.az.gov/sites/default/files/media/Way2Go-Card-Fee-Schedule.pdf) (accessed June 5, 2023); Electronic
 24 Payment FAQs, Michigan Department of Health & Human Servs.,
 25 [https://www.michigan.gov/mdhhs/adult-child-serv/child-sup/how-do-i/make-a-
 26 payment/electronic-payment-faqs](https://www.michigan.gov/mdhhs/adult-child-serv/child-sup/how-do-i/make-a-payment/electronic-payment-faqs) (accessed June 5, 2023); Unemployment
 27 Insurance Way2Go Card™ Frequently Asked Questions, North Dakota Job Service,
 28 [https://www.jobsnd.com/sites/www/files/documents/jsnd-documents/uiway2go
 cardfaqsnd4058.pdf](https://www.jobsnd.com/sites/www/files/documents/jsnd-documents/uiway2go-cardfaqsnd4058.pdf) (accessed June 5, 2023); Frequently Asked Questions
 Regarding the Debit Card, Tennessee Department of Labor & Workforce
 Development, [https://www.tn.gov/content/dam/tn/human-services/documents/
 Frequently_Asked_Questions_Regarding_the_Debit_Card.pdf](https://www.tn.gov/content/dam/tn/human-services/documents/Frequently_Asked_Questions_Regarding_the_Debit_Card.pdf) (accessed June 5,
 2023). The Court can take judicial notice of government websites. *See, e.g.*,
Daniels-Hall v. Nat’l Educ. Ass’n, 629 F.3d 992, 999 (9th Cir. 2010) (judicially
 noticing information on the websites of two school districts because they were
 government entities).

1 Defendants immediately closed her card and issued her a replacement card. (Complaint
 2 ¶¶ 19, 20). Also on December 1, 2022, Plaintiff raised concerns about unauthorized
 3 charges on her card. (Complaint ¶ 19). That same day, Defendants sent Plaintiff a letter
 4 acknowledging her dispute, and Plaintiff alleges that “Defendants’ other records confirm
 5 that Defendants opened her dispute claim on December 1, 2022, the day after [Plaintiff]
 6 discovered the card was stolen.” (Complaint ¶ 29).

7 Over the next few weeks, Plaintiff and Defendants corresponded regarding the
 8 charges Plaintiff believed were unauthorized. (Complaint ¶¶ 22, 23). Plaintiff does not
 9 allege whether she informed Defendants of the basis for her claim that the charges were
 10 unauthorized beyond providing “a handwritten list of 21 disputed charges” to Defendants.
 11 (Complaint ¶ 23). On December 14, 2022, Defendants sent Plaintiff a letter detailing
 12 Defendants’ conclusion that the facts did not support Plaintiff’s claim that the charges were
 13 unauthorized. (Complaint ¶ 30 (noting “we found a conflict in the information provided
 14 by you and the information resulting from our research”)). Based on this denial of
 15 Plaintiff’s claims, she asserts four claims with neither factual nor legal support to survive
 16 a motion to dismiss.

ARGUMENT

17
 18 To survive a Rule 12(b)(6) motion, a complaint must allege “enough facts to state a
 19 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
 20 (2007). A plaintiff’s pleading obligation “requires more than labels and conclusions, and
 21 a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555. “Nor
 22 does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual
 23 enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S.
 24 at 557). “[C]onclusory allegations of law and unwarranted inferences are insufficient to
 25 defeat a motion to dismiss for failure to state a claim.” *Epstein v. Wash. Energy Co.*, 83
 26 F.3d 1136, 1150 (9th Cir. 1996).

27 Here, Plaintiff’s claims for breach of contract, violation of the EFTA, and
 28 violations of the UCL fail for lack of legal and factual support.

1 **I. Plaintiff's Breach of Contract Claim (Count Two) Must Be Dismissed.**

2 **A. Michigan Law Applies to Interpretations of the Terms of Use.**

3 Where the basis for a court's jurisdiction is federal question jurisdiction (28 U.S.C.
4 § 1331), "federal common law choice-of-law rules apply." *Lien Huynh v. Chase*
5 *Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006) (citing *Chuidian v. Philippine Nat'l*
6 *Bank*, 976 F.2d 561, 564 (9th Cir. 1992)). "Federal common law follows the approach
7 outlined in the Restatement (Second) of Conflict of Laws." *Id.* (citation omitted). Further,
8 where "the contract at issue selects the law of a particular jurisdiction to govern disputes,"
9 Restatement (Second) of Conflict of Laws Section 187 applies. *Lagrone v. Advanced Call*
10 *Ctr. Techs., LLC*, No. C13-2136JLR, 2014 U.S. Dist. LEXIS 141497, at *9 (W.D. Wash.
11 Oct. 2, 2014) (citing *Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1297 (9th Cir. 1997)).

12 Under Section 187, courts enforce contractual choice of law provisions "if the
13 particular issue is one which the parties could have resolved by an explicit provision in
14 their agreement directed to that issue." Restatement (Second) of Conflict of Laws § 187(1).
15 Examples of issues the parties could resolve through explicit provisions in their agreement
16 include "rules relating to construction, to conditions precedent and subsequent, to
17 sufficiency of performance and to excuse for nonperformance." *Id.* § 187 cmt. c ("[M]ost
18 rules of contract law are designed to fill gaps in a contract which the parties could
19 themselves have filled with express provisions.").

20 Only if the issue before the court is "one which the parties could not have resolved
21 by an explicit provision in their agreement" does the court need to consider whether the
22 parties or transaction bears a "substantial relationship" with the forum or transaction, or if
23 "application of the law of the chosen state would be contrary to a fundamental policy of a
24 state which has a materially greater interest than the chosen state in the determination of
25 the particular issue." *Id.* § 187(2). Examples of issues that the parties could not resolve
26 through contract are "those involving capacity, formalities and substantial validity." *Id.*
27 § 187 cmt. 4.

1 Here, the parties do not dispute that the Terms of Use constitutes a binding, valid
 2 contract and, thus, the Michigan choice of law provision applies without regard to any
 3 further Section 187(2) inquiry. (*See* Complaint ¶ 59 (The Terms of Use “is an enforceable
 4 contract between Defendants and California Way2GO cardholders.”)); *see also, e.g., In re*
 5 *CMR Mortg. Fund, LLC*, 416 B.R. 720, 729 (N.D. Cal. Bankr. 2009) (declining to engage
 6 in the Section 187(2) inquiry where “the making of a contract is not in dispute”). Thus,
 7 Michigan law governs the parties’ respective obligations pursuant to the Account
 8 Agreement and the parties’ performance of those obligations.

9 **B. Plaintiff Does Not Allege that Defendants Violated Any Provision of the**
 10 **Terms of Use.**

11 A plaintiff asserting a breach of contract claim “must identify and present the actual
 12 contract terms that were allegedly breached.” *Young v. Int’l Union, UAW, Local 651*, 148
 13 F. Supp. 3d 602, 617 (E.D. Mich. 2015) (dismissing breach of contract claim for a failure
 14 to identify contractual provision allegedly breached).

15 Here, as in *Young*, Plaintiff alleges Defendants breached the Terms of Use without
 16 identifying any specific provisions breached. Plaintiff claims that Defendants breached
 17 their obligations under the Terms of Use by: (1) not “reimburs[ing]” her “for unauthorized
 18 transactions”; and (2) not “properly investigat[ing] disputed transactions, putting the onus
 19 on consumers to establish that fraud occurred, and denying valid claims on the basis of
 20 ‘conflicting’ in information.” (Complaint ¶¶ 63–64).

21 As to the first theory, the Terms of Use expressly does not require that Defendants
 22 reimburse cardholders for all transactions that cardholders claim are unauthorized. To the
 23 contrary, the Terms of Use states that Defendants *are not obligated* to reimburse
 24 cardholders for transactions cardholders claim are unauthorized when Defendants
 25 “conclude that the facts do not reasonably support a claim of unauthorized use.” (Decl. of
 26 Solis, Ex. A § 10). Plaintiff alleges no facts to show that Defendants declined to reimburse
 27 Plaintiff without concluding the facts do not reasonably support a claim of unauthorized
 28

1 use. To the contrary, Defendants informed Plaintiff that the facts did not reflect
2 unauthorized use in denying reimbursement. (Complaint ¶ 30).

3 The U.S. District Court for the Southern District of California recently considered
4 a similar lawsuit and dismissed breach of contract claims alleging that Bank of America
5 was required to reimburse the cardholder plaintiffs under an identical “Zero Liability”
6 policy. *In re Bank of Am. Cal. Unemployment Benefits Litig.*, No. 21-md-2992-LAB-MSB,
7 2023 U.S. Dist. LEXIS 92232, at *78 (S.D. Cal. May 25, 2023). As here, the cardholder
8 plaintiffs in *Bank of Am.* claimed that they should be reimbursed for transactions the
9 cardholder plaintiffs reported to Bank of America because the governing agreement
10 provided that the cardholders “will incur no liability for unauthorized transactions reported
11 within a reasonable time.” *Id.* at *8–9 (quotation marks omitted). Because, like here, the
12 governing agreement stated that the “Zero Liability” policy did not apply when Bank of
13 America “conclude[s] that the facts and circumstances do not reasonably support a claim
14 of unauthorized use,” the *Bank of Am.* court dismissed all breach of contract claims where
15 Bank of America concluded that the facts did not support there was unauthorized use. *Id.*
16 at *77–79 (“Based on the plain language of the contract, Plaintiffs can’t allege [Bank of
17 America] breached its obligations under the Account Agreement simply by disagreeing
18 with the outcome.”).

19 The language in the Terms of Use mirrors the dispositive language in the *Bank of*
20 *Am.* case. Like the governing agreement in *Bank of Am.*, the Terms of Use provides
21 Defendants with “great flexibility” in concluding when transactions are unauthorized. *Id.*
22 at *78. And as in *Bank of Am.*, Plaintiff “can’t allege [Defendants] breached [their]
23 obligations under the [Terms of Use] simply by disagreeing with the outcome.” *Id.* As
24 such, dismissal of Plaintiff’s first breach of contract theory is appropriate.

25 Plaintiff’s second breach of contract theory is similarly deficient. First, there is no
26 contractual provision governing how Defendants were supposed to conduct their
27 investigation. As a result, the Terms of Use provides no standard to measure whether
28 Defendants conducted a “proper[] investigat[ion].” (Complaint ¶ 64); *see Diab v. Textron,*

1 *Inc.*, No. 07-11681, 2008 U.S. Dist. LEXIS 90964, at *9 (E.D. Mich. Nov. 6, 2008) (“This
 2 Court cannot read terms into the Contract which are not there.” (citing *McDonald v. Farm*
 3 *Bureau Ins. Co.*, 747 N.W.2d 811 (Mich. 2008))). Moreover, this breach theory is nothing
 4 more than Plaintiff disagreeing with the *result* of Defendants’ investigation and, as noted
 5 above, a mere disagreement with the result of Defendants’ investigation does not constitute
 6 a breach of contract. *See Bank of Am.*, 2023 U.S. Dist. LEXIS 92232, at *78.

7 Second and similarly, there is no Terms of Use provision stating that Defendants
 8 cannot rely on Plaintiff for information in conducting their investigation. Indeed,
 9 applicable law recognizes that cardholders must provide sufficient information regarding
 10 allegedly unauthorized transactions, including why the cardholder believes there is an error
 11 in their statement. *See* 12 C.F.R. § 1005.11(a)(1); 15 U.S.C. § 1693f(a). The Terms of
 12 Use do not place the “onus” exclusively on either Defendants or Plaintiff in determining
 13 whether a transaction is unauthorized. Thus, Plaintiff cannot plausibly allege that
 14 Defendants breached the Terms of Use by purportedly “putting the onus on consumers to
 15 establish that fraud occurred.” (Complaint ¶ 64).

16 Finally, Defendants’ citation to “conflicting” information in denying Plaintiff
 17 reimbursement is the explanation for why Defendants concluded that “the facts do not
 18 reasonably support a claim of unauthorized use.” (Decl. of Solis, Ex. A § 10). In other
 19 words, Plaintiff claims Defendants breached the Terms of Use by merely explaining the
 20 basis for the denial that Defendants were contractually permitted to make. Once again, this
 21 theory amounts to nothing more than Plaintiff’s disagreement with the outcome of
 22 Defendants’ investigation, which is insufficient to constitute a breach of contract. *See Bank*
 23 *of Am.*, 2023 U.S. Dist. LEXIS 92232, at *77–78. Because there is no provision of the
 24 Terms of Use that would support Plaintiff’s breach of contract theories, the Court should
 25 dismiss Plaintiff’s breach of contract claim with prejudice.

26 **II. Plaintiff Has Not Stated a Claim Under EFTA/Reg E (Count One)**

27 Plaintiff’s claim under EFTA and Reg E—which set forth the procedures that
 28 financial institutions must follow in investigating a consumer’s claims of unauthorized

1 transactions and limited consumer liability for unauthorized transactions to \$50 or less in
 2 most instances—fails because it cites *no facts* supporting that Defendants performed a
 3 legally deficient investigation beyond the result of the investigation (i.e., the denial of the
 4 reimbursement claim). *See* 15 U.S.C. §§ 1693f, 1693g; 12 C.F.R. §§ 1005.6, 1005.11.
 5 Plaintiff alleges that Defendants violated EFTA and Reg E by purportedly “revers[ing]
 6 th[e] burden [of proof]” to establish whether a transaction is fraudulent by denying claims
 7 when Defendants “cannot confirm that fraud occurred” or where there is “conflicting
 8 information.” (Complaint ¶ 54).

9 Plaintiff fails to allege facts to support her assertion that Defendants failed to
 10 conduct an investigation as required by EFTA and Reg E. Rather, Plaintiff makes the
 11 conclusory assumption that a proper investigation was not performed simply because the
 12 investigation resulted without reimbursement of the allegedly stolen funds. (Complaint
 13 ¶¶ 30, 32–33). Indeed, the only additional fact is Plaintiff’s inference that because the
 14 Code “FRD7-GO-v01” appeared on the December 14 correspondence from Defendants,
 15 and, therefore, Defendants must have used a form response. Assuming *arguendo* such
 16 letter is derived from some sort of form, neither EFTA nor Reg E prohibit the use of forms.
 17 *See Chore-Time Equip., Inc. v. Cumberland Corp.*, 713 F.2d 774, 781 (Fed. Cir. 1983)
 18 (declining to impose a requirement that “appears nowhere in the statute”). Plaintiff has not
 19 alleged any facts to show specifically how Defendants’ investigation into her claim actually
 20 fell below a controlling legal standard under EFTA and Reg E. Accordingly, Plaintiff’s
 21 EFTA and Reg E claims must be dismissed. *See, e.g., Chen v. Bank of Am., N.A.*, No. CV
 22 19-6941-MWF-SK, 2019 U.S. Dist. LEXIS 232745, at *23 (C.D. Cal. Oct. 29, 2019)
 23 (dismissing claim where the plaintiff alleged that “the Bank ‘failed to investigate in good
 24 faith the fraudulent transactions,’” but “d[id] not allege details establishing any bad faith
 25 on [the Bank]’s part”); *cf. DeWitt v. Cal. Citizens Redistricting Comm’n*, No. C 15-05261
 26 WHA, 2016 U.S. Dist. LEXIS 70806, at *7–8 (N.D. Cal. May 31, 2016), *aff’d* 705 F. App’x
 27 594 (9th Cir. 2017) (dismissing claim where plaintiff alleged “no more than conclusory
 28 allegations” about a failure to investigate).

1 Separately, Plaintiff’s EFTA and Reg E claim fails because Plaintiff fails to allege
 2 that she provided information about the basis she believed each transaction was
 3 unauthorized. *See* 12 C.F.R. § 1005.11(a)(1); 15 U.S.C. § 1693f(a). Only when a
 4 cardholder provides such information do Defendants have obligations under the EFTA and
 5 Reg E. *Id.* General allegations that Plaintiff “reported the fraud” are insufficient. *See*
 6 *Hardin v. Bank of Am., N.A.*, No. 2:22-cv-10023, 2022 U.S. Dist. LEXIS 148149, at *9
 7 (E.D. Mich. Aug. 18, 2022) (dismissing EFTA claim where the plaintiff “pointed to no
 8 specific allegation that suggested he had provided proper notice”); *Ghalchi v. U.S. Bank,*
 9 *N.A.*, No. CV 14-6619 PSG (CWx), 2015 U.S. Dist. LEXIS 201717, at *23–24 (C.D. Cal.
 10 Jan. 8, 2015) (dismissing EFTA claim where “description of [plaintiff’s] notice [] only
 11 indicates that she ‘notified’ Defendant of ‘unauthorized withdrawals’ from her Checking
 12 Account”).

13 For the foregoing reasons, Plaintiff’s EFTA claim fails as a matter of law and should
 14 be dismissed with prejudice.

15 **III. Plaintiff Has Not Stated a Claim for Violation of the California Unfair**
 16 **Competition Law (Counts Three and Four).**

17 California’s UCL prohibits “three varieties of unfair competition—acts or practices
 18 which are unlawful, or unfair, or fraudulent.” *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d
 19 1152, 1168 (9th Cir. 2012). Plaintiff asserts claims under the “unlawful” and “unfair”
 20 prongs, but neither theory is viable.

21 **A. Plaintiff Cannot Assert UCL Claims Related to the Performance of a**
 22 **Michigan Contract.**

23 “A valid choice-of-law provision selecting another state’s law is grounds to dismiss
 24 a claim under California’s UCL.” *Cont’l Airlines, Inc. v. Mundo Travel Corp.*, 412 F.
 25 Supp. 2d 1059, 1070 (E.D. Cal. 2006) (citing *Medimatch, Inc. v. Lucent Techs., Inc.*, 120
 26 F. Supp. 2d 842, 862 (N.D. Cal. 2000) (agreement that “construction, interpretation and
 27 performance of this Agreement shall be governed by the local laws of the State of New
 28 Jersey” required dismissal of California UCL claims)); *see also, e.g., WholeRx Inc. v.*

1 *Cardinal Health, Inc.*, No. 2:22-cv-04498-AB-KS, 2023 U.S. Dist. LEXIS 22602, at *15
 2 (C.D. Cal. Feb. 8, 2023) (dismissing UCL claims “in light of the [agreement’s] Ohio
 3 choice-of-law provision”); *Aliya Medcare Fin., LLC v. Nickell*, No. CV 14-07806 MMM
 4 (Ex), 2015 U.S. Dist. LEXIS 89411, at *65–66 (C.D. Cal. July 9, 2015) (dismissing UCL
 5 claim “related to” underlying agreements with a Nevada choice of law provision and
 6 collecting authority). Courts dismiss UCL claims based on choice of law provisions
 7 selecting a non-California forum regardless of which theory of the UCL the plaintiff has
 8 asserted. *See Aliya*, 2015 U.S. Dist. LEXIS 89411, at *64–66 (dismissing UCL claim based
 9 on the “unlawful, unfair, and fraudulent” prongs of the UCL due to a contractual choice of
 10 law provision).

11 Here, as noted *supra* in Section I.A, the Terms of Use contains a valid Michigan
 12 choice of law provision. Indeed, the choice of law provision applies because—as the courts
 13 in the preceding paragraph have recognized—the parties are capable of contracting around
 14 the UCL. *See* Restatement (Second) Conflict of Laws § 187(1).

15 Moreover, Plaintiff’s allegations under the UCL are identical to her allegations for
 16 breach of contract. (*Compare* Complaint ¶¶ 71, 72, 78 with ¶¶ 63, 64). Specifically,
 17 Plaintiff alleges that Defendants breached the Terms of Use and violated the UCL by not
 18 reimbursing her for transactions she flagged as unauthorized and performing an allegedly
 19 deficient investigation. (Complaint ¶¶ 63, 64, 71, 72, 78). Thus, the Court should dismiss
 20 Plaintiff’s UCL claims because the UCL does not apply to contracts with a choice of law
 21 provision selecting governing law from a non-California forum.

22 **B. The UCL Does Not Provide for the Relief Sought by Plaintiff.**

23 The Court should separately dismiss the UCL claims because the UCL is equitable
 24 in nature and provides for only two forms of relief: injunctive relief and restitution. *See*
 25 *Hyp3r Inc. v. Mogimo Inc.*, No. 17-cv-02977-JSW, 2017 U.S. Dist. LEXIS 228666, at *7
 26 (N.D. Cal. Nov. 8, 2017) (collecting authority). Plaintiff is entitled to neither.

27 “Where the claims pleaded by a plaintiff *may* entitle her to an adequate remedy at
 28 law, equitable relief is unavailable” under the UCL. *Huynh v. Quora, Inc.*, 508 F. Supp.

1 3d 663, 662 (N.D. Cal. 2020). Plaintiff’s UCL claims do not raise any new or different
 2 issues from her other causes of action for breach of contract and violation of the EFTA; the
 3 availability of monetary damages for those causes of action demonstrates that Plaintiff
 4 would have an adequate remedy at law, if she had facts to support her claims. (*See*
 5 Complaint ¶¶ 56, 66 (seeking an award of damages)). Plaintiff is therefore not entitled to
 6 seek additional or different relief under the UCL. *See Sonner v. Premier Nutrition Corp.*,
 7 971 F.3d 834, 844 (9th Cir. 2020) (affirming dismissal of UCL claims where the plaintiff
 8 did not allege she “lacks an adequate legal remedy” and sought damages in her complaint);
 9 *Huynh*, 508 F. Supp. 3d at 662 (granting summary judgment for defendant where plaintiff
 10 “fails to allege or demonstrate that any remedy at law is inadequate” and brought damages
 11 claim based on same alleged conduct); *Gibson v. Jaguar Land Rover N. Am., LLC*, No. CV
 12 20-00769-CJC (GJSx), 2020 U.S. Dist. LEXIS 168724, at *9 (C.D. Cal. Sept. 9, 2020)
 13 (plaintiffs’ failure to “allege[] facts that could support a finding that monetary relief is
 14 insufficient . . . [was] fatal to” UCL claim at the motion to dismiss stage). Indeed, the court
 15 in *Bank of Am.* recently dismissed a nearly identical UCL claim because the complaint
 16 failed to “demonstrate the inadequacy of a legal remedy” because the complaint sought
 17 both equitable *and* legal relief and, therefore, did not “allege inadequate legal remedies.”
 18 *Bank of Am.*, 2023 U.S. Dist. LEXIS 92232, at *51 (quoting *Sharma v. Volkswagen AG*,
 19 524 F. Supp. 3d 891, 907 (N.D. Cal. 2021)).

20 Even if Plaintiff could show that her UCL claims are based on different allegations
 21 (which she cannot do based on the allegations in her Complaint), she is still not entitled to
 22 any UCL relief. Plaintiff’s proposed injunction prohibiting unspecified practices and
 23 requiring unspecified measures (Complaint ¶ 75 (seeking an injunction to prohibit
 24 unspecified “practices in the future”)) does not state a claim for any relief under the UCL.
 25 *See, e.g., Cohen v. Capital One, N.A.*, No. CV 14-6319 PSG (Ex), 2015 U.S. Dist. LEXIS
 26 188249, at *33–34 (C.D. Cal. June 1, 2015) (dismissing UCL claim where the plaintiff
 27 failed to “specify . . . the conduct that must be enjoined”). Moreover, the request for
 28 injunctive relief “to restore to any person in interest, any money or property” is an

1 impermissible attempt to shoehorn a damages claim—a request for payment—into a
 2 request for injunctive relief. *See, e.g., Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.
 3 4th 1134, 1144 (2003) (“A UCL action is equitable in nature; damages cannot be
 4 recovered.”); *Herskowitz v. Apple, Inc.*, 301 F.R.D. 460, 482 (N.D. Cal. 2014) (“[A]
 5 plaintiff cannot transform a claim for damages into an equitable action by asking for an
 6 injunction that orders the payment of money.”).

7 Plaintiff’s claim for restitution also fails because the thing to be “restituted”—funds
 8 from Plaintiff’s prepaid debit card account—was allegedly taken by the third party
 9 criminals who performed the unauthorized transactions, and not by Defendants. (*See, e.g.*,
 10 Complaint ¶¶ 18–27). The UCL does not allow for the disgorgement of profit from a
 11 defendant where “the money sought to be disgorged was not taken from plaintiff.” *Korea*
 12 *Supply Co.*, 29 Cal. 4th at 1144–45; *see also Kanji v. Bank of Am., N.A.*, No. CV 20-3820-
 13 RSWL-SK, 2020 U.S. Dist. LEXIS 247779, at *20–21 (C.D. Cal. Aug. 25, 2020)
 14 (dismissing UCL claim where the plaintiff alleged that cybercriminals accessed her
 15 accounts and stole hundreds of thousands of dollars because the defendant bank did not
 16 acquire or possess the money plaintiff lost).

17 **C. Plaintiff Has Not Adequately Alleged a Violation of the UCL.**

18 Even if Plaintiff could somehow get past the fact that the UCL claims are barred by
 19 the Michigan choice of law provision and that the UCL authorizes none of the relief she
 20 seeks, Plaintiff fails to adequately allege any violation of the statute.

21 **1. Plaintiff Has Not Adequately Alleged “Unlawful” Acts.**

22 Plaintiff’s claim under the “unlawful” prong fails because she has not adequately
 23 alleged any violation of law. *Major v. Wells Fargo Bank, N.A.*, No. 14-CV-998-LAB-
 24 RBB, 2014 U.S. Dist. LEXIS 114977 (S.D. Cal. Aug. 18, 2014) (“[T]o be ‘unlawful’ under
 25 [the UCL], the conduct must violate another ‘borrowed’ law.” (quoting *Cel-Tech Comms.*
 26 *Inc. v. L.A. Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999))). Plaintiff alleges a violation of
 27 the EFTA/Reg E as the basis for her UCL claim, (Complaint ¶ 69), but Plaintiff has failed
 28 to adequately allege a primary violation of the EFTA/Reg E. *See supra* Section II; *see also*

1 *Baba v. Hewlett-Packard Co.*, No. C 09-05946 RS, 2010 U.S. Dist. LEXIS 59747, at *19
 2 (N.D. Cal. June 16, 2010) (“In California, a UCL claim of any kind must identify the
 3 particular section of the statute that was violated, and must describe with reasonable
 4 particularity the facts supporting the violation.” (citation and quotation marks omitted)).

5 **2. Plaintiff Has Not Adequately Alleged “Unfair” Acts.**

6 Plaintiff has likewise failed to adequately allege that Defendants engaged in “unfair”
 7 acts in violation of the UCL. Plaintiff identifies the following allegedly “unfair” practices:
 8 (1) the alleged improper investigation of cardholder’s disputes; (2) the alleged “placement
 9 of the onus on cardholder to prove that transactions are fraudulent”; and (3) the alleged
 10 “failure to promptly credit cardholder’s accounts for fraudulent transactions despite both
 11 legal obligations and promises to do so.” (Complaint ¶ 78). But this list provides little
 12 more than vague and standardless obligations that no contract or law requires.

13 As courts recognize, “[w]hat constitutes unfair conduct in consumer actions under
 14 the UCL is unclear.” *Klaehn v. Cali Bamboo, LLC*, No. 19cv1498-LAB (KSC), 2020 U.S.
 15 Dist. LEXIS 123288, at *21 (S.D. Cal. July 13, 2020). Some courts consider a practice to
 16 be “unfair” if it “offends an established public policy” or is “immoral, unethical,
 17 oppressive, unscrupulous or substantially injurious to customers.” *Davis*, 691 F.3d at 1169.
 18 Other courts look at whether a consumer injury is “substantial,” “not outweighed by any
 19 countervailing benefits to consumers or competition,” or “one that consumers themselves
 20 could not reasonably have avoided.” *Klaehn*, 2020 U.S. Dist. LEXIS 123288, at *21
 21 (internal quotation marks omitted). “Under another approach, California courts balance
 22 the impact of its alleged victim against the reasons, justifications, and motives of the
 23 alleged wrongdoer.” *Id.* (internal alterations and quotations omitted).

24 Plaintiff has not alleged facts to support a finding of any practice that rises to the
 25 level of “unfair” under the UCL. Rather, Plaintiff’s claim is premised on her dissatisfaction
 26 with Defendants’ ultimate decision against reimbursement—a decision Defendants were
 27 contractually and legally permitted to make. If it prevails, Plaintiff’s belief that her mere
 28 disagreement with the reimbursement decision, gives rise to a UCL claim would lead to

1 Defendants being sued under the UCL *every time* they deny reimbursement. Further, as
2 noted *supra* in Section I.B, Plaintiff has not alleged that any part of the investigation was
3 unfair beyond the result of the investigation. Finally, merely informing Plaintiff as to the
4 basis of the denial of reimbursement did not place any onus on Plaintiff; Plaintiff has not
5 alleged that Defendants did anything less than a full investigation of the available facts.

6 Because Plaintiff’s UCL claim is barred by the choice of law provision in the Terms
7 of Use, fails to plausibly allege that no legal remedies are available, and fails to set forth
8 facts establishing unlawful or unfair acts, the Court should dismiss the UCL claim with
9 prejudice.

10 **CONCLUSION**

11 For the foregoing reasons, Defendants respectfully request that the Court dismiss
12 Plaintiff’s Complaint with prejudice.

13 DATED this 12th day of June, 2023.

14 **BALLARD SPAHR LLP**

15 By: /s/ Mitchell Turbenson

16 Mitchell Turbenson
17 2029 Century Park East, Suite 1400
18 Los Angeles, CA 90067-2909

19 John C. Grugan (*pro hac vice* to be filed)
20 Jenny N. Perkins (*pro hac vice* to be filed)
21 1735 Market Street, 51st Floor
22 Philadelphia, PA 19103-7599
23 *Attorneys for Defendants Conduent*
24 *Business Services, LLC and Comerica Bank*
25
26
27
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Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 12, 2023, he caused the foregoing document to be electronically filed with the Court using the CM/ECF system. Notice of this filing will be sent to the parties of record by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

Executed on June 12, 2023.

/s/ Mitchell Turbenson
Mitchell Turbenson

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

1 Mitchell Turbenson (346024)
turbensonm@ballardspahr.com
2 BALLARD SPAHR LLP
2029 Century Park East, Suite 1400
3 Los Angeles, CA 90067-2909
Telephone: 424.204.4400

4 [Additional counsel listed on the Motion
5 signature page]

6 *Attorney for Defendants Conduent*
Business Services, LLC and Comerica
7 *Bank*

8 THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

11 Plaintiff,

12 vs.

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

16 Defendants.

NO. 4:23-CV-02028

**DECLARATION OF JANELL SOLIS
IN SUPPORT OF DEFENDANTS
CONDUENT BUSINESS SERVICES,
LLC'S AND COMERICA BANK'S
NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFF'S CLASS ACTION
COMPLAINT PURSUANT TO
FEDERAL RULE 12(B)(6)**

Hearing Date: Thursday, July 27, 2023
Hearing Time: 1:00 P.M.

Hon. Donna M. Ryu
Courtroom 4
United States Courthouse
1301 Clay Street
Oakland, CA 94612

Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

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Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

1 I, Janell Solis, declare as follows:

2 1. I am employed by Conduent State & Local Solutions, Inc. (“Conduent
3 S&L”).

4 2. Conduent Business Services, LLC (“CBS”) is the parent company of
5 Conduent S&L.

6 3. Conduent S&L is the entity that contracted with Comerica Bank to
7 provide services related to the program relevant here.

8 4. I have been employed by Conduent S&L for approximately four (4)
9 years. My current role is Senior Supervisor for Fraud Operations. I am familiar with
10 the Way2Go Card Program that is the subject of this action. My responsibilities
11 include preparing declarations in connection with litigation involving Conduent
12 S&L and CBS, and I am authorized to provide this Declaration here. I have access
13 to the business records relating to the Way2Go Program.

14 5. The exhibit (**Exhibit A**) to this Declaration is a true and correct
15 business record created and maintained by Conduent S&L, or its predecessors and
16 affiliates, in the course of regularly conducted business activity, and as part of the
17 regular practice of Conduent S&L to create and maintain such records, and it was
18 also made at the time of the act, transaction, occurrence or event or within a
19 reasonable time thereafter. The statements set forth in this Declaration are true and
20 correct to the best of my knowledge, information and belief. Except where based
21 upon information provided by persons working under my direction and supervision,
22 the statements contained herein are based on my personal knowledge or review of
23 Conduent S&L’s records, including records pertaining to the Way2Go account
24 issued to plaintiff Paula Sparkman (“Plaintiff”). If called as a witness, I am
25 competent to testify to the statements contained herein.

26 6. Exhibit A is an exemplar of the Terms of Use Conduent mailed to
27 Plaintiff along with her physical Way2Go Card.

28

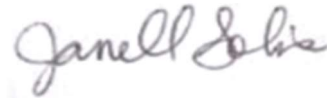
1 7. As discussed and instructed in the Terms of Use, by selecting a PIN,
2 activating the Way2Go Card, and using the Way2Go Card, the cardholder accepted
3 and agreed to the Terms of Use:

4 By selecting your PIN and activating the Card in accordance with the
5 instructions accompanying these Terms, you will be agreeing to abide
6 by these Terms. Your use of the Card Account will be further evidence
7 of your agreement to these Terms.

8 *See Exhibit A at p. 1.*

9 I declare under the penalty of perjury that the foregoing is true and correct.

10 Executed this 12th day of June, 2023, in San Antonio, Texas.

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14 _____
15 Janell Solis
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Ballard Spahr LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

Exhibit A

Comerica Bank Prepaid Mastercard® Card Terms of Use

Comerica Bank (“we”, “us” and “Bank”) is providing you with these terms (“Terms”) and the enclosed California Way2Go Card® Mastercard® Card (“Card”) because you have agreed with the State to accept payments you are eligible to receive by means of the Card. The Card is issued by us pursuant to a license by Mastercard International Incorporated. These Terms describe your rights and obligations with respect to the Card. If you have questions, wish to discuss your options, or do not agree with these Terms, you must contact your Agency or local office processing your payments and do not activate the Card. You can destroy it by cutting it in half.

YOU CANNOT USE THE ENCLOSED CARD UNTIL YOU HAVE SELECTED YOUR PERSONAL IDENTIFICATION NUMBER (PIN), WHICH WILL ALSO ACTIVATE THE CARD.

By selecting your PIN and activating the Card in accordance with the instructions accompanying these Terms, you will be agreeing to abide by these Terms. Your use of the Card account will be further evidence of your agreement to these Terms.

To ensure you receive a replacement card before expiration please contact the number on the back of your card to keep your address current. Card expiration date can be found on the front of your card.

1. Payments to You. A Card account has been established with us to fund payments to you. We will make funds available to you only in the amounts designated by the State, and you will be able to access those funds with your Card when funds have been authorized by the State and posted to your Card account. You are not allowed to spend or withdraw more than the amount of funds posted to your Card account. You may use your Card at merchant and bank locations worldwide wherever Mastercard® cards are accepted. You may receive automated notification via phone or email, when a deposit is posted to your Card account.

Funds that the State has provided to us to be applied to your Card may be returned to the State if: (a) you fail to activate your Card by selecting your PIN within 90 days from the date the Card was issued; (b) we do not have your correct address and are unable to deliver your Card by regular mail; or (c) funds are deposited to your Card in error.

2. Personal Identification Number (PIN). To use your Card at automated teller machines (“ATMs”) and at some point-of-sale (“POS”) terminals you must use your PIN. At some merchants you may be asked to sign a sales slip and provide identification. At some merchants you may not be required to sign your name or enter your PIN.

3. Card Transactions. You can use the Card to obtain cash at ATMs and financial institutions, and to make purchases at POS terminals and merchants, that participate in the Mastercard® network. When you use the Card to initiate a transaction at certain merchants, such as hotels, a hold may be placed on your available Card funds for an amount equal to or in excess of your ultimate transaction. The held funds will not be available to you for any other purpose. Any excess will be released for your use when the transaction is finally settled.

Cash refunds will not be made to you for POS purchases. If a merchant gives you a credit for merchandise returns or adjustments, it may do so by processing a credit adjustment, which we will apply as a credit to your Card.

We may refuse to authorize a Card transaction if: (a) it would exceed the amount that the State has advised us to make available for your use; (b) the Card is reported lost or stolen; (c) we believe the Card is counterfeit; or (d) we are uncertain whether the transaction is authorized by you or permitted by law. We may temporarily “freeze” the Card and attempt to contact you if we note transactions that are unusual or appear suspicious.

In order to protect your Card account from suspected fraudulent activity or unauthorized use, we may temporarily impose limits on the dollar amount, number, and types of transactions performed using your Card. These Card limits could include limits on the number and dollar amount of ATM cash withdrawals and POS transactions. An ATM operator may impose additional ATM withdrawal limits and/or surcharges.

You may not use the Card to perform transactions that exceed the amount of funds made available to you through this program by the State. There may be occasions when deposits are posted to your Card account in error, or funds added that do not belong to you. You are not authorized to spend these funds because the State has not authorized us to make these funds available through the Card. In such events, this error will be corrected once discovered and funds will be adjusted in your Card account. Should the adjustment result in your Card account balance becoming negative, a notice will be sent to you explaining the error and the reason for the adjustment. If you have spent the funds before the error is identified, the amount to be repaid may be automatically deducted from future payments to your Card account as described in Section 8 of this document.

Your Card must not be used for any unlawful purpose (for example, to facilitate Internet gambling). You agree not to use your Card or funds for any transaction that is illegal. We reserve the right to deny transactions or authorizations from merchants apparently engaging in the Internet gambling business or identifying themselves through transaction records or otherwise as engaged in such business. You also may experience difficulties using the Card at: unattended vending machines and kiosks.

You do have the option of ordering a “Companion Card” for up to 5 other sub accounts under your primary card. These can be for use of caregivers, children, and other dependents. These Companion Cards will have restricted privileges and only access to funds that the Primary cardholder designates. You may sign up for this feature on www.GoProgram.com, log into your account then select “Companion Card” from the menu.

APPLICABLE FOR CARDHOLDERS receiving Temporary Assistance for Needy Families (TANF) benefits only:

Federal Law prohibits the use of Temporary Assistance for Needy Families (TANF) benefits at the following locations:

- any liquor store or retail establishment that mainly sells liquor;
- any casino, gambling casino or gaming establishment; or
- any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state.

Using your Card at these locations are subject to California penalties. This includes Automated Teller Machine (ATM) withdrawals and Point of Sale (POS) purchase transactions.

Pre-authorized Payments. You may use your Card to make regular, pre-authorized payments to merchants by giving your Card information to a merchant. If these payments may vary in amount, the merchant you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

You have the right to cancel a pre-authorized payment from your Card if you call us at the number on the back of your card or find the number by visiting www.GoProgram.com and selecting the “Contact Us” link at the bottom of the page or write to us at Customer Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997. We must receive your request at least three (3) business days before the payment is scheduled to be made. You also must notify the payee. (Note: If we do not receive your request at least three (3) business days before the scheduled payment, we may attempt, at our sole discretion, to stop the payment. However, we assume no responsibility for our failure or refusal to do so, even if we accept your stop payment request). If you call, we may require you to put your request in writing to us and to provide us with a copy of your notice to the payee, revoking the payee’s authority to originate debits to your Card, within 14 days after you call. If we do not receive the written confirmation within 14 days, we may honor subsequent debits to your Card. For individual payments, please specify the exact amount (dollars and cents) of the transfer you want to stop, the date of the transfer, and

the identity of the payee. Unless you tell us that all future transfers to a specific recipient are to be stopped, we may treat your stop payment order as a request concerning the one (1) transfer only. If you order us to stop one of these payments at least three (3) business days before the funds transfer is scheduled and we do not do so, we will be liable for your losses or damages.

4. Card and PIN Security. You agree not to give or otherwise make your Card or PIN available to others. For security reasons, you agree not to write your PIN on your Card or keep it in the same location as your Card. Remember, we will never ask you to provide or confirm your PIN over the telephone or our website. If you receive an email that appears to come from us or see a website that contains our name, do not respond to any request for your PIN. If you suspect fraud, please contact us as soon as possible at the number on the back of your card or find the number by visiting www.GoProgram.com and selecting the “Contact Us” link located at the bottom of the page. Your Card is our property and must be returned to us upon request.

5. Foreign Currency Transactions. Please notify us in advance of your intent to use your Card outside of the United States to avoid any disruption to your services. Simply call the number on the back of your card or find it by visiting www.GoProgram.com and selecting the “Contact Us” link located at the bottom of the page, so that we can activate the feature which will allow international purchases to successfully complete. If you obtain cash or make a purchase in a currency other than U.S. dollars, Mastercard® International will convert the amount deducted from your available funds into U.S. dollars. Under the currency conversion procedure that Mastercard® International uses, the non-U.S. dollar transaction amount is converted into a U.S. dollar amount by multiplying the transaction amount in the non-U.S. dollar currency by a currency conversion rate. The currency conversion rate that Mastercard® International typically uses is either a government-mandated rate, or a wholesale rate provided to Mastercard® International. This rate may differ from the rate in effect when the transaction occurred or when we post it against the funds that are available to you.

6. Record of Your Available Funds and Transactions. You can get a receipt at the time you perform a transaction at an ATM or POS terminal. You may obtain information about your available funds and your last 10 transactions by calling the Customer Service Center toll free at the number listed on the back of your card or by visiting www.GoProgram.com. From the website, you can select and print transaction history for up to 12 months for tracking the transactions posted to your Card account. The amount of your available funds is also available on the receipt you get when you make a withdrawal or balance inquiry at certain ATMs.

You also have the right to obtain at least 24 months of written history of Card Account transactions by calling us at the number on the back of your card or writing us at Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997. You will not be charged a fee for this information, unless you request it more than once a month.

7. Misplaced/Lost or Stolen Card/PIN. If you believe your Card or PIN has been lost or stolen or that someone has transferred or may transfer money from your available funds without your permission, call us at the number listed on the back of your card or find the number by visiting www.GoProgram.com and selecting the “Contact Us” link located at the bottom of the page, or write to us at Customer Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997 with details.

If you have misplaced your card you have the option to put a temporary “suspend” on your card to block any transactions from happening until you are able to locate the Card. You simply logon to GoProgram.com click “Services” and from the drop down select “Card Suspend”. However, any recurring transactions set up will still occur. Once you have located the card you simply go to same place on website and click “Card Unsuspend”.

8. Adjustments to Your Card Account Balance. There are occasions when adjustments will be made to your Card account to reflect a merchant adjustment, resolve a Cardholder dispute regarding a transaction posted to your Card account, or to adjust entries or deposits posted in error. These processing entries could cause your Card account to have a negative balance. If so, you agree to repay us the amount of any transaction(s) that exceed the authorized amount or cause your Card account to go negative, either from future deposits posted to your Card account or by personal check or money order. The amount to be repaid will be automatically deducted from future payments to your Card account. If no future deposits are made to your Card account, you must satisfy a negative balance by making payment to: Go Program Payment Processing Service, and mail a check or money order to: Customer Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997. Remember, you always have the right to dispute the amount posted.

9. In Case of Errors or Questions About Your Transactions. If you think an error has occurred in connection with your available funds, call us at the number listed on the back of your card, which can also be found by visiting www.GoProgram.com and selecting the “Contact Us” link located at the bottom of the page or write us at Customer Account Services, P.O. Box 245997 San Antonio, Texas 78224-5997 as soon as you can. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at the number on the back of your card, or writing to us at the address listed above. You will need to tell us:

- Your name, address, telephone number and Card number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If the error cannot be resolved over the phone, we will mail you a Request for Investigation Form to complete and return within 10 business days to Customer Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your Card within 10 business days (20 business days for new Card accounts opened less than 30 days) for the amount you think is in error, so that you will have the use of the money during the time that it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not give you credit to your Card while we investigate your claim. For errors involving POS or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation. If you need more information about our error-resolution process, call us at the toll free Customer Service number, at the number listed on the back of your card.

10. Your Liability. Tell us AT ONCE if you believe your Card or PIN has been lost or stolen or your PIN has been compromised or you believe a transaction has been made without your permission using information from your Card account. Contacting us by telephone at the number listed on the back of your card, is the best way to minimize your possible losses. Or write us at Customer Account Services, P.O. Box 245997, San Antonio, Texas 78224-5997 as soon as you can. You could lose all the money in your Card account.

If you tell us within two (2) business days, after you learn of the loss or theft of your Card or PIN you can lose no more than \$50 if someone used your Card or PIN without your permission. If you do not tell us within two (2) business days after you learn of the loss or theft of your Card or PIN, and we can prove that we could have stopped someone from using your Card or PIN without your permission if you had told us, you could lose as much as \$500.

You are responsible for all authorized uses of your Card except as set forth below; you will not be responsible for an unauthorized use of your Card. An “unauthorized” use is a withdrawal or transaction that you or someone you authorized did not transact. We may refuse to reimburse you for a transaction you assert is unauthorized if: (1) you give your Card, Card number, and/or PIN to another person whom you expressly or implicitly authorize to use your Card, even if that person withdraws or

purchases more than you authorized, or (2) we conclude that the facts do not reasonably support a claim of unauthorized use.

Also, if the written transaction history or other Card transaction information that you obtain from us shows fund transfers that you did not make, including those made by Card, PIN or otherwise, tell us at once. If you do not tell us within 60 days after we transmit or otherwise make such information available to you by telephone, electronic transaction history or written transaction history, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

We will cancel your Card if it is reported to us as lost, stolen or destroyed. Once your Card is canceled, you will have no liability for further transactions involving the use of the canceled Card.

Change of Address: You are responsible for notifying the State agency promptly upon any change to your mailing address, telephone number or email address.

11. Our Liability. If we do not complete an electronic fund transfer to or from your Card on time or in the correct amount according to these Terms, we may be liable for your losses or damages. There are some exceptions, however. We will not be liable, for instance, if:

- Through no fault of ours, you do not have enough available funds on your Card to perform the transaction;
- We believe the transaction may not be authorized by you;
- Circumstances beyond our control (such as fire, flood, water damage, power failure, strike, labor dispute, computer breakdown, telephone line disruption, or a natural disaster) prevents or delays the fund transfer, despite reasonable precautions taken by us;
- The system, ATM or POS terminal, was not working properly and you knew about the problem when you started the transaction;
- The State has not authorized us to make the necessary funds available through your Card;
- The funds available through your Card are subject to legal process or are otherwise not available for withdrawal; or
- The transaction cannot be completed because your Card is damaged.

12. Unclaimed Property. Under certain circumstances, we are required by state law to relinquish the balance in accounts in which there has been no activity for a specified amount of time, such as deposits, withdrawals, balance inquiry or any other Customer initiated contact. The time period for relinquishment, also called escheatment, varies by state. You agree that we are not liable for any loss you may incur due to our good faith compliance with these laws.

13. Limitation of Time to Sue. An action or proceeding by you to enforce an obligation, duty or right arising under these Terms or by law with respect to your Card or the Card service must be commenced within 12 months after the cause of action accrues, unless this limitation is not permitted by applicable law.

14. Waiver of Right to Jury Trial. If you have a problem with your Card or the Card service, please bring it to our attention immediately by calling Customer Service at the number listed on the back of your card. In most cases, a telephone call will quickly resolve the problem in a friendly, informal manner. If a dispute cannot be resolved informally, you or we may file an action. You and we each give up the right to a trial by a jury to resolve each dispute, claim, demand, cause of action, and controversy between you and us arising out of, or relating to your Card or this service. This includes, without limitation, claims brought by you as a class representative on behalf of others, and claims by a class representative on your behalf as a class member (so-called “class action” suits).

15. Privacy. We may obtain non-public personal information about you (e.g., your name, address, telephone number, social security number, and date of birth) from the State in order to verify your identity. We do not release personal non-public financial information obtained in connection with

List of all fees for California Child Support Prepaid Card

All Fees	Amount	Details
Spend money		
Transactions at Point-of-Sale (POS) locations	\$0.00	There is no fee for Personal Identification Number (PIN) or signature based POS transactions in the U.S.
Get Cash		
ATM withdrawal (in-network)*	\$0.00	There is no fee for in-network ATM withdrawals conducted at Comerica and MoneyPass ATM locations. In-network refers to Comerica and MoneyPass ATM locations. In-network locations can be found at https://locations.comerica.com/ and moneypass.com/atm-locator.html . When using your card at an ATM, the maximum amount that can be withdrawn from your Card account per calendar day is \$500.00.
ATM withdrawal (out-of-network)	\$1.50	This is our fee. “Out-of-network” refers to all ATMs outside of the Comerica Bank and MoneyPass ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction. When using your Card at an ATM, the maximum total amount that may be withdrawn from your Card account per calendar day is \$500.00.
Teller-assisted cash withdrawal (OTC)*	\$0.00	There is no fee for teller-assisted withdrawals at Mastercard member bank or credit union teller windows.
Information		
Cardholder alerts	\$0.00	No fee for email, phone or text messaging cardholder alerts. You may be charged a fee by your mobile carrier or internet service provider.
Customer service	\$0.50	Per call, for calling the Interactive Voice Response (IVR) automated line. You are allowed three (3) calls to the IVR per month for no fee. There is no additional fee for transferring to a live customer service agent.
Online access to card account	\$0.00	No fee for accessing account information at GoProgram.com .
Using your card outside the U.S.		
International ATM withdrawal	\$1.50	This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction. International transaction fee also applies.
International transaction fee	3%	Of the U.S. dollar amount of any type of transaction, including ATM withdrawals. Transactions completed in U.S. Territories are not international transactions.
Other		
Card replacement	\$0.00	There is no fee for standard delivery (5 to 8 business days) of a replacement card.
Expedited card delivery	\$25.00	If you request your replacement card to be expedited rather than receiving it by regular mail, you will be assessed the expedited card delivery fee, in addition to any applicable card replacement fee. Expedited card delivery is 2 to 3 business days.
Cardless Cash Access (Coming in 2021)	\$8.00	This is our fee. In the event you lose your card and need cash prior to receiving a new card, you have the option of getting cash from an ATM by requesting a one time PIN to be used at an ATM near you. You can request the PIN by calling the number on the back of your card or by logging on to GoProgram.com and selecting “Services” then “Cardless Cash Access.” You may also access this feature on the mobile app.

* “No Fee” transactions expire at the end of each calendar month if not used.

Your funds are eligible for FDIC insurance and will be held at or transferred to Comerica Bank, an FDIC-insured institution. Once there, your funds are insured up to \$250,000 by the FDIC in the event Comerica Bank fails, if specific deposit insurance requirements are met. See fdic.gov/deposit/deposits/prepaid.html for details.

No overdraft/credit feature.

Contact Go Program Customer Services by calling 1-844-318-0740, by mail at P.O. Box 245997, San Antonio, TX 78224-5997 or visit GoProgram.com.

For general information about prepaid accounts, visit cfpb.gov/prepaid.

If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit cfpb.gov/complaint.

Card program about current or former Cardholders to anyone, except, and as permitted by federal and state law: to process a transaction at your request; to the State or its agent in connection with the account that funds Card payments; where it is necessary or helpful in effecting, administering, or enforcing a transaction; to comply with a law, regulation, legal process or court order; to local, state and federal authorities if we believe a crime may have been committed involving a Card; or as otherwise permitted by law. We restrict access to non-public personal information about you to those employees who need to know that information to provide products and services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

16. Cardholder Identity. To help the government fight the funding of terrorism and money laundering activities, Federal law requires that identifying information be obtained for each person who obtains a Card.

17. Business Days. Business days are Monday through Friday, excluding U.S. federal holidays.

18. Assignment. You may not assign your rights or obligations in connection with these Terms, the funds available to you through your Card, or the Card itself to others. We may assign our rights and obligations under these Terms to others without prior notice to you or your consent.

19. Severability/Waiver. If any provision of these Terms is deemed unlawful, void, or unenforceable, it will be deemed severed from these Terms and shall not affect the validity and enforceability of the remaining provisions. We may delay enforcing our rights under these Terms without losing them. Any waiver by us will not be deemed a waiver of other rights or of the same right at another time.

20. Governing Law. These Terms will be governed by and construed in accordance with applicable federal law and the laws of the State of Michigan, without reference to its conflict of law principles.

21. Legal Process. We may comply with any subpoena, levy or other legal process as permitted by state and federal law. If we are not fully reimbursed for our record research, photocopying and handling costs by the party that served the process, we may charge such costs to your Card account, in addition to our legal process fee of \$50. We may honor legal process that is served personally, by mail, or by facsimile transmission at any of our offices (including locations other than where the funds, records or property sought is held), even if the law requires personal delivery at a different location.

22. Change in Terms. We may change (add to, delete or amend) these Terms at any time by providing you with prior notice of the change as required by law.

23. Termination. We may suspend or terminate your use of the Card with or without cause at any time by providing you with prior notice. We may terminate your use of our Card and this service immediately if: you breach these Terms or any other agreement with us; we are notified to do so by the State or its agent; we have reason to believe that there has been or may be an unauthorized use of your available Card account funds, Card or PIN; or there are conflicting claims to your available Card account funds. You may terminate your use of the Card and these Terms without cause at any time by contacting Customer Service at the number on the back of your card, which can also be found at www.GoProgram.com.

24. Program Closure. We will notify you of any steps you must take in the event this Prepaid Card Program ends with the State. Your Card Account may be subject to an account closure fee if funds remain on your Card after the Program ends.

25. FDIC Insured. The funds associated with the Card are insured and guaranteed by the Federal Deposit Insurance Corporation to the extent provided by law.

26. Fee Schedule. The following is a list of fees that are applicable to your card. Fees will be withdrawn from your Card account balance, except where prohibited by law.

Condiciones de uso de la tarjeta de débito de Prepago Mastercard® de Comerica Bank

Comerica Bank (“nosotros”, “nuestro” y “Banco”) le facilita estos términos (“Términos”); también adjuntamos la tarjeta de Prepago de California Way2Go Card® Mastercard® (“Tarjeta”) pues ha estado de acuerdo con el Estado en aceptar pagos para los que es elegible recibir por medio de la tarjeta. La tarjeta se emite de acuerdo con la licencia de Mastercard® International Incorporated. Estos términos describen sus derechos y obligaciones con relación a la tarjeta. Si tiene alguna pregunta, desea hablar sobre sus opciones o no está de acuerdo con estos términos, debe comunicarse con su agencia o con la oficina local que procesa sus pagos y no active la tarjeta. Puede destruirla cortándola por la mitad.

NO PUEDE USAR LA TARJETA ADJUNTA HASTA QUE HAYA ESCOGIDO SU NÚMERO DE IDENTIFICACIÓN PERSONAL (PIN), EL CUAL TAMBIÉN ACTIVARÁ LA TARJETA.

Al elegir su PIN y activar la tarjeta de acuerdo con las instrucciones que van con estos términos, usted estará aceptando que cumplirá estos términos. Usar la cuenta de la tarjeta será evidencia adicional de que está de acuerdo con estos términos.

Para asegurar que usted reciba un reemplazo tarjeta antes de la expiración, comuníquese con su agencia estatal para mantener su dirección actualizada. Fecha de vencimiento de la tarjeta se puede encontrar en la parte delantera de su tarjeta.

1. Pagos que reciba. Hemos establecido una cuenta de tarjeta donde puede consolidar los pagos que reciba. Los fondos que dejáremos disponibles a su favor serán la cantidad que el Estado designe y usted tendrá acceso a esos fondos con su tarjeta cuando el Estado los haya autorizado y contabilizado en la cuenta de su tarjeta. No podrá gastar ni retirar una cantidad mayor a los fondos que estén contabilizados en la cuenta de su tarjeta. Puede usar su tarjeta en establecimientos comerciales o en bancos de todo el mundo en donde acepten las tarjetas de Prepago Mastercard®. Puede recibir notificaciones automatizadas en su teléfono o correo electrónico cuando se contabiliza un depósito en la cuenta de su tarjeta.

Los fondos que el Estado nos ha proporcionado para aplicar en su tarjeta pueden ser devueltos al Estado, si: (a) no llegara a activar su tarjeta por medio de le elección de su PIN dentro de un plazo de 90 días a partir de la fecha en que se emitió su tarjeta; (b) no contamos con su dirección correcta y esto nos impidiera entregarle su tarjeta por correo regular, o (c) los fondos se depositan en su tarjeta por error.

2. Número de identificación personal (PIN, por sus siglas en inglés). Para usar su tarjeta en cajeros automáticos (“ATM”, por sus siglas en inglés) y en algunas terminales de puntos de venta (“POS”, por sus siglas en inglés) debe usar su PIN. Algunos comercios le solicitarán firmar un recibo de venta y presentar su identificación. Puede que en comercios como las gasolineras, no soliciten su firma ni el ingreso de su PIN.

3. Transacciones de la tarjeta. Puede usar la tarjeta para obtener efectivo en los cajeros automáticos y en las instituciones financieras, así como para hacer compras en terminales POS y en comercios que participen en la red de Mastercard®. Cuando usa la tarjeta para el inicio de una transacción en algunos comercios, como en los hoteles, puede que se reserve una cantidad de los fondos disponibles de su tarjeta, la cual puede igualar o exceder el monto final de la transacción. Los fondos en reserva no estarán disponibles para que los use con otro propósito. Cuando la transacción se finalice, cualquier monto sobrante se liberará para que pueda disponer de él. No se le realizarán reembolsos en efectivo por sus compras en POS. Si un comercio le otorga crédito por devoluciones de mercadería o por ajustes, se puede realizar al procesar un ajuste de crédito, el cual se aplicará como un crédito a su tarjeta.

Podríamos rehusar la autorización de una transacción de la tarjeta, si: (a) el monto superara la cantidad que el Estado nos ha indicado poner a su disposición; (b) la tarjeta se ha denunciado como perdida o robada; (c) consideramos que la tarjeta es falsa; o, (d) no tenemos la certeza de que usted haya autorizado la transacción o que la ley la permita. Podríamos “congelar” temporalmente la tarjeta e intentar comunicarnos con usted si observamos que las transacciones son inusuales o parecieran sospechosas. Para proteger la cuenta de su tarjeta de actividades que se sospechan como fraudulentas o sin autorización, podríamos establecer límites temporales en el monto en dólares, cantidad y tipos de transacciones que se pueden hacer al usar su tarjeta. Estos límites de la tarjeta pueden incluir límites en la cantidad y monto de los retiros en dólares en cajeros automáticos y en transacciones en los POS. El operador del cajero automático podría establecer límites en los retiros en los cajeros y/o recargos adicionales.

Podría darse que no pueda usar la tarjeta para realizar transacciones que superen el monto o los fondos que el Estado ponga a su disposición por medio de este programa. Pudiera haber ocasiones en que los depósitos se contabilicen en la cuenta de su tarjeta por error, o bien, que se añadan fondos que no le pertenecen. No tendrá autorización para gastar dichos fondos porque el Estado no nos ha autorizado que estos fondos estén disponibles por medio de la tarjeta. En tales casos, el error se corregirá cuando se descubra y se realizará el ajuste en los fondos de la cuenta de su tarjeta. Si el ajuste diera como resultado un saldo negativo en su tarjeta, se le enviará una notificación en donde se le explicará el error y la razón del ajuste. Si hubiera gastado los fondos antes de haber identificado el error, el monto a repararse podría debitarse automáticamente de pagos futuros que se hagan a la cuenta de su tarjeta, tal como se describe en la Sección 8 de este documento.

Su tarjeta no deberá usarse para ningún propósito ilegítimo (por ejemplo: para facilitar el juego de azar por Internet). Usted acepta a no usar su tarjeta o sus fondos para ninguna transacción que sea ilegal. Nos reservamos el derecho de negar transacciones o autorizaciones en comercios que aparentemente estuvieran involucrados en el negocio del juego de azar por Internet o que se evidencian a sí mismos como involucrados en dichos negocios por medio de registros de transacciones u otras modalidades. También podrá tener dificultades al usar su tarjeta en: máquinas expendedoras y quioscos sin supervisión.

Usted tiene la opción de pedir una “tarjeta de acompañante” para hasta 5 otras subcuentas bajo su tarjeta principal. Estos pueden ser para el uso de cuidadores, niños y otros dependientes. Estos tarjetas complementarias tendrán privilegios restringidos y solo acceso a los fondos que el titular de la tarjeta principal designe. Puede registrarse para esta función en www.GoProgram.com, iniciar sesión en su cuenta y luego seleccionar “tarjeta de acompañante” en el menú.

APLICABLE para los titulares de tarjeta recibir asistencia temporal para beneficios de familias necesitadas (TANF) solamente:

La ley federal prohíbe que los beneficios de Asistencia Temporal para Familias Necesitadas (TANF, por sus siglas en inglés) se usen en los siguientes lugares:

- cualquier licorería o establecimiento minorista que principalmente venda bebidas alcohólicas;
- cualquier casino, casino de juegos de azar o centros de juegos de azar; o,
- cualquier comercio minorista que provea entretenimiento dirigido a adultos, en donde los protagonistas se desvistan o se presenten sin vestuario.

Al usar su tarjeta en estos lugares, queda sujeto a las sanciones impuestas en California. Esto abarca los retiros en los cajeros automáticos (ATM) y las transacciones en los puntos de venta (POS).

Pagos autorizados con anticipación. Puede utilizar su tarjeta para hacer pagos regulares y preautorizados en comercios cuando les proporcionr la información de su tarjeta. Si estos pagos llegaran a variar en el monto, el comercio al que usted le pagará se lo informará 10 días antes de cada pago, así también le indicará cuándo se realizará el pago y de cuánto será. Puede decidir recibir estas notificaciones únicamente cuando el pago difiera a un monto mayor al pago anterior o cuando el monto excediera los límites específicos que usted estableció.

Tiene derecho de cancelar el pago preautorizado de su tarjeta si nos llama al el número que aparece en la parte posterior de su tarjeta o encontrar el número visitando www.GoProgram.com y seleccionando el enlace “Contáctenos” ubicado en la parte inferior de la página o escribe al departamento de Servicio a cuentas de clientes al P.O. Box 245997, San Antonio, Texas 78224-5997. Debemos recibir su solicitud al menos tres (3) días hábiles antes de la fecha programada para el pago. También debe notificar al beneficiario del pago. (Nota: Si no recibimos su solicitud al menos tres (3) días hábiles antes de la fecha programada para el pago, podemos hacer lo posible de detener el pago a nuestra entera discreción. Sin embargo, no nos hacemos responsables por no poder detenerlo o por negarnos a hacerlo, incluso cuando hayamos aceptado su solicitud para detener el pago). Si decide llamar, puede que requiramos que nos envíe su solicitud por escrito y que nos entregue una copia de la notificación que entregó al beneficiario en donde les revoca la autorización para realizar débitos a su tarjeta; esto, dentro de los 14 días posteriores a su llamada. Si no recibimos la confirmación escrita dentro de estos 14 días, debemos respetar los siguientes débitos a su tarjeta. En cuanto a los pagos individuales, debe especificar el monto exacto (los dólares y los centavos) de la transferencia que desea detener, así como la fecha de la transferencia y la identificación del beneficiario. A menos que nos indique que se deben detener todas las transferencias futuras enviadas a un receptor específico, manejaremos su orden para la detención del pago como si fuera una solicitud relacionada únicamente con una (1) transferencia. Si su orden para detener uno de estos pagos se realiza al menos con tres (3) días calendario antes de la fecha programada para la transferencia de fondos y nosotros incumplimos, nos haremos responsables de sus pérdidas o daños.

4. Seguridad de su tarjeta y su PIN. Usted está de acuerdo en no proporcionar ni poner a disposición de nadie más su tarjeta o su PIN. Usted es responsable por razones de seguridad, usted está de acuerdo en no escribir su PIN en la tarjeta o guardarlo en el mismo lugar donde guarda su tarjeta.

Recuerde que nosotros jamás le solicitaremos ni pediremos confirmación de su PIN por teléfono o por nuestro sitio web. Si recibe un correo electrónico que pareciera llegar de parte nuestra, o ve un sitio web con nuestro nombre, no responda a ninguna solicitud en donde le pidan su PIN. Si sospecha fraude, póngase en contacto con nosotros tan pronto como sea posible en el número en la parte posterior de su tarjeta o encontrar el número visitando www.GoProgram.com y seleccionando el enlace “Contáctenos” ubicado en la parte inferior de la página. La tarjeta que maneja es de nuestra propiedad y debe devolverla cuando se le solicite.

5. Transacciones en moneda extranjera. Agradeceremos nos informe por anticipado si su intención es usar su tarjeta fuera de los Estados Unidos para evitar cualquier interrupción a sus servicios. Simplemente llame al número en la parte posterior de su tarjeta o buscar por visitar www.GoProgram.com y seleccionar el enlace “Contáctenos” ubicado en la parte inferior de la página, para que podemos activar la función que le permitirá compras internacionales llevar a cabo. Si recibe efectivo o hace compras con otra moneda que no sean dólares estadounidenses, Mastercard® International convertirá el monto que se debite de sus fondos disponibles a dólares estadounidenses. De acuerdo con el procedimiento de conversión de moneda que usa Mastercard® International, los montos de transacciones que no correspondan a dólares estadounidenses, se convierten en montos en dólares estadounidenses al multiplicar el monto de la transacción en moneda extranjera por una tasa de conversión de moneda. La tasa de conversión de moneda que usa Mastercard® International, generalmente es la tasa oficial del gobierno o bien, una tasa mayorista proporcionada por Mastercard® International. Esta tasa puede ser diferente a la tasa que estaba en vigencia al momento de la transacción o cuando se contabiliza contra los fondos que usted tenga disponibles.

6. Registro de sus fondos disponibles y transacciones. Al momento de realizar una transacción en un cajero automático o una terminal de POS usted puede recibir un recibo. Puede obtener información sobre sus fondos disponibles y de las últimas 10 transacciones al llamar al número gratuito del Centro de servicio al cliente el número que aparece en la parte posterior de su tarjeta o al visitar el sitio www.GoProgram.com. Desde la web, puede seleccionar e imprimir el historial de transacciones hasta por 12 meses para el seguimiento de las transacciones en su cuenta de tarjeta. Desde la web, puede seleccionar e imprimir el historial de transacciones hasta por 12 meses para el seguimiento de las transacciones en su cuenta de tarjeta.

Usted también tiene el derecho a obtener por lo menos 24 meses de la historia escrita de las transacciones de cuenta de tarjeta, llamándonos al número en la parte posterior de su tarjeta o escribimos a cuenta de servicios, P.O. Box 245997, San Antonio, Texas 78224-5997. No se le aplicará un cargo por esta información, a menos que usted lo solicite más de una vez al mes.

7. Fuera de lugar y perdido o tarjeta robada y PIN. Si cree que su tarjeta o PIN han sido robados o extraviados o que alguien ha transferido o podría transferir dinero desde sus fondos disponibles sin su autorización, llámenos al número que aparece en la parte posterior de su tarjeta o encontrar el número visitando www.GoProgram.com y seleccionando el enlace “Contáctenos” ubicado en la parte inferior de la página, o escribanos los detalles al departamento de Servicios a cuentas de clientes al P.O. Box 245997, San Antonio, Texas 78224-5997.

Si hay fuera de lugar su tarjeta tiene la opción de poner un “suspender” temporal en su tarjeta para bloquear cualquier transacción que ocurra hasta que pueda localizar la Tarjeta. Simplemente inicie sesión para GoProgram.com haga clic en “Servicios” y en el menú desplegable seleccione “suspender tarjeta”. Sin embargo, las transacciones periódicas configuradas seguirán ocurriendo. Una vez que haya localizado la tarjeta, simplemente vaya al mismo lugar en el sitio web y haga clic en “tarjeta de desembolso”.

8. Ajustes en el saldo de la cuenta de su tarjeta. En algunas ocasiones pudieran darse ajustes en la cuenta de su tarjeta para reflejar el ajuste de un comercio, resolver una disputa del portador de tarjeta con relación a una transacción contabilizada en la cuenta de su tarjeta o ajustar los ingresos o depósitos contabilizados por error. Estos ingresos en proceso pudieran causar que la cuenta de su tarjeta tenga un saldo negativo. De ser así, usted está de acuerdo con reembolsarnos el monto de cualquier transacción(es) que supere el monto autorizado o que provoque que la cuenta de su tarjeta esté en saldo negativo, ya sea por medio de futuros depósitos contabilizados a la cuenta de su tarjeta o por medio de cheque personal o giro bancario. El monto a reembolsar se debitará automáticamente de pagos futuros de la cuenta de su tarjeta. Si no se realizan depósitos futuros a la cuenta de su tarjeta, debe liquidar un saldo negativo al hacer el pago a: Servicio de procesamiento de pagos de Go Program por medio del envío de un cheque o giro bancario que enviará por correo a: Servicios a cuentas de clientes, P.O. Box 245997, San Antonio, Texas 78224-5997. Recuerde, siempre tiene el derecho de impugnar el monto contabilizado.

9. En caso de errores o preguntas acerca de sus transacciones. Si cree que ha habido un error relacionado con sus fondos disponibles, llámenos al número que aparece en la parte posterior de su tarjeta o encontrar el número visitando www.GoProgram.com y seleccionando el enlace “Contáctenos” ubicado en la parte inferior de la página o escribanos al departamento de Servicios a cuentas de clientes, P.O. Box 245997, San Antonio, Texas 78224-5997, tan pronto como sea posible. Debemos permitirle informar un error hasta 60 días después de la fecha anterior en la que acceda electrónicamente a su cuenta, si el error se pudo ver en su historial electrónico, o la fecha en que enviamos el PRIMER historial escrito en el que apareció el error. Puede solicitar un historial escrito de sus transacciones en cualquier momento llamándonos al número que figura en el reverso de su tarjeta o escribiéndonos a la dirección que figura arriba. Tendrá que informarnos:

(1) su nombre, dirección, número de teléfono y número de tarjeta.

(2) la razón por qué cree que es un error y el monto en dólares involucrado.

(3) cuándo se dio el error aproximadamente.

Si el error no puede resolverse por teléfono, le enviaremos un Formulario de solicitud de investigación para que lo llene y lo devuelva dentro de los siguientes 10 días hábiles al departamento de Servicios a cuentas de clientes, P.O. Box 245997, San Antonio, Texas 78224-5997.

Estableceremos si se dio un error en un plazo de 10 días hábiles después de recibir sus noticias y cualquier error, se corregirá con prontitud. Sin embargo, si necesitarámos más tiempo, podríamos tomar hasta 45 días para investigar su queja o pregunta. Si decidimos proceder así, en un plazo de 10 días hábiles (20 días hábiles para las cuentas nuevas de tarjetas que se hayan abierto en un período menor a los 30 días), acreditaremos a su tarjeta el monto que considere como error, de esta forma, podrá usar el dinero durante el tiempo que nos lleve completar nuestra investigación. Si le solicitamos presentar su queja o inquietud por escrito y no la recibimos dentro de 1o días hábiles, puede que no le acreditemos en su tarjeta mientras investigamos su queja. Para errores donde se involucre un POS o transacciones que se hayan iniciado en el extranjero, podríamos tomar hasta 90 días para investigar su queja o inquietud. Le informaremos sobre los resultados dentro de tres (3) días hábiles después de haber finalizado nuestra investigación. Si llegamos a la conclusión de que no hubo error, le enviaremos una explicación escrita. Puede solicitar copias de los documentos que usamos en nuestra investigación. Si necesita mayor información acerca de nuestro proceso de resolución de errores, llámenos al número gratuito de Servicio al Cliente, aparece en la parte posterior de su tarjeta.

10. Su responsabilidad. Si usted cree que su tarjeta o PIN han sido robados o extraviados, que su PIN está en riesgo, o cree que se ha realizado una transacción sin su autorización con la información de la cuenta de su tarjeta, infórmenos DE INMEDIATO. Comunicarse con nosotros al teléfono el número que aparece en la parte posterior de su tarjeta es la mejor manera para minimizar la posible pérdida. También puede escribimos al departamento de Servicios a cuentas de clientes, P.O. Box 245997, San Antonio, Texas 78224-5997, tan pronto como sea posible. Podría perder todo el dinero que tiene en la cuenta de su tarjeta.

Si nos informa dentro de dos (2) días hábiles, después de saber de la pérdida o robo de su tarjeta o PIN, podría perder hasta un máximo de \$50 si alguien usó su tarjeta o PIN sin su permiso. Si no nos informara dentro de los dos (2) días hábiles después de saber de la pérdida o robo de su tarjeta o PIN y podemos comprobar que pudimos haber detenido a esa persona de usar su tarjeta o PIN sin su permiso si nos lo hubiera informado, podría perder hasta \$500.

Usted es responsable de cualquier uso autorizado de su tarjeta, excepto de los que se definen a continuación; usted no será responsable por el uso de su tarjeta sin autorización. El uso “sin autorización” es el retiro o transacción no realizado por usted ni por alguien a quien haya autorizado. Podría ser que rechacemos el reembolso por una transacción que usted afirma como no autorizada, si: (1) usted entrega su tarjeta, número de tarjeta y/o PIN a otra persona a quien usted autorizó expresa o implícitamente el uso de su tarjeta, incluso si esa persona retira o compra más de lo que usted haya autorizado, o (2) concluimos que los hechos no respaldan razonablemente una queja o uso no autorizado.

Así también, debe informarnos de inmediato si el historial físico de transacciones u otra información de transacciones de la tarjeta que le hayamos enviado mostrara transferencias de fondos que usted no realizó, inclusive aquellas hechas con tarjeta, PIN, o por cualquier otro medio. Si no nos informara dentro de un plazo de 60 días después de haberle enviado o presentado dicha información por cualquier medio, ya sea por teléfono, historial electrónico de transacciones o historial físico de transacciones, podría suceder que no recupere el dinero que perdió después de los 60 días al comprobar que pudimos haber evitado que el culpable se llevara el dinero si nos lo hubiera informado a tiempo. Si existiera una buena razón (como un viaje extenso o una hospitalización) que le impida informarnos, ampliaremos esos períodos.

Si nos informa sobre la pérdida el robo o la destrucción, cancelaremos su tarjeta. Una vez que se haya cancelado su tarjeta, usted es responsable por transacciones adicionales que tengan que ver con el uso de la tarjeta cancelada.

Cambio de dirección: Usted es responsable de notificarnos sin demora sobre cualquier cambio en su dirección, numero de telefono, correo electronico.

11. Nuestra responsabilidad. Si no completamos una transferencia electrónica de fondos hacia o desde su tarjeta en tiempo, o no es el monto correcto de acuerdo con estos términos, podríamos ser responsables de sus daños y pérdidas. Sin embargo, existen excepciones. Es decir, no nos haremos responsables, si:

- no siendo culpa nuestra, usted no tenga los fondos suficientes en su tarjeta para realizar la transacción;
- consideramos que usted no hubiera autorizado la transacción;
- las circunstancias fueran más allá de nuestro control (como incendios, inundaciones, daños por agua, fallas en la energía, huelgas, conflictos laborales, colapso en las computadoras, interrupción de las líneas telefónicas o algún desastre natural) y estas evitaran o retrasaran la transferencia de fondos a pesar de las medidas prudenciales que hayamos tomado;
- el sistema, el cajero automático o la terminal de POS no estuviera trabajando adecuadamente y usted viera que existe el problema al iniciar la transacción;
- el Estado no nos hubiera autorizado poner a su disposición en su tarjeta los fondos necesarios;
- los fondos disponibles en su tarjeta quedaran sujetos a proceso legal o no pudieran estar disponibles para retirarlos por cualquier otra razón; o,
- la transacción no puede realizarse porque su tarjeta está dañada.

12. Bienes no reclamados. En algunas situaciones, la ley estatal nos solicita abandonar el saldo en las cuentas que han dejado de tener actividad por un tiempo específico, estas actividades pueden ser depósitos, retiros, consultas de saldos o algún tipo de comunicación que el cliente inicie. El período para el abandono, que también se llama reversión, varía dependiendo del estado. Usted acepta que no somos responsables por cualquier pérdida en que pudiera incurrir debido a la buena fe con que cumplimos con estas leyes.

13. Límite de tiempo para demandar. Si iniciara una acción o proceso para hacer cumplir una obligación, deber o derecho que surja de estos términos o que por ley, esté relacionada con su tarjeta o el servicio de la tarjeta, esta acción o proceso debe dar inicio dentro de los 12 meses después de surgida la causa de la demanda correspondiente, a menos que la ley que corresponda no permita esta limitante.

14. Renuncia al derecho de un juicio por jurado. Si tuviera un problema con su tarjeta o servicio de la tarjeta, agradeceremos nos lo informe al llamar inmediatamente a Servicio al cliente al el número que aparece en la parte posterior de su tarjeta. En la mayoría de casos, una llamada telefónica resolverá rápidamente el problema en una forma amigable e informal. Si un conflicto no pudiera resolverse informalmente, usted o nosotros, podríamos iniciar una acción. Tanto usted como nosotros, renunciamos al derecho de un juicio por jurado para resolver cualquier conflicto, reclamo, demanda, causa de acción y controversia que se dé entre ambos y que surja o esté relacionada con su tarjeta o este servicio. Esto incluye, sin limitación, a las demandas que usted presente como una demanda de conflicto colectivo en nombre de otros, así como demandas de conflicto colectivo que obren a nombre suyo como miembro del colectivo (a estas también se le llaman “demanda legal conjunta”).

15. Confidencialidad. Del Estado podríamos obtener información personal que no sea pública acerca de usted (es decir: su nombre, dirección, número de teléfono, número de seguro social y fecha de nacimiento) para verificar su identidad. Información financiera y personal que no sea pública y que se reciba con relación a este programa de tarjetas sobre portadores de tarjetas actuales o anteriores, no se divulga a ninguna persona, excepto y conforme lo permitan las leyes federales y estatales: para procesar una transacción a su solicitud; al Estado o su representante en relación con la cuenta que mantiene los fondos para los pagos de la tarjeta; cuando sea necesario o beneficioso para efectuar, administrar o hacer cumplir una transacción; para cumplir con una ley, regulación, proceso legal u orden judicial; a las autoridades locales, estatales y federales si consideramos

Todos los cargos	Monto	Detalles
Gastar dinero		
Transacciones en puntos de venta (POS, por sus siglas en inglés)	\$0.00	No hay ningún cargo para transacciones en POS con firma o número de identificación personal (PIN, por sus siglas en inglés) en los EE. UU
Obtener efectivo		
Retiro por cajero automático (ATM) (dentro de la red)	\$0.00	No hay ningún cargo por dentro de la red de cajeros automáticos. “Dentro de la red” se refiere de cajeros automáticos red de Comerica y MoneyPass. Puede encontrar un ATM en https://locations.comerica.com/ y moneypass.com/atm-locator.html. Al usar tu tarjeta en un cajero automático, el importe total máximo que puede ser retirado de su cuenta de tarjeta por día es \$500.00.
Retiros por ATM (fuera de la red)	\$1.50	Este es nuestro cargo. “Fuera de la red” hace referencia a todos los ATM que no pertenecen a la Red de ATM de Comerica y MoneyPass. Es posible que el operador del ATM también le cobre un cargo, incluso si usted no completa una transacción. Al usar tu tarjeta en un cajero automático, el importe total máximo que puede ser retirado de su cuenta de tarjeta por día es
Retiro de efectivo con la asistencia de un(a) cajero(a) (por ventanilla)	\$0.00	No hay ningún cargo por retiros de efectivo realizados en ventanas de cajeros de bancos miembro de Mastercard o cooperativa de credito.
Información		
Alertas para el(la) titular de la tarjeta	\$0.00	Sin cargo para alertas para el(la) titular de la tarjeta por correo electrónico, teléfono o mensaje de texto. Su proveedor de telefonía móvil o de servicios de Internet podría cobrarle un cargo.
Servicio al cliente	\$0.50	Por llamada, por llamar a la línea automatizada de respuesta de voz interactiva (IVR, por sus siglas en inglés). Se le permite realizar tres (3) llamadas de servicio al cliente por mes calendario sin cargo. Sin cargo adicional por transferencia a un representante del servicio al cliente en directo.
Acceso a la cuenta de la tarjeta por Internet	\$0.00	Sin cargo para acceder a la información de la cuenta en GoProgram.com.
Cómo usar su tarjeta fuera de los EE. UU.		
Retiro por ATM internacional	\$1.50	Este es nuestro cargo. Es posible que el operador del ATM también le cobre un cargo, incluso si usted no completa una transacción. También se aplica un cargo por transacción internacional.
Cargo por transacción internacional	3%	Del monto en dólares estadounidenses de cualquier tipo de transacción, incluidos los retiros por ATM. Las transacciones completadas en territorios de los EE. UU. no se consideran transacciones internacionales.
Otros		
Reemplazo de tarjeta	\$0.00	No hay ningún cargo por entrega estándar (5 a 8 días laborables) de una reemplazo de tarjeta.
Entrega rápida de la tarjeta	\$25.00	Si usted solicita que la entrega de su tarjeta de reemplazo sea rápida en lugar de recibirla por correo postal regular, se le cobrará el cargo por entrega rápida de la tarjeta, además de cualquier cargo por reemplazo de tarjeta aplicable. El tiempo de entrega rápida de la tarjeta es de 2 a 3 días laborables.
Acceso al efectivo sin tarjeta (Disponible en 2021)	\$8.00	Este es nuestro cargo. En caso de que pierda su tarjeta y necesite dinero en efectivo antes de recibir una nueva tarjeta, tiene la opción de obtener dinero en efectivo de un cajero automático (ATM) solicitando un PIN de una sola vez para ser utilizado en un cajero automático (ATM) cerca de usted. Puede solicitar el PIN llamando al número que aparece al dorso de su tarjeta o iniciando sesión en GoProgram.com y seleccione “Servicios” y luego “Acceso en efectivo sin tarjeta”. También puede acceder a esta función en la aplicación móvil.

Sus fondos son elegibles para el seguro de la FDIC y se retendrán en Comerica Bank o se transferirán a Comerica Bank, una institución asegurada por la FDIC. Una vez allí, sus fondos están asegurados por la FDIC hasta \$250,000 en caso de que Comerica Bank quiebre, si se reúnen los requisitos específicos del seguro de depósito. Consulte fdic.gov/deposit/deposits/prepaid_esp.html para obtener detalles.

Sin característica de protección contra sobregiros/crédito.

Comuníquese con Go Program Customer Services (Servicio al cliente de Go Program) llamando al 1-844-318-0740, por correo postal a P.O. Box 245997,

San Antonio, TX 78224-5997 o visite www.GoProgram.com.

Para obtener información general acerca de las cuentas prepagadas, visite cfpb.gov/prepaid.

Si tiene una queja sobre una cuenta prepagada, llame a la Oficina para la Protección Financiera del Consumidor al 1-855-411-2372 (marque 2 para recibir atención en español) o visite cfpb.gov/complaint.

que se ha cometido un delito que involucra a una tarjeta, o bien, en cualquier otra situación que la ley permita. Su información personal no pública queda restringida para que tengan acceso solo aquellos empleados que necesitan saber esa información para proporcionarle productos y servicios. Mantenemos resguardos físicos, electrónicos y procedimentales que cumplen con las regulaciones federales para resguardar su información personal no pública.

16. Identidad del portador de tarjeta. Para colaborar con la lucha del gobierno contra el financiamiento de terrorismo y actividades de lavado de dinero, la ley federal requiere que se obtenga información de identificación de cada persona que recibe una tarjeta.

17. Días hábiles. Los días hábiles son de lunes a viernes y se excluyen las festividades federales de los Estados Unidos.

18. Cesión. Usted no puede ceder sus derechos u obligaciones relacionados con estos términos, los fondos disponibles por medio de su tarjeta o la tarjeta en sí, a otras personas. Podemos ceder nuestros derechos y obligaciones de acuerdo con estos términos, a terceros, sin notificación previa o sin su consentimiento.

19. Nulidad y renuncia. Si alguna de las estipulaciones de estos términos se considerara ilícita, inválida o inejecutable, se considerará nula de estos términos y no afectará las estipulaciones restantes la validez o el ser ejecutable. Podríamos demorar en el cumplimiento de nuestros derechos en conformidad con estos términos, sin perderlos. Cualquier renuncia que realicemos no se considerará como una renuncia de nuestros derechos o del mismo derecho al que renunciamos, en un momento diferente.

20. Ley vigente. Estos términos estarán rigidos e interpretados en conformidad con las leyes federales correspondientes y las leyes del estado de Michigan, sin referencia a su conflicto de principios legales.

21. Proceso legal. En caso de alguna citación, imposición u otro proceso legal, nosotros podríamos cumplir con ello en la medida que lo permita la ley estatal y federal. Si la parte que inició el proceso no llegara a reembolsarnos el total por nuestros costos de búsqueda en registros, fotocopiado y manejo, podríamos cobrar dichos costos de la cuenta de su tarjeta, además de nuestro cargo por proceso legal de \$50. Nuestra intención es respetar el proceso legal que se haya entregado personalmente, por correo o por transmisión de facsímil en alguna de nuestras oficinas (inclusive en lugares diferentes en los que se mantienen los fondos, registros o propiedad en búsqueda), incluso si la ley requiere entrega personal en una ubicación diferente.

22. Cambio en los términos. Podemos cambiar (agregar, eliminar o modificar) estos términos en cualquier momento al proporcionarle una notificación anticipada, tal como lo solicita la ley.

23. Rescisión. Podríamos suspender o dar por finalizado el uso de tu tarjeta, con o sin causa, al momento en que le proporcionemos una notificación anticipada. El servicio de su tarjeta podría darse por finalizado de forma inmediata, si: incumple con estos términos o cualquier otro acuerdo con nosotros; el Estado o su representante nos notifica hacerlo; tenemos razón para creer que los fondos disponibles en la cuenta de su tarjeta, su tarjeta o su PIN se han usado o podrían usarse sin autorización; o, si hay reclamaciones conflictivas con los fondos disponibles en la cuenta de su tarjeta. Puede dar por terminado el uso de la tarjeta y de estos términos sin causa, en cualquier momento, con solo comunicarse con Servicio al cliente, al número que aparece al reverso de su tarjeta, el cual también puede encontrar en www.GoProgram.com.

24. Cierre de programa. Nosotros le notificaremos de los pasos que se deben tomar en caso de que este programa de tarjeta prepagada termina con el estado. Cuenta de su tarjeta puede ser sujeto a una tasa de cierre de la cuenta si quedan fondos en su tarjeta después de que el programa termina.

25. Asegurado por la FDIC. Los fondos asociados con la tarjeta cuentan con el seguro y la garantía de la Corporación Federal de Seguro de Depósitos (Federal Deposit Insurance Corporation, por su nombre en inglés) hasta donde lo permita la ley.

26. Lista de tarifas. La siguiente es una lista de tarifas que se aplican a su tarjeta. Honorarios se retirará de su saldo de tarjeta, excepto cuando prohibido por la ley.

Mitchell Turbenson (346024)
turbensonm@ballardspahr.com
BALLARD SPAHR LLP
2029 Century Park East, Suite 1400
Los Angeles, CA 90067-2909
Telephone: 424.204.4400

[Additional counsel listed on signature page]

Attorneys for Defendants Conduent Business Services, LLC and Comerica Bank

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: 4:23-CV-02028

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO STRIKE JURY DEMAND

Hearing Date: Thursday, July 27, 2023
Hearing Time: 1:00 P.M.

Hon. Donna M. Ryu
Courtroom 4
United States Courthouse
1301 Clay Street
Oakland, CA 94612

Now before the Court is Defendants' motion to strike Plaintiff's jury demand. After considering the parties' papers, relevant legal authority, the record in this case, and the oral argument of counsel, the Court GRANTS Defendants' motion to strike jury demand.

Dated: _____

CHIEF MAGISTRATE JUDGE
DONNA M. RYU