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**ATTORNEYS FOR PLAINTIFFS**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

RENEE WALKER, JASON CHAN, ROBERT )  
ACKERMAN, MICHELE KRAYNAK, )  
SHAWN IRVINE, ANTHONY DEMARCO, )  
MARTI KELMER, JOSE CRUZ, ROBERT )  
HIBBS, JASON HART and TAMMY )  
MARSH, each individually and on behalf of )  
all others similarly situated, )

Case No.: No. C 10-03013 SI

**JURY TRIAL DEMANDED**

**FIRST AMENDED  
CLASS ACTION COMPLAINT**

Plaintiffs,

vs.

DISCOVER FINANCIAL SERVICES, Inc., )  
DFS FINANCIAL SERVICES, LLC, )  
DISCOVER BANK, MORGAN STANLEY, )  
and UNIDENTIFIED ENTITIES A through Z, )  
Inclusive, )

Defendants.

Plaintiffs, Renee Walker, Jason Chan, Robert Ackerman, Michele Kraynak, Shawn

1 Irvine, Anthony DeMarco, Marti Kelmer, Jose Cruz, Robert Hibbs, Jason Hart and Tammy  
2 Marsh (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through  
3 their undersigned counsel, Paris Ackerman & Schmierer LLP, Nagel Rice, LLP, Carey, Danis &  
4 Lowe, LLP, and Rukin Hyland Doria & Tindall LLP, hereby bring the within action against  
5 Defendants Discover Financial Services, Inc., DFS Financial Services, LLC, Discover Bank,  
6 Morgan Stanley and Unidentified Entities A – Z (collectively the “Defendants” or “Discover”).  
7 In support thereof, Plaintiffs allege as follows:

8 **INTRODUCTION**

9 1. This is a class action lawsuit brought by, and on behalf of, Discover® credit card  
10 (“Discover® Card”) members throughout the country, who were enrolled in the Defendants’  
11 “Payment Protection Plan” (the “Plan”).

12 2. Defendants are a leading credit card issuer with one of the most recognized  
13 brands in U.S. financial services.

14 3. Defendants operate the Discover® Card, with more than 50 million card  
15 members.

16 **I. Discover’s Payment Protection Plan**

17 4. This matter arises from the deceptive business practices implemented by  
18 Defendants, their agents, employees, representatives, and affiliates, through which they employ  
19 confusing and misleading sales tactics to surreptitiously enroll unwitting Discover® Card  
20 members (“Card Members”) into the costly Plan.

21 5. Defendants’ deceptive scheme is further perpetrated by their improper calculation  
22 of fees relating to the Plan, and their refusal to refund the unlawful fees.

23 6. The Plan is purported to “help safeguard your account payment history by putting  
24 your account on hold during the benefit period (durations vary by product) if you experience a  
25 covered hardship such as disability, hospitalization or one of the other covered events<sup>1</sup>.”

26 7. The Plan purportedly provides both debt suspension and debt cancellation benefits

27 \_\_\_\_\_  
28 <sup>1</sup> <http://www.discovercard.com/protection-solutions/payment-protection.html> (as of July 7, 2010).

1 for a certain fee.

2 8. If a Card Member is enrolled in the Plan and experiences a covered hardship,  
3 certain benefits are purportedly available, including: (i) a hold on monthly payments during the  
4 benefit period; (ii) an abatement of periodic finance charges or late fees during the benefit  
5 period; and (iii) a complete cancellation of outstanding balances, up to Twenty-Five Thousand  
6 Dollars (\$25,000.00) in the event of card member death.<sup>2</sup>

7 9. Upon information and belief, the Plan is aggressively promoted to Card Members  
8 by Defendants' sales agents via scripted telephonic sales pitches, which occur during the  
9 enrollment process, subsequent solicitations, or even during client initiated inquiries.

10 10. The Plan is disingenuously presented as an "optional" benefit to Card Members.

11 11. In reality, however, Defendants' agents use misleading, sleight-of-hand sales  
12 tactics to willfully and knowingly dupe unsuspecting Card Members into unknowingly enrolling  
13 in the Plan.

14 12. For example, Defendants' agents often misrepresent their intentions during such  
15 solicitations, stating that they are merely seeking authorization to send promotional materials  
16 relating to the Plan.

17 13. In actuality, when the unsuspecting Card Members authorize the Defendants'  
18 agents to mail said promotional materials, the agents unilaterally extend the scope of that  
19 authority and enroll the Card Members in the Plan without consent.

20 14. Defendants' knowingly and willfully imposes the Plan feature on the Card  
21 Members' accounts without receiving the Card Members' consent or authorization, and then  
22 requires the Card Member to take onerous affirmative steps to cancel the Plan.

23 15. As a result, Card Members, like the Plaintiffs herein, are deluded into enrollment,  
24 and caused to pay the attendant monthly fee which is a percentage of their balance on each  
25 statement closing date the Card Members are enrolled in the Plan.

26 16. Upon the Card Member's request for proof of such enrollment, Defendants refuse

27 \_\_\_\_\_  
28 <sup>2</sup> *Id.*

1 to provide any such evidence.

2 **II. Defendants' False Advertising Relating to Pricing of the Plan**

3 17. The marketing materials and telephonic solicitations offering the Plan mislead  
4 consumers to believe that the fee associated with the Plan is assessed as "89¢ per every \$100.00  
5 of your total Discover Card account balance at the end of each monthly billing period in which  
6 you're enrolled in Payment Protection."

7 18. Thus, according to the information presented through the marketing of the plan, if  
8 a Card Member's total account balance at the end of a billing period in which he/she is enrolled  
9 in the Plan is \$100.00, Discover may contractually charge a fee of 89¢.

10 19. Such marketing and advertising lead Card Members to believe that if their total  
11 Discover Card account balance at the end of a billing period in which he/she is enrolled in the  
12 Plan reached the next \$100.00 increment, *i.e.*, \$200.00; Discover may contractually charge a fee  
13 of \$1.78.

14 20. Such marketing and advertising further lead the Card Members to believe that if  
15 their total Discover® Card account balance at the end of a billing period in which he/she is  
16 enrolled in the Plan is \$110.00 (*i.e.*, more than \$100.00, but less than the next \$100.00 increment  
17 of \$200.00), Discover may only contractually charge a fee of 89¢ because the next \$100.00  
18 increment has not yet been reached.

19 21. In contrast with the misinformation provided through the marketing and  
20 advertising of the Plan, Defendants actually charge .0089 of the Card Member's total Discover®  
21 Card account balance at the end of each a billing period in which the Card Member is enrolled in  
22 the Plan.

23 22. Therefore, when a Card Member carries a balance of \$110.00 on the statement  
24 closing date while he/she is enrolled in the Plan, Defendants' charges a fee of 97.9¢ (*i.e.*, .0089 x  
25 \$110.00), as opposed to the 89¢ as advertised.

26 23. Additionally, the Plan creates an "endless cycle" whereby the resulting fees are  
27 exacerbated and compounded as a result of the interest that accrues when Card Members do not  
28

1 pay their account balances off in full.

2 24. Furthermore, the fees associated with the Plan cause many Card Members to  
3 exceed their credit limits, resulting in additional excessive fees and penalties.

4 **III. Defendants' Violation of the Federal Truth In Lending Act**

5 25. In addition to the foregoing, the fees charged in connection with the Plan are  
6 actually finance charges, as defined under the Federal Truth in Lending Act, 15 U.S.C. § 1601, *et*  
7 *seq.* (the "TILA").

8 26. Pursuant to statutory mandate, Defendants are required to include these fees in the  
9 finance charge section of the Card Members' statement.

10 27. Instead, Defendants surreptitiously disguise such fees as transactions in the Card  
11 Members' statement, in blatant violation of the TILA.

12 28. Additionally, Defendants violate Regulation Z, 12 CFR part 226, which was  
13 issued to implement the TILA, by failing to itemize and identify the components of such fees.

14 29. Lastly, Defendants attempt to limit its Card Members' ability to vindicate their  
15 rights and seek legal redress for this misconduct by including unconscionable procedural  
16 impediments such as arbitration provisions and class action waivers within the Plan "Terms and  
17 Conditions" and its Card Member Agreement.

18 **STATEMENT OF FACTS**

19 **A. Plaintiff Renee Walker**

20 30. Renee Walker ("Walker") has been a Discover® Card Member since December  
21 2008.

22 31. Defendants deceptively enrolled Walker in the Plan without her authorization or  
23 consent.

24 32. Walker first learned she was being billed for fees related to the Plan in or about  
25 March 2010.

26 33. On or about January 15, 2010, Walker called Defendants to challenge the subject  
27 fees.

1           34. Defendants' Customer Service representative advised Walker that she had been  
2 enrolled in the Plan as of May 14, 2009.

3           35. Defendants' Customer Service representative agent advised Walker that her  
4 consent for enrollment in the Plan was "on file", but could not provide any further information  
5 on the matter.

6           36. Walker cancelled the Plan on the same day.

7           37. Walker was charged, at a minimum, five hundred, fifty-one dollars and ninety  
8 eight cents (\$551.98) in unauthorized fees related to the Plan.

9           38. Pursuant to Cal. Civ. Code § 1782, Plaintiff Walker notified Defendants in  
10 writing, by certified mail sent on July 9 2010, of the particular violations of Cal. Civ. Code  
11 §1770 and demanded that Defendants rectify the problems associated with the actions detailed  
12 above (the "Walker Letter").

13           39. Defendants did not respond to the Walker Letter.

14           40. Defendants did not resolve or offer to resolve the issues raised in the Walker  
15 Letter.

16 **B. Plaintiff Jason Chan**

17           41. Jason Chan ("Chan") is a Discover® Card Member since 2006.

18           42. Defendants deceptively enrolled Chan in the Plan without his authorization or  
19 consent.

20           43. Chan first learned he was being billed for fees related to the Plan in or about  
21 March 2010.

22           44. On or about March 21, 2010, Chan called Defendants to challenge the subject fee.

23           45. A Discover® Customer Service representative advised Chan that he had been  
24 enrolled in the Plan for more than two years.

25           46. Defendants' Customer Service representative agent advised Chan that his consent  
26 for enrollment in the Plan was "on file", but could not provide any further information on the  
27 matter.

1 47. Chan cancelled the Plan on the same day.

2 48. Chan was charged, at a minimum, one thousand, six hundred, fifty-seven dollars  
3 and twenty- four cents (\$1,657.24) in unauthorized fees related to the Plan.

4 49. Pursuant to Cal. Civ. Code § 1782, Plaintiff Chan notified Defendants in writing,  
5 by certified mail sent on July 8, 2010, of the particular violations of Cal. Civ. Code §1770 and  
6 demanded that Defendants rectify the problems associated with the actions detailed above (the  
7 “Chan Letter”).

8 50. Defendants did not respond to the Chan Letter.

9 51. Defendants did not resolve or offer to resolve the issues raised in the Chan Letter.

10 **C. Plaintiff Robert Ackerman**

11 52. Plaintiff Robert Ackerman (“Ackerman”) has been a Card Member since 2001.

12 53. Defendants deceptively enrolled Ackerman in the Plan without his authorization  
13 or consent.

14 54. Ackerman first learned he was being billed for fees related to the Plan in or about  
15 November 2009.

16 55. In or about November 2009, Ackerman called Defendants to challenge the subject  
17 fees.

18 56. Defendants’ Customer Service representative advised Ackerman that he had been  
19 enrolled in the Plan since July 2008.

20 57. Defendants’ Customer Service representative advised Ackerman that his consent  
21 for enrollment in the Plan was “on file”, but could not provide any further information on the  
22 matter.

23 58. Ackerman cancelled the Plan on the same day.

24 59. Ackerman was charged, at a minimum, three hundred dollars (\$300.00) in  
25 unauthorized fees related to the Plan.

26 **D. Plaintiff Michelle Kraynak**

27 60. Michelle Kraynak (“Kraynak”) has been a Discover® Card Member since 2001.





1 74. During that call, the Irvines cancelled their enrollment in the Plan.

2 75. On or about June 19, 2009, Irvine received a letter from Defendants'  
3 "Cardmember Services" department stating that an internal investigation had established proof of  
4 his enrollment in the Plan on August 6, 2008, but could not provide any further information on  
5 the matter.

6 76. The Irvines were charged in excess of one thousand dollars (\$1,000.00) in  
7 unauthorized fees related to the Plan.

8 **F. Plaintiff Anthony DeMarco**

9 77. Anthony DeMarco ("DeMarco") is a Discover® Card Member.

10 78. Defendants deceptively enrolled DeMarco in the Plan without his authorization or  
11 consent.

12 79. DeMarco first learned he was being billed for fees related to the Plan in or about  
13 March 2010.

14 80. In or about March 2010, DeMarco called Defendants to challenge the subject fee.

15 81. Defendants' Customer Service representative advised DeMarco that he had been  
16 enrolled in the Plan since April 2008.

17 82. Defendants' Customer Service representative agent advised DeMarco that a  
18 recording of his consent for enrollment in the Plan was "on file", but could not provide any  
19 further information on the matter.

20 83. DeMarco cancelled the Plan on the same day.

21 84. DeMarco was charged, at a minimum, two hundred dollars (\$200.00) in  
22 unauthorized fees related to the Plan.

23 **G. Plaintiff Marti Kelmer**

24 85. Marti Kelmer ("Kelmer") has been a Discover® Card Member since on or about  
25 October 2006.

26 86. Defendants deceptively enrolled Kelmer in the Plan without her authorization or  
27 consent.

1           87. Kelmer first learned she was being billed for fees related to the Plan in or about  
2 September of 2009.

3           88. On or about September 21, 2009, Kelmer called Defendants to challenge the  
4 subject fees.

5           89. Defendants' Customer Service representative advised Kelmer that she had been  
6 enrolled in the Plan since October 30, 2006.

7           90. Defendants' Customer Service representative agent advised Kelmer that her  
8 consent for enrollment in the Plan was "on file", but could not provide any further information  
9 on the matter.

10          91. Kelmer cancelled the Plan on the same day.

11          92. Kelmer was charged, at a minimum, seven hundred, eighty-one dollars and  
12 nineteen cents (\$781.19) in unauthorized fees related to the Plan.

13 **H. Plaintiff Jose Cruz**

14          93. Jose Cruz ("Cruz") has been a Discover® Card Member since in or about 2009.

15          94. Defendants deceptively enrolled Cruz in the Plan without his authorization or  
16 consent.

17          95. Cruz first learned he was being billed for fees related to the Plan on or about June  
18 16, 2010.

19          96. On or about June 16, 2010, Cruz and his wife called Defendants to challenge the  
20 subject fees.

21          97. Defendants' Customer Service representative advised Cruz and his wife that his  
22 account had been enrolled in the Plan since April 17, 2009.

23          98. Defendants' Customer Service representative agent advised Cruz that his wife's  
24 consent for enrollment in the Plan was "on file", but could not provide any further information  
25 on the matter.

26          99. After further dispute, Defendants agreed to provide Cruz a credit refund on  
27 account for the Plan fees, pending their investigation.

1           100. Cruz cancelled the Plan the same day.

2           101. Approximately one month later, Defendants contacted Cruz to advise that they  
3 had confirmed his enrollment in the plan and re-instated all of the fees that they had previously  
4 refunded.

5           102. Cruz was charged, at a minimum, seven hundred dollars (\$700.00) in  
6 unauthorized fees related to the Plan.

7 **I. Plaintiff Robert Hibbs**

8           103. Robert Hibbs (“Hibbs”) has been a Discover® Card Member since 2000.

9           104. Defendants deceptively enrolled Hibbs in the Plan without his authorization or  
10 consent.

11           105. Hibbs first learned he was being billed for fees related to the Plan in or about the  
12 last week of July 2010.

13           106. Upon learning that he was being billed for fees related to the Plan, Hibbs  
14 reviewed his historical statements and learned he had been enrolled in the Plan since March  
15 2009.

16           107. Hibbs immediately called Defendants to challenge the subject fees.

17           108. Defendants’ Customer Service representative advised Hibbs that they would  
18 conduct an investigation to determine whether or not they had proof of his enrollment.

19           109. Hibbs cancelled the plan on the same day and has not heard back from Defendants  
20 regarding their investigation.

21           110. Hibbs was charged, at a minimum, one thousand dollars (\$1,000.00) in  
22 unauthorized fees related to the Plan

23 **J. Plaintiff Jason Hart**

24           111. Jason Hart (“Hart”) has been a Discover® Card Member since November 2009

25           112. Defendants deceptively enrolled Hart in the Plan without his authorization or  
26 consent.

27           113. Hart first learned he was being billed for fees related to the Plan on or about  
28

1 August 8, 2010.

2 114. On or about August 8, 2010, Hart called Defendants to challenge the subject fees.

3 115. Defendants' Customer Service representative advised Hart that he had been  
4 enrolled in the Plan since May 2010.

5 116. Defendants' Customer Service representative agent advised Hart that his consent  
6 for enrollment in the Plan was "on file", but could not provide any further information on the  
7 matter.

8 117. Hart cancelled the Plan on the same day.

9 118. Marsh was charged, at a minimum, Forty-Five Dollars and Eighty-Five cents  
10 (\$45.85) in unauthorized fees related to the Plan.

11 **K. Plaintiff Tammy Marsh**

12 119. Tammy Marsh ("Marsh") has been a Discover® Card Member since June 2008.

13 120. Defendants deceptively enrolled Marsh in the Plan without her authorization or  
14 consent.

15 121. Marsh first learned she was being billed for fees related to the Plan on or about  
16 January 29, 2010.

17 122. On or about January 29, 2010, Marsh called Defendants to challenge the subject  
18 fees.

19 123. Defendants' Customer Service representative advised Marsh that she had been  
20 enrolled in the Plan since April 20, 2009.

21 124. Defendants' Customer Service representative agent advised Marsh that her  
22 consent for enrollment in the Plan was "on file", but could not provide any further information  
23 on the matter.

24 125. Marsh cancelled the Plan on the same day.

25 126. Marsh was charged, at a minimum, one thousand, two hundred, ninety-three  
26 dollars and twenty-four cents (\$1293.24) in unauthorized fees related to the Plan.

27 **JURISDICTION AND VENUE**



1 residing in San Francisco, and a Card Member who was unknowingly enrolled into the Plan and  
2 caused to unjustly pay fees for said enrollment.

3 134. Plaintiff Ackerman was, at all times relevant hereto, a citizen of the State of New  
4 Jersey, residing in East Brunswick and a Card Member who was unknowingly enrolled into the  
5 Plan and caused to unjustly pay fees for said enrollment.

6 135. Plaintiff Krayank was, at all times relevant hereto, a citizen of the State of  
7 Pennsylvania, residing in Rices Landing, and a Card Member who was unknowingly enrolled  
8 into the Plan and caused to unjustly pay fees for said enrollment.

9 136. Plaintiff Irvine was, at all times relevant hereto, a citizen of the State of Texas,  
10 residing in Rockwall, and a Card Member who was unknowingly enrolled into the Plan, and  
11 caused to unjustly pay fees for said enrollment.

12 137. Plaintiff DeMarco was, at all times relevant hereto, a citizen of the State of New  
13 York, residing in Webster, and a Card Member who was unknowingly enrolled into the Plan, and  
14 caused to unjustly pay fees for said enrollment.

15 138. Plaintiff Kelmer was, at all times relevant hereto, a citizen of the State of  
16 Pennsylvania, residing in Philadelphia, and a Card Member who was unknowingly enrolled into  
17 the Plan and caused to unjustly pay fees for said enrollment.

18 139. Plaintiff Cruz was, at all times relevant hereto, a citizen of the State of Texas,  
19 residing in Iowa Park, and a Card Member who was unknowingly enrolled into the Plan, and  
20 caused to unjustly pay fees for said enrollment.

21 140. Plaintiff Hibbs was, at all times relevant hereto, a citizen of the State of Oregon  
22 and a Card Member who was unknowingly enrolled into the Plan, and caused to unjustly pay  
23 fees for said enrollment.

24 141. Plaintiff Hart was, at all times relevant hereto, a citizen of the State of Missouri,  
25 residing in Lemay, and a Card Member who was unknowingly enrolled into the Plan, and caused  
26 to unjustly pay fees for said enrollment.

27 142. Plaintiff Marsh was, at all times relevant hereto, a citizen of the State of  
28

1 Pennsylvania, residing in Elizabethtown, and a Card Member who was unknowingly enrolled  
2 into the Plan and caused to unjustly pay fees for said enrollment.

3 143. Defendant DFS Services LLC, formerly known as Discover Financial Services  
4 LLC, (hereinafter, "Defendants"), is a limited liability company duly organized and existing  
5 under the laws of the State of Delaware, having a principal place of business in the State of  
6 Illinois. The sole member of the limited liability company DFS Services LLC is Defendant  
7 Discover Financial Services (Inc.). As the sole member of the limited liability company DFS  
8 Services, LLC, Defendant Discover Financial Services (Inc.) is responsible for the actions and  
9 wrongdoings of the limited liability company DFS Services, LLC. Defendant Discover Financial  
10 Services (Inc.) is a corporation duly organized and existing under the laws of the State of  
11 Delaware, having a principal place of business in the State of Illinois. Because limited liability  
12 companies are deemed citizens of the State where it has its principal place of business (Illinois),  
13 the State under whose laws it is organized (Delaware), and every state of which a member is a  
14 citizen (Delaware and Illinois), Defendant DFS Services LLC is a citizen of the States of  
15 Delaware and Illinois.

16 144. Defendant Discover Financial Services (Inc.) is a corporation duly organized and  
17 existing under the laws of the State of Delaware, having a principal place of business in the State  
18 of Illinois. Defendant Discover Financial Services (Inc.), as the parent corporation of Defendant  
19 Discover Bank, is responsible for the actions and wrongdoings of Defendant Discover Bank. As  
20 the sole member of the limited liability company DFS Services, LLC, Defendant Discover  
21 Financial Services (Inc.) is responsible for the actions and wrongdoings of the limited liability  
22 company DFS Services, LLC.

23 145. Defendant Discover Bank, (hereinafter, "Defendants"), is a corporation duly  
24 organized and existing under the laws of the State of Delaware, having a principal place of  
25 business in the State of Delaware. Defendant Discover Bank is a wholly owned subsidiary of  
26 Defendant Discover Financial Services (Inc.). Defendant Discover Financial Services (Inc.), as  
27 the parent corporation of Defendant Discover Bank, is responsible for the actions and  
28

1 wrongdoings of Defendant Discover Bank.

2 146. Defendant Morgan Stanley, (hereinafter, "Defendants") is a corporation duly  
3 organized and existing under the laws of the State of Delaware, having a principal place of  
4 business in the State of New York. During all relevant times prior to June 24, 2007, Defendant  
5 Morgan Stanley was the parent corporation of Discover Financial Services (Inc.). As such,  
6 Defendant Morgan Stanley is responsible for the actions and wrongdoings of Defendant  
7 Discover Financial Services (Inc.) that took place prior to June 30, 2007.

8 147. The true names and capacities, of the Defendants named as UNIDENTIFIED  
9 ENTITIES A through Z, inclusive, are unknown to Plaintiffs and the Putative Class who,  
10 therefore, sue those Defendants by such fictitious names. Plaintiffs and the Putative Class are  
11 informed and believe and thereon allege that each of the Defendants sued herein as  
12 UNIDENTIFIED ENTITIES A through Z are and were affiliates, subsidiaries, or other related  
13 entities of each and every other Defendants and were at all relevant times acting within the  
14 course and scope of such agency and affiliation, and/or are legally responsible in some manner  
15 for the events and happenings herein referred to and caused injuries and damages proximately  
16 thereby to Plaintiffs and the Putative Class as alleged herein. Plaintiffs will seek to amend this  
17 Complaint to allege the true names and capacities of such Defendants when ascertained.

18 **CLASS ACTION ALLEGATIONS**

19 148. This action is brought as a class action pursuant to Federal Rules of Civil  
20 Procedure 23(a) and (b) on behalf of the Plaintiffs named above and all others similarly  
21 situated. The class is defined as:

22 a. All United States Citizens (including persons and business  
23 entities) that were enrolled in the Plan without their  
24 consent during the longest period permitted by the  
applicable statutes of limitations.

25 and/or

26 b. All persons in the United States who are/were Members of  
27 the Plan, and were charged a fee higher than the advertised  
28 amount.



1  
2 149. Excluded from the proposed Class are:

- 3 a. Defendants;
- 4 b. Any entities in which Defendants have or had a controlling interest;
- 5 c. Any officers or directors of Defendants;
- 6 d. The legal representatives, heirs, successors, and assigns of Defendants;
- 7 e. Any Judge assigned to this action and his or her immediate family, and  
8 anyone who timely requests exclusion from the Class;

9 150. **Numerosity**: Members of the Class are so numerous that their individual joinder  
10 is impractical. The precise identities, number, and addresses of members of the Class are  
11 unknown to the Plaintiffs, but may and should be known with proper and full discovery of  
12 Defendants, third-parties, and their respective records. All Class members pray for money  
13 damages, temporary and permanent injunctive relief, and declaratory relief because the parties  
14 opposing the Class have acted on grounds generally applicable to the Class, thereby making  
15 appropriate injunctive relief to the class as a whole.

16 151. **Existence of Common Questions of Fact and Law**: There is a well-defined  
17 commonality and community of interest in the questions of fact and law affecting the members  
18 of the Class. The common questions of fact and law include, among other things:

- 19 a. Whether Defendants engaged in a common policy, plan or scheme to  
20 unilaterally enroll customers in the Plan;
- 21 b. Whether Defendants engaged in a common policy, plan or scheme to  
22 implement a scripted sales pitch to confuse customers into enrolling into the  
23 plan;
- 24 c. Whether Defendants engaged in a common policy, plan or scheme to charge  
25 fees in excess of those represented to customer;
- 26 d. Whether Defendants engaged in a common policy, plan or scheme to omit  
27 material terms and conditions of the Plan so that customers would enroll in the  
28 Plan.
- e. Whether and to what extent each Defendant's deceptive business practices and  
misconduct, as complained of herein, violate California law;

- 1 f. Whether and to what extent each Defendant's deceptive business practices and  
2 misconduct, as complained of herein, constitute fraud under California law
- 3 g. Whether and to what extent each Defendant's deceptive business practices and  
4 misconduct, as complained of herein, are in violation of Cal. Bus. & Prof.  
5 Code § 17200, *et seq.*;
- 6 h. Whether and to what extent each Defendant's deceptive business practices and  
7 misconduct, as complained of herein, are in violation of Cal. Bus. & Prof.  
8 Code § 17500, *et seq.*;
- 9 i. Whether and to what extent each Defendant's deceptive business practices and  
10 misconduct, as complained of herein, are in violation of Cal. Civ. Code §  
11 1770, *et seq.*;
- 12 j. Whether and to what extent each Defendant's deceptive business practices and  
13 misconduct, as complained of herein, violate Consumer Protection Statutes of  
14 various other states, including New Jersey, New York, Pennsylvania, and  
15 Texas;
- 16 k. Whether and to what extent each Defendant has been unjustly enriched as a  
17 result of the deceptive and unfair business practices, as complained of herein;
- 18 l. Whether each Defendant's practices violated TILA, 15 U.S.C. § 1601, *et seq.*;
- 19 m. Whether each Defendant's practices violated Regulation Z, 12 CFR part 226;
- 20 n. Whether the arbitration provision in the Discover Card Member Agreement,  
21 as incorporated by reference into the Plan's "Terms & Conditions," is  
22 unconscionable and unenforceable;
- 23 o. Whether the class-action prohibition provision in the Discover Card Member  
24 Agreement, as incorporated by reference into the Plan's "Terms &  
25 Conditions" is unconscionable and unenforceable;
- 26 p. Whether the terms of the Discover® Card Member Agreement "Terms &  
27 Conditions" are applicable to disputes involving the Plan.
- 28 q. If the terms of the Discover® Card Member Agreement "Terms &  
Conditions" are applicable to disputes involving the Plan, whether the  
arbitration provision in the Discover© Card Member Agreement is  
unconscionable and unenforceable;
- r. If the terms of the Discover® Card Member Agreement "Terms &

1           Conditions” are applicable to disputes involving the Plan, whether the class-  
2           action prohibition provision in the Discover® Card Member Agreement is  
3           unconscionable and unenforceable; and

- 4           s. Whether Plaintiffs and the Putative Class are entitled to recover  
5           compensatory, exemplary, treble, statutory or punitive damages based on the  
6           Defendants’ fraudulent and illegal conduct or practices in connection with the  
7           Plan.

8           152. **Typicality:** Plaintiffs are members of the Putative Class. The Plaintiffs’ claims  
9           and the claims of the Putative Class have a common origin and share common bases. Their  
10          claims originate from the same deceptive and fraudulent practices of the Defendants, and the  
11          Defendants act and have acted in the same way toward the Plaintiffs and the Class members. If  
12          brought and prosecuted individually, the claims of each Putative Class member would  
13          necessarily require proof of the same material and substantive facts, rely upon the same remedial  
14          theories, and seek the same relief.

15          153. **Adequacy:** Plaintiffs are adequate representative of the Putative Class because  
16          their interests do not conflict with the interests of the members of the Putative Class they seek to  
17          represent. Plaintiffs have retained competent counsel, and intend to prosecute this action  
18          vigorously. Plaintiffs’ counsel will fairly and adequately protect the interests of the members of  
19          the Putative Class.

20          154. **Superiority.** A Class action is superior to all other available methods for the fair  
21          and efficient adjudication of this controversy because joinder of all Members is impracticable.  
22          Furthermore, as the damages suffered by individual Class Members might be relatively small,  
23          the expense and burden of individual litigation makes it impossible for Members of the Class to  
24          individually redress the wrongs done to them. There will be no difficulty in the management of  
25          this case as a Class action.

26          155. In the alternative, the Class may be certified because:

- 27           a. the prosecution of separate actions by the individual Members of the Class  
28           would create a risk of inconsistent or varying adjudication with respect to  
            individual Class Members that would establish incompatible standards of  
            conduct for Defendants;

- 1
- 2 b. the prosecution of separate actions by individual Class Members would
- 3 create a risk of adjudications with respect to them that would, as a
- 4 practical matter, be dispositive of the interests of other Class Members not
- 5 party to the adjudications, or they would substantially impair or impede
- 6 their ability to protect their interests; and
- 7
- 8 c. Defendants have acted or refused to act on grounds generally applicable to
- 9 the Class, thereby making appropriate final and injunctive relief with
- 10 respect to the Members of the Class as a whole.

11

12 156. This lawsuit may be maintained as a class action pursuant to Federal Rule of Civil

13 Procedure 23(b)(2) because Plaintiffs and the Putative Class seek declaratory and injunctive

14 relief, and all of the above factors of numerosity, common questions of fact and law, typicality

15 and adequacy are present. Moreover, Defendants have acted on grounds generally applicable to

16 Plaintiffs and the Putative Class as a whole, thereby making declaratory and/or injunctive relief

17 proper and suitable remedies.

18

19 157. This lawsuit may be maintained as a class action under Federal Rule of Civil

20 Procedure 23(b)(3) because questions of fact and law common to the Class predominate over the

21 questions affecting only individual members of the Class, and a class action is superior to other

22 available means for the fair and efficient adjudication of this dispute. The damages suffered by

23 each individual class member may be disproportionate to the burden and expense of individual

24 prosecution of complex and extensive litigation to proscribe Defendants' conduct and practices.

25 Additionally, effective redress for each and every class member against Defendants may be

26 limited or even impossible where serial, duplicate, or concurrent litigation occurs arising from

27 these disputes. Even if individual class members could afford or justify the prosecution of their

28 separate claims, such an approach would compound judicial inefficiencies, and could lead to

incongruous and conflicting judgments against Defendants.

25 **COUNT I**

26 **COMMON LAW FRAUD**

27 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,

28 and for this Count, allege the following:

1 158. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
2 paragraphs of this Complaint as if fully set forth herein.

3 159. Defendants have engaged in a common scheme of fraud, through which they  
4 unlawfully enroll Card Members in the Plan without obtaining the Card Members' consent or  
5 authorization.

6 160. Defendants perpetrate the common scheme of fraud complained of herein by  
7 omitting, or failing to disclose to Card Members, that they are unilaterally enrolling said Card  
8 Members in the Plan.

9 161. Defendants knowingly and willfully enroll Card Members in the Plan without  
10 obtaining the Card Members' consent or authorization.

11 162. Defendants intentionally perpetrate the common scheme of fraud complained of  
12 herein as an unlawful means to cause Card Members to pay additional fees.

13 163. Plaintiffs, and the putative class, are presumed to have justifiably relied on  
14 Defendants' omissions and failures to disclose.

15 164. As a direct and proximate result of Defendants' common scheme of fraud,  
16 Plaintiffs were caused to sustain damages in the form of the unauthorized fees paid in connection  
17 with the Plan.

18 **COUNT II**  
19 **CALIFORNIA UNFAIR COMPETITION LAW**  
20 **CAL. BUS. & PROF. CODE § 17200.**  
**(Injunctive Relief and Restitution)**

21 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,  
22 and for this Count, allege the following:

23 165. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
24 paragraphs of this Complaint as if fully set forth herein.

25 166. Plaintiffs are entitled to injunctive relief under Cal. Bus. & Prof. Code § 17200, *et*  
26 *seq.*

27 167. Defendants fall within the definition of a "person" as contemplated by Cal. Bus.  
28

1 & Prof. Code 17200, *et seq.*

2 168. The acts and practices of Defendants as alleged herein constitute unlawful, unfair,  
3 and fraudulent business acts and practices within the meaning of Cal. Bus. & Prof. Code §  
4 17200, *et seq.*

5 169. Defendants fraudulently and deceptively charged higher fees related to the Plan  
6 than advertised in marketing materials and telephonic solicitations in violation of Cal. Bus. &  
7 Prof. Code § 17200, *et seq.*

8 170. Defendants have also engaged in a “fraudulent” business act or practice in that the  
9 representations and omissions described herein are false and/or likely to deceive potential and  
10 current Card Members.

11 171. Defendants have also engaged in “unfair” business acts or practices in that the  
12 harm caused by Defendants' misconduct outweighs any utility of such conduct and such  
13 misconduct offends public policy, is immoral, unscrupulous, unethical, deceitful and offensive,  
14 and causes substantial injury to consumers.

15 172. The aforementioned unlawful, fraudulent, and unfair business acts or practices  
16 conducted by defendants continue to this day. Defendants have failed to publicly acknowledge  
17 the wrongful nature of their actions and continue to perpetrate the fraud complained of herein.

18 173. Defendants fraudulently and deceptively caused Plaintiffs and the Putative Class  
19 to enroll in the Plan without obtaining consent or authorization to do so in violation of Cal. Bus.  
20 & Prof. Code § 17200, *et seq.*

21 174. Defendants have engaged in “unlawful” business acts and practices by violating  
22 Cal. Bus. & Prof. Code § 17500, *et seq.* as described above.

23 175. Defendants have engaged in “unlawful” business acts and practices by violating  
24 15 U.S.C. §1601, *et seq.* as described above.

25 176. Defendants' deceptive and fraudulent business practices complained of herein, are  
26 the direct and proximate cause of damages sustained by Plaintiffs and the Putative Class  
27 members.

1 177. Plaintiffs bring this action for injunctive relief to enjoin the misconduct and  
2 practices complained of herein.

3 178. Plaintiffs reserve the right to allege other violations of law which constitute  
4 unlawful acts or practices. Such conduct is ongoing and continues to this date.

5 179. Plaintiff also brings this action pursuant to Section 17203 for restitutionary relief  
6 as the court deems proper to prevent the use or employment by Defendants of any practices which  
7 violate Section 17200, et seq. or which may be necessary to restore to any person in interest any  
8 money property, real or personal, which may have been acquired by means of any practice  
9 declare unlawful under Section 17200, et seq.

10 **COUNT III**  
11 **CALIFORNIA FALSE ADVERTISING LAW**  
12 **CAL. BUS. & PROF. CODE § 17500**  
13 **(Injunctive Relief and Restitution)**

14 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,  
15 and for this Count, allege the following:

16 180. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
17 paragraphs of this Complaint as if fully set forth herein.

18 181. Defendants made untrue and misleading statements to Plaintiffs and the Putative  
19 Class when soliciting their enrollment in the Plan, in violation of Cal. Bus. & Prof. Code §  
20 17500.

21 182. As alleged with specificity herein, Defendants misrepresented their intentions  
22 during said solicitations, as a means to deceive Plaintiffs and the Putative Class into enrolling in  
23 the Plan.

24 183. Defendants knew or should have known that the solicitations to enroll plaintiffs  
25 and the putative class in the Plan, as alleged with specificity herein, were untrue and misleading.

26 184. Defendants' engaged in a scheme to advertise and promote the Plan at a cost of  
27 "89¢ per every \$100.00 of your total Discover® Card account balance," with the intent not to  
28 sell the Plan at the stated price.

1 185. In actuality, Defendants charge Card Members enrolled in the Plan .0089 times  
2 their total outstanding monthly balance to arrive at the total monthly fee.

3 186. Defendants knew or should have known that the stated price of the Plan, as  
4 presented in marketing materials and during solicitations, was untrue and misleading.

5 187. As a direct and proximate result of these acts, consumers have been and are being  
6 harmed.

7 188. Plaintiff brings this action pursuant to Section 17500, *et seq.* (a) for injunctive  
8 relief to enjoin the practices described herein.

9 189. Plaintiff also brings this action pursuant to Section 17535 for restitutionary relief  
10 as the court deems proper to prevent the use or employment by Defendants of any practices which  
11 violate Section 17500, *et seq.* or which may be necessary to restore to any person in interest any  
12 money property, real or personal, which may have been acquired by means of any practice  
13 declare unlawful under Section 17500, *et seq.*

14 **COUNT IV**  
15 **CONSUMERS LEGAL REMEDIES ACT**  
16 **Cal. Civ. Code § 1770**  
17 **(Injunctive Relief)**

18 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,  
19 and for this Count, allege the following:

20 190. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
21 paragraphs of this Complaint as if fully set forth herein.

22 191. As alleged with specificity herein, Defendants engaged in unfair and deceptive  
23 business practices relating to the enrollment of Plaintiffs and the Putative Class in the Plan.

24 192. Plaintiffs assert this cause of action individually and on behalf of all members of  
25 the Class against defendant for violation of the Consumers Legal Remedies Act, Civil Code §  
26 1750, *et seq.*

27 193. Defendants are “person(s)” within the meaning of Cal. Civ. Code sections 1761(c)  
28 and 1770.



1 194. Defendants provide the Plan, which constitutes “services” within the meaning of  
2 Cal. Civ. Code sections 1761(b) and 1770.

3 195. Purchasers of Defendant's services, including Plaintiffs and members of the  
4 Class, are “consumers” within the meaning of Cal Civ. Code sections 1761(d) and 1770.

5 196. Plaintiffs’ and each Class member’s enrollment in the Plans represent a  
6 “transaction” within the meaning of Cal. Civ. Code sections 1761(e) and 1770.

7 197. The Plan is an ancillary service offered by Defendants, to their Card Members,  
8 which is entirely unrelated to the extension of credit.

9 198. As alleged with specificity herein, Defendants advertised and offered certain  
10 services to Plaintiffs and the Putative Class, with intent not to sell such services as advertised.

11 199. Specifically, Defendants’ advertised and promoted the Plan at a cost of “89¢ per  
12 every \$100.00 of your total Discover® Card account balance,” with the intent not to sell the Plan  
13 at the stated price.

14 200. In actuality, Defendants charge Card Members enrolled in the Plan .0089 times  
15 their total outstanding monthly balance to arrive at a total monthly fee which exceeds the  
16 advertised “89¢ per every \$100.00” of the Card Members’ total balance.

17 201. As alleged with specificity herein, Defendants represent that the subject of a  
18 transaction has been supplied in accordance with a previous representation when it has not.

19 202. Specifically, Defendants represent that Plaintiffs and the Putative Class authorized  
20 and consented to enrollment in the Plan, when no such authorization or consent was ever  
21 provided.

22 203. As alleged with specificity herein, Defendants have inserted an unconscionable  
23 provision in the Discover® Card Member Agreement and the Plan.

24 204. Specifically, the mandatory arbitration provision within the Discover® Card  
25 Member Agreement and the Plan is unconscionable.

26 205. Likewise, the class action waivers within the mandatory arbitration provisions in  
27 the Card Member Agreement and the Plan are unconscionable.



1 at the stated price.

2 217. In actuality, Defendants charge Card Members enrolled in the Plan .0089 times  
3 their total outstanding monthly balance to arrive at a total monthly fee which exceeds the  
4 advertised “89¢ per every \$100.00” of the Card Members’ total balance.

5 218. As alleged with specificity herein, Defendants represent that the subject of a  
6 transaction has been supplied in accordance with a previous representation when it has not.

7 219. Specifically, Defendants represent that Plaintiffs and the Putative Class authorized  
8 and consented to enrollment in the Plan, when no such authorization or consent was ever  
9 provided.

10 220. As alleged with specificity herein, Defendants have inserted an unconscionable  
11 provision in the Discover® Card Member Agreement and the Plan.

12 221. Specifically, the mandatory arbitration provisions within the Discover® Card  
13 Member Agreement and the Plan are unconscionable.

14 222. Likewise, the class action waivers within the mandatory arbitration provisions in  
15 the Card Member Agreement and the Plan are unconscionable.

16 223. Pursuant to Cal. Civ. Code § 1782, Plaintiff Chan notified Defendants in writing,  
17 by certified mail sent on July 8, 2010, of the particular violations of Cal. Civ. Code §1770 and  
18 demanded that Defendants rectify the problems associated with the actions detailed above (the  
19 “Chan Letter”).

20 224. Pursuant to Cal. Civ. Code § 1782, Plaintiff Walker notified Defendants in  
21 writing, by certified mail sent on July 9 2010, of the particular violations of Cal. Civ. Code  
22 §1770 and demanded that Defendants rectify the problems associated with the actions detailed  
23 above (the “Walker Letter”).

24 225. Defendants did not respond to the Chan Letter.

25 226. Defendants did not resolve or offer to resolve the issues raised in the Chan Letter.

26 227. Defendants did not respond to the Walker Letter.

27 228. Defendants did not resolve or offer to resolve the issues raised in the Walker  
28

1 Letter.

2 229. As a result of the foregoing Plaintiffs seek actual, punitive and special statutory  
3 damages as provided for under Cal. Civ. Code § 1780 (a) - (d).

4 **COUNT VI**  
5 **UNJUST ENRICHMENT**

6 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,  
7 and for this Count, allege the following:

8 230. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
9 paragraphs of this Complaint as if fully set forth herein.

10 231. To the detriment of Plaintiffs and the Class, Defendants have been, and continue  
11 to be, unjustly enriched as a result of their wrongful conduct alleged herein.

12 232. Plaintiffs and the Class conferred a benefit on Defendants when Defendants  
13 enrolled Plaintiffs and Class Members in the Plan without their knowledge and/or consent.

14 233. Defendants unlawfully accepted said benefits, which under the circumstances,  
15 would be unjust to allow Defendants to retain.

16 234. Plaintiffs and the Class Members, therefore, seek disgorgement of all wrongfully  
17 obtained profits received by Defendants as a result of their inequitable conduct.

18 **COUNT VII**  
19 **VIOLATION OF TRUTH IN LENDING ACT**  
20 **15 U.S.C. §1601 et seq.**

21 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,  
22 and for this Count, allege the following:

23 235. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
24 paragraphs of this Complaint as if fully set forth herein.

25 236. Throughout the relevant time period, Defendants have sold the credit services at  
26 issue herein to individuals in this District, this State, and nationwide, engaging in significant  
27 interstate commerce.



1 concerning the parties' respective rights and obligations under the "Terms and Conditions" and  
2 whether the class action prohibition within the arbitration provision of those "Terms and  
3 Conditions" is unconscionable.

4 244. The inclusion of such an onerous provision in the adhesive form "Terms and  
5 Conditions" is unconscionable violating California public policy and therefore renders the  
6 "Terms and Conditions" void and unenforceable. Plaintiffs are therefore entitled to a declaration  
7 from this Court that the "Terms and Conditions" entered into by Plaintiffs, and others similarly  
8 situated, are void and unenforceable.

9 245. Alternatively, Plaintiffs ask this Court to strike those provisions that are  
10 unenforceable.

11 **COUNT IX**  
12 **(Violations of state consumer protection laws)**

13 COME NOW PLAINTIFFS, individually and on behalf of all others similarly situated,  
14 and for this Count, allege the following:

15 246. Plaintiffs repeat, reallege, and incorporate by reference each of the foregoing  
16 paragraphs of this Complaint as if fully set forth herein.

17 247. Defendants had a statutory duty to refrain from unfair and deceptive trade acts or  
18 practices in the promotion and sale of the Plan.

19 248. The actions and failures to act of Defendants constitute acts, uses, or employment  
20 by defendants of unconscionable and/or unfair practices, deception, fraud, false pretenses, false  
21 promises, misrepresentations, or the concealment, suppression, or omission of material fact in  
22 connection with the promotion and sale of the Plan to the Plaintiffs and the Putative Class within  
23 the meaning of various state consumer protection acts.

24 249. Defendants had a statutory duty to refrain from unfair and/or deceptive trade acts  
25 or practices in how the fees for the Plan were assessed to Plaintiffs and Putative Class.

26 250. The actions and failures to act of Defendants constitute acts, uses, or employment  
27 by defendants of unconscionable and/or unfair practices, deception, fraud, false pretenses, false  
28

1 promises, misrepresentations, or the concealment, suppression, or omission of material fact in  
2 connection with how the fees for the Plan were assessed to Plaintiffs and Putative Class within  
3 the meaning of various state consumer protection acts.

4 251. The violations of the various state consumer protection acts (Alabama: the  
5 Alabama Deceptive Trade Practices Act (Ala. Code §8-19-1 et seq.); Alaska: Alaska Unfair  
6 Trade Practices and Consumer Protection Act (Alaska Stat. §45.50.471 et seq.); Arizona: the  
7 Arizona Consumer Fraud Statute (Ariz. Rev. Stat. Ann. §44-1521 et seq.); Arkansas: the  
8 Arkansas Deceptive Trade Practices Act (Ark. Code Ann. §4-88-101 et seq.); Colorado: the  
9 Colorado Consumer Protection Act (Colo. Rev. Stat. §6-1-101 et seq.); Connecticut: the  
10 Connecticut Unfair Trade Practices Act (Conn. Gen. Stat. §42-110a et seq.); Washington, D.C.  
11 the Consumer Protection Procedures Act (D.C. Code Ann. §28-3901 et seq.); Florida: the Florida  
12 Deceptive and Unfair Trade Practices Act (Fla. Stat. Ann. §501.201 et seq. (West)) and the  
13 Florida False Advertising Statutes (Fla. Stat. Ann. §817.40 et seq. (West)); Georgia: Uniform  
14 Deceptive Trade Practices Act (Ga. Code Ann. §10-1-370 et seq.); the Fair Business Practices  
15 Act (Ga. Code Ann. §10-1-390 et seq.); and the False Advertising Statute (Ga. Code Ann. §10-1-  
16 420 et seq.); Hawaii: The Hawaii Federal Trade Commission Act (Hawaii Rev. Stat. §480 et  
17 seq.) and the Uniform Deceptive Trade Practice Act (Hawaii Rev. Stat. §481A et seq.); Idaho:  
18 the Idaho Consumer Protection Act (Idaho Code §48-601 et seq.); Illinois: the Illinois Consumer  
19 Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. Ann. §505/1 et seq. (Smith  
20 Hurd)) and the Uniform Deceptive Trade Practices Act (815 Ill. Comp. Stat. Ann. 510/1 et seq.  
21 (Smith Hurd)); Indiana: the Deceptive Consumer Sales Act (Ind. Code Ann. §24-5-0.5-1 et seq.  
22 (Burns)); Iowa: the Iowa Consumer Fraud Act (Iowa Code Ann. §714.16 (West)); Kansas: the  
23 Kansas Consumer Protection Act (Kan. Stat. Ann. §50-623 et seq.); Kentucky: the Consumer  
24 Protection Act (Ky. Rev. Stat. §367.110 et seq.); Louisiana: the Unfair Trade Practices and  
25 Consumer Protection Law (La. Rev. Stat. Ann. §51:1401 (West)); Maine: the Maine Unfair  
26 Trade Practices Act (Me. Rev. Stat. Ann. Tit. 5 §206 et seq.) and the Uniform Deceptive Trade  
27 Practices Act (Me. Rev. Stat. Ann. Tit. 10 §1211 et seq.); Maryland: the Maryland Consumer

1 Protection Act (Md. Com. Law Code Ann. §§13-101 et seq., 14-101 et seq.); Massachusetts: the  
2 Consumer Protection Act (Mass. Gen. Laws Ann. Ch. 93A); Michigan: the Michigan Consumer  
3 Protection Act (Mich. Comp. Laws Ann. §445.901 et seq.) and the Michigan Pricing and  
4 Advertising Act (Mich. Comp. Laws Ann. §445.351 et seq.); Minnesota: the Consumer Fraud  
5 Act (Minn. Stat. Ann. §325 F. 69); the False Statement in Advertisement Statute (Minn. Stat.  
6 Ann. §325 F. 67); the Uniform Deceptive Trade Practices Act (Minn. Stat. Ann. §325D.44); and  
7 the Unlawful Trade Practices Act (Minn. Stat. Ann. §325D.13); Mississippi: the Consumer  
8 Protection Act (Miss. Code Ann. §75-24-1 et seq.) and the False Advertising Statutes (Miss.  
9 Code Ann. §97-23-3); Missouri: the Missouri Merchandising Practices Act (Mo. Rev. Stat.  
10 §407.010 et seq.); Montana: the Montana Unfair Trade Practices and Consumer Protection Act  
11 (Mont. Code Ann. §30-14-101 et seq.); and the Statutory Deceit Statute (Mont. Code Ann. §27-  
12 1-712); Nebraska: the Nebraska Consumer Protection Act (Neb. Rev. Stat. §59-1601 et seq.) and  
13 the Nebraska Uniform Deceptive Trade Practices Act (Neb. Rev. Stat. §87-301 et seq.); Nevada:  
14 the Deceptive Trade Statutes (Nev. Rev. Stat. §§598.0903 et seq., 41.600 et seq.); New  
15 Hampshire: the Regulation of Business Practices for Consumer Protection Act (N.H. Rev. Stat.  
16 Ann. §358-A:1 et seq.); New Jersey: the New Jersey Consumer Fraud Act (N.J. Stat. Ann. §56:8-  
17 1 et seq. (West)); New Mexico: New Mexico Unfair Practices Act (N.M. Stat. Ann. §57-12-1 et  
18 seq.); New York: New York Consumer Protection Act (N.Y. Gen. Bus. Law §§349, 350  
19 (Consol.)); North Carolina: North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen.  
20 Stat. §75-1.1 et seq.); North Dakota: Deceptive Act or Practice Statutes (N.D. Gen. Stat. §51-15-  
21 01 et seq.); Ohio: Ohio Consumer Sales Practices Act (Ohio Rev. Code Ann. §1345.01 et seq.  
22 (Baldwin)); Oklahoma: Oklahoma Consumer Protection Act (Okla. Stat. Ann. Tit. 15, §751 et  
23 seq. (West)) and the Oklahoma Deceptive Trade Practices Act (Okla. Stat. Ann. Tit. 78, §51 et  
24 seq. (West)); Oregon: the Unlawful Trade Practices Act (Or. Rev. Stat. §646.605 et seq.) and the  
25 Oregon Food and Other Commodities Act (Or. Rev. Stat. §616.005 et seq.); Pennsylvania:  
26 Unfair Trade Practices Act and Consumer Protection Law (Pa. Stat. Ann. Tit. 73 §201-1 et seq.  
27 (Purdon); Rhode Island: Consumer Protection Act (R.I. Gen. Law §6-13.1-1 et seq.); South  
28



1 Carolina: South Carolina Unfair Trade Practices Act (S.C. Code Ann. §39-5-10 et seq.); South  
2 Dakota: South Dakota Deceptive Trade Practices and Consumer Protection Law (S.D. Codified  
3 Laws Ann. §37-24-1 et seq.); Tennessee: Tennessee Consumer Protection Act (Tenn. Code Ann.  
4 §47-18-101 et seq.); Texas: Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code Ann.  
5 §17.41 et seq. (Vernon)); Utah: Utah Consumer Sales Practices Act (Utah Code Ann. §13-11-1  
6 et seq.) and the Utah Truth in Advertising Act (Utah Code Ann. §13-11a-1 et seq.); Vermont:  
7 Vermont Consumer Fraud Statute (Vt. Stat. Ann. Tit. 9, §2451 et seq.); Virginia: Virginia  
8 Consumer Protection Act (Va. Code 59.1-196 et seq.); Washington: Washington Consumer  
9 Protection Act (Wash. Rev. Code Ann. §19.86 et seq.); West Virginia: West Virginia Consumer  
10 Credit and Protection Act (W. Va. Code §46A-6-101 et seq.); Wisconsin: Wisconsin Fraudulent  
11 Representations Act (Wis. Stat. Ann. §100.18 et seq. (West)); Wyoming: Consumer Protection  
12 Act (Wyo. Stat. §40-12-101 et seq.) have directly, foreseeably, and proximately caused damages  
13 to Plaintiffs and Putative Class in amounts yet to be determined.

14 252. Defendants' actions are outrageous due to their reckless indifference to the rights  
15 of Plaintiffs and Putative Class.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, as to each of the foregoing Counts, Plaintiffs, individually and on  
18 behalf of all others similarly situated, seek the following relief:

- 19 a. An Order certifying the proposed Class herein and appointing Plaintiffs  
20 and the undersigned counsel of record to represent the Class;
- 21 b. An Order rescinding the Plan enrollment of each and every Plaintiff and  
22 member of the Class based on Defendants' deceptive misconduct as  
23 complained of herein, or, alternatively, damages for said fraud;
- 24 c. An Order issuing a preliminary injunction enjoining Defendants and all  
25 others, known and unknown, from continuing to take illegal action as set  
26 forth in this Complaint;
- 27 d. An Order issuing a permanent injunction enjoining Defendants and all  
28 others, known and unknown, from continuing to take illegal action as set  
forth in this Complaint;

- 1
- 2 e. An Order declaring the "Card Member Agreement" entered into by each
- 3 and every Plaintiff and member of the Class unconscionable, and,
- 4 therefore, unenforceable; or, in the alternative, an Order severing the
- 5 portions of the "Card Member Agreement" which the Court deems
- 6 unconscionable and unenforceable, and enforcing the remaining valid
- 7 portions of the "Terms and Conditions"
- 8
- 9 f. A Judgment awarding Plaintiffs and the Class compensatory,
- 10 consequential, and statutory damages, including, without limitation, the
- 11 loss of monies paid to Defendants as fees derived from enrollment in the
- 12 Plan, pre-judgment interest, and post-judgment interest;
- 13
- 14 g. A Judgment awarding Plaintiffs and the Class restitution of all fees paid in
- 15 connection with the Plan;
- 16
- 17 h. A Judgment awarding Plaintiffs and the Class exemplary, treble and
- 18 punitive damages;
- 19
- 20 i. A Judgment for actual damages for injuries suffered by Plaintiffs and the
- 21 members of the proposed Class as a result of Defendants' violation of
- 22 TILA and Regulation Z;
- 23
- 24 j. A Judgment awarding Plaintiffs and the Class reasonable attorneys' fees
- 25 and costs of this action in accordance with California Code of Civil
- 26 Procedure § 1021.5 and Cal. Civ. Code § 1780; and
- 27
- 28 k. Such other and further relief as this Honorable Court finds just and proper
- under the circumstances.

**JURY DEMAND**

WHEREFORE, as to each of the foregoing matters, Plaintiffs demand a trial by jury on all issues so triable as a matter of right.

Dated: August 23, 2010

/s/ Tiffany M. Yiatras

Michael J. Flannery, CA State Bar #196266

John J. Carey, *pro hac vice*

Francis J. "Casey" Flynn, Jr., *pro hac vice*

Tiffany M. Yiatras, Esq., *pro hac vice*

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on this **23<sup>rd</sup>** day of **August, 2010**, I electronically filed the attached **FIRST AMENDED CLASS ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF System, which will automatically send email notification of such filing to all attorneys of record.

I further certify that on this **23<sup>rd</sup>** day of **August, 2010**, I hand delivered the attached **FIRST AMENDED CLASS ACTION COMPLAINT** to the following attorney of record at the following address:

Francis J. "Casey" Flynn, Jr.  
Carey, Danis & Lowe  
8235 Forsyth Boulevard, Suite 1100  
Saint Louis, Missouri 63105

**ATTORNEY FOR PLAINTIFF**

/s/ Tiffany M. Yiatras  
**Tiffany M. Yiatras**