

1 **MANFRED, APC**
2 Manfred P. Muecke (SBN: 222893)
3 mmuecke@manfredapc.com
4 1350 Columbia Street, Suite 603
5 San Diego, CA 92101
6 Telephone: (619) 550-4005
7 Fax: (619) 550-4006

8 **CARLSON LYNCH LLP**
9 Todd D. Carpenter (SBN: 234464)
10 tcarpenter@carlsonlynch.com
11 Scott G. Braden (SBN: 305051)
12 sbraden@carlsonlynch.com
13 1350 Columbia Street, Suite 603
14 San Diego, CA 92101
15 Telephone: (619) 762-1910
16 Fax: (619) 756-6991

17 *Attorneys for Plaintiff*

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **DAVID ABEL**, On Behalf of Himself
21 and All Others Similarly Situated,

22 Plaintiff,

23 vs.

24 **CITIBANK, N.A.**,

25 Defendant.

26 **CLASS ACTION COMPLAINT**

27 **DEMAND FOR JURY TRIAL**

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

Table of Contents

INTRODUCTION.....1

JURISDICTION AND VENUE.....6

PARTIES7

FACTUAL ALLEGATIONS.....7

Citi Defines What Are Considered Standard Purchases And Cash Advances7

Cardholders Incur Significant Costs From Cash-Like Transactions9

Plaintiff’s Transactions10

CLASS DEFINITIONS AND ALLEGATIONS13

Numerosity14

Predominance of Common Issues.....14

Typicality15

Adequacy of Representation15

Superiority.....16

Rule 23(b)(2).....17

Rule 23(b)(3).....17

COUNT I Breach of Contract.....18

COUNT II Violation of Truth in Lending Act.....20

COUNT III Violation Of The California Unfair Competition Law23

Fraudulent Prong.....24

Unlawful Prong25

Unfair Prong.....26

PRAYER FOR RELIEF.....27

JURY TRIAL DEMANDED.....28

1 Upon information and belief, Plaintiff David Abel (“Plaintiff”) brings this
2 action on behalf of himself and all others similarly situated against Defendant
3 Citibank, N.A. (“Citi” or “Defendant”) and states:
4

5 INTRODUCTION

6 1. In recent years, the prevalence of mobile electronic payment
7 applications (“MEP Apps”) such as Venmo, PayPal, and Cash App has
8 dramatically increased and spawned a nascent era of new methods to pay for goods
9 and services. As consumers and businesses have been drawn to these new MEP
10 Apps, the popularity and usage of these platforms have markedly increased over
11 the last few years.
12

13
14 2. Upon consumer registration with these MEP Apps and confirmation
15 of identification, end user consumers of these MEP apps (“mobile payors”) are
16 presented with various options to fund mobile payments to peers as well as
17 entrepreneurs, businesses, contractors, and the like for the purchase of goods and
18 services. These mobile payment methods generally include any available balance
19 in the mobile payor’s Venmo or PayPal account as well as a link to a funding
20 source as selected by the mobile payor. MEP app funding sources generally
21 include checking or savings accounts, a debit card, and major consumer credit
22 cards such as Visa or MasterCard.
23
24

25
26 3. When mobile payors elect the option to utilize a personal credit card
27 to fund a mobile payment through a MEP App, a modest transaction fee of
28

1 approximately 3% is imposed by the MEP App on mobile payors for processing a
2 mobile payment with a consumer credit card. This transaction fee is consistently
3 disclosed by the MEP Apps prior to confirming the mobile electronic purchase as a
4 condition for using a credit card to fund the mobile electronic payment. These
5 transaction fees imposed by MEP Apps are not contested by Plaintiff and the
6 putative class of mobile payors.
7

8
9 4. Citi is one of the largest issuers of credit cards with nearly \$400
10 billion in purchase volume in 2020. Citi generally directs credit card transactions
11 made with a Citi consumer credit card into one of three categories -- standard
12 purchases, balance transfers, and cash advances. Citi's categorization of its credit
13 card transactions is critical as it directly impacts the cost of credit borne by the
14 consumer including, but not limited to, the interest rate applicable to the
15 transaction, the applicability of an interest free grace period, and whether a
16 transaction fee (such as a cash advance fee) will be incurred by the consumer.
17

18
19 5. Until recently, Citi processed MEP app transactions funded by a Citi
20 credit card as standard purchase transactions. Citi defines "purchases" (herein
21 referenced as "standard purchases") as buying goods and/or services with a Citi
22 consumer credit card as more fully defined below. Standard purchase transactions
23 are subject to Citi's standard purchase interest rates and interest-free grace periods
24 ("grace period on purchases") and do not incur a transaction fee, as disclosed in
25
26
27
28

1 Defendant’s consumer credit card agreements (“Card Agreement”). Exhibit A, pgs.
2 1, 3

3 6. Starting sometime in early 2020, without warning or advance notice to
4 its consumers, Citibank began to re-classify purchase transactions made through
5 MEP Apps funded with Citibank consumer credit cards as cash advances.¹ Unlike
6 standard purchase transactions, cash advance transactions incur a fee on each such
7 transaction, are subject to higher interest rates, and have interest calculated from
8 the date of purchase without any grace period. Exhibit A, pgs. 1, 3

9
10
11 7. A cash advance fee is “Any fee imposed for an extension of credit in
12 the form of cash or its equivalent.” 12 C.F.R. § 1026.6(b)(2)(vii).

13
14 8. According to its Card Agreement, Citi charges cash advance fees to
15 transactions it categorizes as cash advances, such as cash withdrawals from ATMs
16 where a credit card is used to make the withdrawal. Citi also charges cash advance
17 fees on “cash-like transactions” such as purchase of casino gaming chips, money
18 orders, wire transfers, traveler’s checks, lottery tickets, and other similar
19 transactions as set forth in the Citi Card Agreement. Exhibit A, pgs. 1, 3

20
21
22 9. Unlike a standard purchase, there is no interest-free grace period
23 applicable to cash advances and thus, interest accrues immediately from the time of
24

25
26
27 ¹ Carrns, Ann; *Beware the Fees That Come With Some Money Transfers on Apps*; New York Times,
28 April 24, 2020 (updated Nov. 6, 2020); <https://www.nytimes.com/2020/04/24/your-money/fees-mobile-app-payments.html> (last checked May 7, 2021)

1 the transaction. Cash advances can also incur a higher applicable “Cash Advance
2 APR” interest rate as compared to “Purchase APR” interest rates or other
3 introductory promotional interest rates applied to a standard purchase.
4

5 10. MEP App purchase transactions funded by a Citi consumer credit card
6 had been previously coded and processed as standard purchases subject to the
7 comparatively lower “Purchase APR” and introductory interest rates. These
8 standard purchase transactions did not incur a cash advance transaction fee and
9 qualified for an interest free grace period under the terms of the Citi Card
10 Agreement. Without warning, MEP App transactions processed by Citi morphed
11 from standard purchase transactions into cash advances for which the MEP App
12 user was charged a cash advance fee, subject to a higher interest rate, and began
13 accruing interest on the transaction date without the benefit of a grace period
14 applicable for standard purchase transactions.
15
16
17

18 11. Citi’s undisclosed reclassification of MEP APP transactions from
19 standard purchases to cash advances amounted to a significant material deviation
20 from its application of its Card Agreement account terms. Yet, Citi elected not to
21 amend its current Card Agreement terms or otherwise advise its cardholders of the
22 impending change in how it would classify and process MEP App payments
23 funded by a Citi credit card.
24
25

26 12. The Truth In Lending Act (“TILA”), implemented through
27 Regulation Z, mandates credit card account opening disclosures be “clear and
28

1 conspicuous”. 15 U.S.C. §§1632(a), 1637, *et seq.*; 12 C.F.R. §1026.5(a)(1)(i).

2 Compliance with these disclosure requirements is accomplished by clearly stating
3 the applicable interest rate, charges, and fees to certain types of transactions,
4 especially if different types of transactions incur different rates. 12 C.F.R.
5 §1026.6(b)(4)(i)(C).
6

7 13. Citi sowed confusion among its cardholders who reasonably believed
8 the purchase of goods and services through MEP Apps would be classified as
9 standard purchases consistent with the Citi Card Agreements as well as Citi’s
10 established practice of previously processing such transactions as standard
11 purchases. As a result, Plaintiff and Class Members incurred cash advance fees and
12 incurred interest charges without a grace period because Citi failed to clearly and
13 conspicuously disclose it would classify a segment of standard purchase
14 transactions as cash advance transactions because they were made through a MEP
15 App.
16
17
18

19 14. Despite the ubiquity of mobile electronic payments over the last
20 several years, Citi’s decision to not disclose its re-classification of MEP App
21 transactions as cash advances is a self-serving choice to derive fee and interest
22 income at the expense of its credit card consumers who used their Citi consumer
23 credit card to fund MEP App transactions.
24
25

26 15. This sudden and unannounced change left Plaintiff and other Class
27 members saddled with unexpected fees and increased interest charges without any
28

1 warning that such a change in processing or coding of MEP App transactions was
2 forthcoming by Citi. Indeed, Plaintiff was not made aware of the cash advance fee,
3 higher interest rate, and lack of grace period applicable to his Venmo mobile
4 electronic transactions funded with his Citi credit card until he reviewed his Citi
5 credit card transaction history online after the transactions had already occurred.
6 Plaintiff and Class Members were assessed higher credit transaction costs than they
7 reasonably expected to as a result of Citi's undisclosed change in the classification
8 and transaction processing of MEP app purchases.

11 16. Plaintiff brings this action on behalf of himself and a proposed Class
12 of Citi consumer credit card customers who were damaged by Citi's breach of its
13 own Card Agreement and failure to clearly and conspicuously disclose how it
14 would categorize and process MEP App payments in violation of TILA and other
15 statutes.
16
17

18 JURISDICTION AND VENUE

19 17. This Court has original jurisdiction pursuant to 28 U.S.C. §1331. This
20 Court also has subject matter jurisdiction under claims arising pursuant to 15
21 U.S.C. §1601, *et seq.*
22

23 18. Venue is proper in this Court pursuant to 28 U.S.C. §1391 *et seq.*
24 inasmuch Plaintiff resides in this District and because a substantial part of the
25 events giving rise to Plaintiff's claims occurred while he resided in this judicial
26
27
28

1 district. Venue is also proper in this Court under 18 U.S.C. §1965(a) because
2 Defendant regularly transacts substantial business in this District.

3 **PARTIES**

4
5 19. Plaintiff David Abel is a resident of Los Angeles, California and has
6 resided in Los Angeles during the relevant time period.

7
8 20. Defendant Citibank, N.A. is a national banking and financial services
9 company incorporated and headquartered in New York, New York. Defendant
10 markets and issues consumer credit cards to consumers nationwide, including in
11 California. Defendant is considered a creditor as defined under 15 U.S.C.A.
12 §1602(g).
13

14 **FACTUAL ALLEGATIONS**

15 **Citi Defines What Are Considered Standard Purchases And Cash Advances**

16
17 21. Defendant distributes a Card Agreement to every consumer and
18 business who has been issued a credit card by Citi. At the option of the cardholder,
19 the Card Agreement may be distributed to the cardholder in electronic or hardcopy
20 paper form. Citi may elect to update the Card Agreement from time to time on an
21 irregular basis.
22

23
24 22. Attached to this complaint as Exhibit A, the current Citi Card
25 Agreement applicable to Plaintiff's Citi Simplicity credit card account identifies
26 what types of credit card transactions will be considered "Cash Advances".
27

28 **Cash Advance** - Use of your Card to get cash, including foreign

1 currency, or for what we consider a cash-like transaction. Examples
2 include using your Card for: ATM and teller withdrawals, wire transfers,
3 money orders, traveler’s checks, lottery tickets, gaming chips and other
4 methods used for gambling, wagers and other betting transactions. A Citi
5 Flex Loan is not a Cash Advance.

6 Exhibit A, page 1.

7 23. Notably omitted from Citi’s exhaustive definition of Cash Advances,
8 is any reference to mobile electronic payments as a cash-like item despite the
9 prevalence of MEP Apps and the funding of payments with Citi credit cards over
10 the last several years.

11 24. Citi also defines what it considers to be standard purchases which
12 center on the purchase of goods and services.

13 **Purchase** – Use of your Card to buy goods and services. Balance Transfers
14 and Cash Advances are not Purchases.

15 *Id.*

16 25. Citi issues several types of consumer credit cards that offer consumer
17 perks or rewards such as cash back, airline miles, etc.² Each type of consumer
18 credit card issued by Citi is accompanied by a Card Agreement listing terms and
19 rates applicable to the corresponding Citi consumer credit card.
20
21

22 26. The Citi Card Agreements are form agreements with variations by
23 card type in the “Purchase Annual Percentage Rate,” “Balance Transfer APR”,
24 introductory promotional interest rates, and whether a foreign transaction fee is
25
26

27
28 ² <https://www.citi.com/credit-cards/home> (last accessed May 7, 2021)

1 charged, but otherwise feature almost entirely identical terms. During the time
2 period at issue, the definitions of “Cash Advance”, “Cash Advance APR”, and
3 “Cash Advance Fee” are virtually identical across all Citi Card Agreements.
4

5 **Cardholders Incur Significant Costs From Cash-Like Transactions**

6 27. When a transaction had been previously processed as a standard
7 purchase credit card transaction is instead treated as a cash-like transaction and
8 processed as a cash advance without advance notice, material and unexpected
9 credit costs are thrust upon the cardholder.
10

11 28. To illustrate, a standard purchase credit card transaction does not
12 incur a transaction fee of any sort, while for each cash advance transaction, the
13 cardholder is charged a cash advance fee of the greater of \$10 or 5% of the amount
14 of the transaction.
15

16 **Transaction Fee for Cash Advances:** Either \$10 or 5% of the amount of
17 each cash advance, whichever is greater. We charge you a fee for each Cash
18 Advance.
19

20 Exhibit A, pg. 5

21 29. A standard purchase credit card transaction also has an interest-free
22 grace period during which interest will not be charged to the cardholder so long as
23 the cardholder pays the entire balance before or by the due date each month. In
24 contrast, interest is immediately charged to cash advances as of the transaction date
25 and accrues until the balance including accrued interest is paid off.
26
27
28

1 **Grace Period on Purchases.** You won't pay any interest on Purchases if
2 you pay the Adjusted New Balance, including any Balance Transfers, plus
3 any Citi Flex Plan Payment Account, in full by the payment due date shown
4 on your statement each Billing Period. We call this a **grace period on**
5 **purchases.** If you don't pay your Adjusted New Balance in full, plus any
6 Citi Flex Plan Payment Amount, by the payment due date in a Billing
7 Period, you'll pay interest on your Purchases from the date they're posted to
8 your Account. You also won't have a grace period on Purchases again until
9 you pay the Adjusted New Balance in full, plus any Citi Flex Plan Payment
10 Amount, by the payment due date 2 Billing Periods in a row.

11 There's no grace period on Balance Transfers and Cash Advances. This
12 means you'll pay interest on Balance Transfers and Cash Advances from the
13 date these Transactions post to your Account.

14 Exhibit A, pg. 3

15 **Plaintiff's Transactions**

16 30. Citi issued Plaintiff a Simplicity MasterCard on or around October
17 2019 with an introductory interest rate of 0% for standard purchase transactions
18 through September 9, 2020.

19 31. From on or around July 8, 2020 through October 9, 2020, Plaintiff
20 issued mobile electronic payments through his Venmo MEP App funded by his
21 Citi Simplicity MasterCard credit card to vendors for music recording and mixing
22 services as well as lease of a recording studio. Plaintiff had previously paid these
23 same vendors on several occasions using the same Venmo MEP App method
24 funded by his Citi Simplicity MasterCard credit card which was processed by Citi
25 as standard purchase transactions. As such, Plaintiff reasonably assumed his
26 Venmo MEP App payments to these vendors would be processed as standard
27

1 purchases just as similar previous transactions with the same vendors had been
2 processed.

3 32. Sometime in October 2020, Plaintiff viewed his Citi Simplicity
4 MasterCard credit card account balance and monthly statements online where to
5 his surprise, he first observed his Venmo MEP App payments on July 8, 2020 had
6 been assessed Cash Advance fees in the amount of \$10 per transaction by Citi.
7

8 33. Indeed, Plaintiff was assessed Cash Advance fees on his Venmo MEP
9 App transactions on the following dates: July 8, 2020; July 27, 2020; July 31,
10 2020; August 1, 2020; and October 9, 2020.
11

12 34. Plaintiff further observed he did not receive an interest grace period
13 for these transactions and didn't receive the benefit of the zero percent introductory
14 rate he enjoyed with his Citi Simplicity card for transactions prior to September 9,
15 2020. Plaintiff subsequently contacted Citi via phone to dispute the assessment of
16 the "cash advance" fee. Citi refused to refund or cancel the cash advance fee and
17 did not address the interest assessed and accruing upon Plaintiff's Venmo MEP
18 App transactions.
19
20
21

22 35. Plaintiff reasonably assumed purchases made through his Venmo
23 MEP App for music-related services funded by his Citi credit card would be
24 deemed standard purchases consistent with the terms of his Citi credit card
25 agreement.
26
27
28

1 36. Plaintiff also reasonably assumed his Venmo MEP App payment for
2 music-related services funded by his Citi credit card would not be considered a
3 cash advance nor a cash-like transaction under the terms of his Citi credit card
4 agreement.
5

6 37. Plaintiff did not deploy his Venmo MEP App payment funded by his
7 Citi credit card to withdraw cash from an ATM machine, conduct a wire transfer of
8 money, purchase gaming chips, place a wager, or any of the myriad examples of
9 cash-like transactions listed by Citi in its Card Agreement.
10

11 38. Had Plaintiff known Citi would start processing his Venmo MEP App
12 payments as cash advance transactions, Plaintiff would not have funded his Venmo
13 MEP App purchase transactions with his Citi credit card or would have used a
14 different method of payment.
15

16 39. Plaintiff and the Class would derive greater benefits from the use of
17 their Citi credit cards as a result of timely and accurate disclosures by Citi
18 concerning the cost of credit furnished by Citi applicable to MEP transactions.
19

20 40. Plaintiff incurred cash advance fees for his use of a MEP App without
21 any warning or disclosure from Citi that such transactions funded by a Citi credit
22 card would incur a cash advance fee. As a result of Citi's contravention of its own
23 Card Agreement as well as Citi's violation of Federal regulations and California
24 unfair competition laws as discussed herein, Plaintiff suffered monetary damages
25 from Citi's unlawful and deceptive conduct.
26
27
28

CLASS DEFINITIONS AND ALLEGATIONS

1
2 41. Plaintiff brings this action on behalf of himself and all other similarly
3 situated consumers pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of
4 Civil Procedure.
5

6 42. Plaintiff asserts his claims for breach of contract and violation of
7 TILA on behalf of the following class (“**National Class**”):
8

9 All persons and entities who within the applicable statute of limitations
10 whose utilized a mobile electronic payment application to fund a payment
11 transaction with a credit card issued by Defendant and such transactions
12 were classified as cash advance transactions by Defendant.

13 43. Plaintiff asserts his claims for violation of the UCL on behalf of the
14 following subclass (“**California Subclass**”):

15 All persons and entities residing within California who within the applicable
16 statute of limitations utilized a mobile electronic payment application to
17 fund a payment with a credit card issued by Defendant and such transactions
18 were classified as cash advance transactions by Defendant.

19 44. The National Class and California Subclass are referred to collectively
20 herein as the “Class” or “Classes”.

21 45. Excluded from the Classes are Citi; any affiliate, parent, or subsidiary
22 of Citi; any entity in which Citi has a controlling interest; any officer, director, or
23 employee of Citi; any successor or assign of Citi; any Judge to whom this case is
24 assigned as well as his or her immediate family and staff.
25

26 46. Plaintiff reserves the right to amend or modify the Class definitions in
27 connection with a motion for class certification or with the result of discovery.
28

Numerosity

1
2 47. The members of the Classes are so numerous that joinder of all
3 members of the Class is impracticable. Plaintiff is informed and believes that the
4 proposed Class contains at least thousands of Citi credit card customers who have
5 been damaged by Defendant’s conduct as alleged herein. The precise number of
6 Class members is unknown to Plaintiff.
7

8
9 **Predominance of Common Issues**

10 48. This action involves common questions of law and fact, which
11 predominate over any questions affecting individual Class members. These
12 common legal and factual questions include, but are not limited to, the following:
13

- 14 a. whether Citi’s disclosed credit card fees and applicable interest
15 rates are considered material account terms;
- 16 b. whether Citi clearly and conspicuously disclosed fees and
17 applicable interest rates applicable to MEP App payment
18 transactions to Plaintiff and the Class;
- 19 c. whether Citi’s application of cash advance fees, corresponding
20 interest rates, and failure to provide a grace period to MEP App
21 payment transactions are a breach of the Card Agreement
22 discussed herein;
- 23 d. whether Citi’s alleged conduct is unlawful;
- 24 e. whether Citi’s alleged conduct constitutes a violation of TILA;
- 25
- 26
- 27
- 28

- 1 f. whether Citi engaged in unfair and deceptive business practices;
- 2 g. whether Plaintiff and the Class suffered monetary damages as a
- 3 result of Citi's alleged unlawful conduct; and
- 4
- 5 h. whether Plaintiff and Class members are entitled to appropriate
- 6 statutory remedies, including restitution, corrective disclosures,
- 7 and injunctive relief and statutory damages.
- 8

9 **Typicality**

10 49. Plaintiff's claims are typical of the claims of the members of the
11 Classes because, inter alia, all Class members were injured through the uniform
12 misconduct described above and were subject to Citi's failure to disclose a material
13 significant change in the terms and conditions applicable to Citi's credit card
14 customers who made mobile electronic payments through MEP Apps funded by a
15 Citi credit card. Plaintiff is also advancing the same claims and legal theories on
16 behalf of himself and all members of the Class.
17
18

19 **Adequacy of Representation**

20
21 50. Plaintiff will fairly and adequately protect the interests of the
22 members of the Classes. Plaintiff has retained counsel experienced in complex
23 consumer class action litigation, and Plaintiff intends to prosecute this action
24 vigorously. Plaintiff has no adverse or antagonistic interests to those of the
25 Classes.
26
27
28

Superiority

1
2 51. A class action is superior to all other available means for the fair and
3 efficient adjudication of this controversy. The damages or other financial
4 detriment suffered by individual Class members is relatively small compared to the
5 burden and expense that would be entailed by individual litigation of their claims
6 against Citi. It would thus be virtually impossible for members of the Classes, on
7 an individual basis, to obtain effective redress for the wrongs done to them.
8

9
10 Furthermore, even if Class members could afford such individualized litigation, the
11 court system could not. Individualized litigation would create the danger of
12 inconsistent or contradictory judgments arising from the same set of facts.
13

14 Individualized litigation would also increase the delay and expense to all parties
15 and the court system from the issues raised by this action. By contrast, the class
16 action device provides the benefits of adjudication of these issues in a single
17 proceeding, economies of scale, and comprehensive supervision by a single court,
18 and presents no unusual management difficulties under the circumstances here.
19

20
21 52. Plaintiff seeks equitable relief on behalf of the Classes, on grounds
22 generally applicable to the entire Class and Subclass requiring Citi to provide full
23 statutory and restitution relief to Plaintiff and Class members.
24

25 53. Unless a Class is certified, Citi will retain monies received as a result
26 of its conduct that were taken from Plaintiff and Class members.
27
28

Rule 23(b)(2)

1
2 54. Class certification is also warranted under Rule 23(b)(2). A class may
3 be certified under Rule 23(b)(2) where “the party opposing the class has acted or
4 refused to act on grounds that apply generally to the class, so that final injunctive
5 relief or corresponding declaratory relief is appropriate respecting the class as a
6 whole. *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (the requirements of
7 Rule 23(b)(2) “are unquestionably satisfied when members of a putative class seek
8 uniform injunctive or declaratory relief from policies or practices that are generally
9 applicable to the class as a whole”).
10
11

12
13 55. Certification under Rule 23(b)(2) is appropriate here because all of the
14 Class members have by definition been exposed to the same deficient terms and
15 conditions governing credit card transactions by Citi that fail to meet the “clear and
16 conspicuous” standard set forth under TILA. Moreover, the declaratory and
17 injunctive relief sought by Plaintiff are by definition generally applicable across
18 the Class as a whole.
19
20

Rule 23(b)(3)

21
22 56. The Class may also be certified under Rule 23(b)(3) when questions
23 of law or fact that are common to class members predominate over questions
24 concerning individual members. Certification under Rule 23(b)(3) is appropriate
25 when necessary to attain time, effort, and resource efficiencies as well as
26 uniformity of decision applicable to similarly situated persons without sacrificing
27
28

1 procedural fairness. Predominance is found on sufficient cohesiveness among class
2 members with a focus on whether common questions can be resolved in a single
3 adjudication. *Walker v. Life Ins. Co. of Sw.*, 953 F.3d 624 (9th Cir. 2020) (citations
4 omitted)
5

6 57. Very few members of the Class will have the means to seek individual
7 redress for the violations of TILA and UCL committed against them. Once Citi's
8 liability has been established as to its failure to abide by the requirements of the
9 TILA applicable to the uniform Citi credit card agreement and account disclosures
10 held by all members of the Class, the Court can readily oversee the efficient
11 administration of the Class claims.
12
13

14 58. Individualized litigation presents a potential for inconsistent or
15 contradictory judgments. In contrast, a class action presents far fewer management
16 difficulties; allows the hearing of claims that might otherwise go unaddressed; and
17 provides the benefits of single adjudication, economies of scale, and
18 comprehensive supervision by the Court.
19
20

21 **COUNT I**
22 **Breach of Contract**
23 **(On Behalf of the Nationwide Class)**

24 59. Plaintiff repeats and re-alleges the allegations contained in the
25 paragraphs above, as if fully set forth herein.

26 60. Plaintiff brings this claim individually and on behalf of the
27 Nationwide Class.
28

1 61. Plaintiff entered into a Card Agreement with Citi upon his acceptance
2 of the terms and conditions in his Citi Simplicity Credit Card Agreement.

3 62. Under TILA, Citi was statutorily obligated to set forth terms and
4 conditions to Plaintiff and other consumers concerning the applicable Annual
5 Percentage Rate (“APR”), transaction costs, and grace period for the credit cards
6 issued to Plaintiff and the Nationwide Class.
7

8 63. Citi breached its Card Agreement by failing to clearly and
9 conspicuously disclose it will process MEP App payments as a cash advance or
10 cash-like transaction. Citi further breached its Card Agreement by failing to
11 sufficiently define categories of mobile electronic payments that it would treat as a
12 cash advance or cash-like transaction.
13

14 64. Citi also breached its Card Agreement with Plaintiff and the
15 Nationwide Class by imposing cash advance fees and interest charges on Plaintiff
16 and the Nationwide Class for MEP App payment transactions without any
17 contractual right to do so.
18

19 65. As a result of Citi’s breach, Plaintiff and the Nationwide Class were
20 financially harmed by Citi’s imposition of cash advance fees and interest charges
21 that were not permitted under the terms of Citi’s Card Agreement.
22

23 66. On behalf of himself and all other members of the Nationwide Class,
24 Plaintiff seeks class-wide relief in the form of restitution of the cash advance fees
25
26
27
28

1 and interest Citi received stemming from Citi’s breach of its Card Agreement as
2 well as all applicable interest, costs, and attorney fees as permitted by law.

3
4 **COUNT II**
5 **Violation of Truth In Lending Act**
6 **15 U.S.C. §§1601, 1632, 1637, *et seq.* (via 12 C.F.R. §1026.9(c)(2))**
7 **(On Behalf of the Nationwide Class)**

8 67. Plaintiff repeats and re-alleges the allegations contained in the
9 paragraphs above, as if fully set forth herein.

10 68. Plaintiff brings this claim individually and on behalf of the
11 Nationwide Class.

12 69. The overarching purpose of TILA is to equip credit card consumers
13 with a full disclosure of credit card terms so consumers can be sufficiently
14 informed and aware of the costs of credit available to them as well as safeguard
15 against deceptive business practices and acts. 15 U.S.C. §1601(a)

16 70. As alleged herein, Plaintiff paid vendors for music-related services via
17 Venmo MEP App funded by his Citi Simplicity credit card. Without notice, Citi
18 altered the classification of the MEP App transactions from a standard purchase
19 transaction to a cash advance and processed the transaction as a cash advance. As
20 a result, Plaintiff incurred a cash advance fee, was deprived of the benefits of his
21 0% introductory interest rate while charged the higher Cash Advance APR interest
22 rate and didn’t receive the benefit of an interest-free grace period applicable on
23 standard purchase transactions.
24
25
26
27
28

1 71. Under TILA, creditors such as Citi are required to clearly and
2 conspicuously disclose material terms including rates and fees to its credit card
3 accountholders in its opening account disclosures. 15 U.S.C. §1637, *et seq.*
4

5 72. Under Regulation Z, clear and conspicuous account opening
6 disclosures to consumers has been required by the Consumer Protection Finance
7 Bureau (“CPFB”). These account opening disclosures include, but are not limited
8 to, transaction charges, grace periods, introductory rates, balance computation
9 methodology, and cash advance fees. 15 U.S.C. §1637; See also 12 C.F.R.
10 §§1226.1-1226.60 (enabling the CPFB to promulgate regulations pursuant to
11 TILA).
12
13

14 **Transaction charges.** Any transaction charge imposed by the creditor for
15 use of the open-end plan for purchases.
16 15 U.S.C. §1637(c)(1)(A)(ii)(III)

17 **Grace period.** The date by which or the period within which any credit
18 extended may be repaid without incurring a finance charge due to a periodic
19 interest rate and any conditions on the availability of the grace period.
20 15 U.S.C. §1637(c)(1)(A)(iii)(I)

21 **Balance computation method.** The name of the balance computation
22 method listed in §1026.60(g) that is used to determine the balance on which
23 the finance charge is computed for each feature, or an explanation of the
24 method used if it is not listed, along with a statement that an explanation of
25 the method(s) required by paragraph (b)(4)(i)(D) of this section is provided
26 with the account-opening disclosures. In determining which balance
27 computation method to disclose, the creditor shall assume that credit
28 extended will not be repaid within any grace period, if any.
15 U.S.C. §1637(c)(1)(A)(iv)(I)

Cash advance fee. Any fee imposed for an extension of credit in the form of
cash or its equivalent.

1 15 U.S.C. §1637(c)(1)(B)(i)

2
3 73. TILA's clear and conspicuous notice requirement also extends to the
4 type of credit card transactions that would incur different levels of interest rates in
5 order to best inform the consumer of his or her use of credit.

6
7 **Type of transaction.** The type of transaction to which the [interest] rate
8 applies, if different rates apply to different types of transactions.

9 12 C.F.R. §1026.6(b)(4)(i)(C); 12 CFR § 1026.9(c)(2)(B)(ii) and (iii).

10
11 74. Citi failed to provide clear and conspicuous disclosure of any kind to
12 Plaintiff and Nationwide Class Members regarding its intent to assess a cash
13 advance fee to MEP App payments. Citi also failed to provide sufficient disclosure
14 that it would alter the types of transactions to which the Cash Advance APR
15 applied to include Venmo and other MEP App payment transactions; and failed to
16 provide statutory written notice that a grace period would no longer be available
17 for certain mobile electronic payment transactions.
18

19
20 75. Plaintiff and Nationwide Class Members have been damaged by Citi's
21 ongoing failure to provide clear and conspicuous disclosure of the type of
22 transactions that would incur cash advance fees, higher interest charges, and the
23 lack of an interest grace period.
24

25
26 76. Plaintiff and Class Members request all statutory and actual damages
27 pursuant to TILA as well as attorney fees and costs.
28

COUNT III
VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
Cal. Civ. Code §§ 17200 *et seq.*
(on Behalf of Plaintiff and the California Subclass)

1
2
3
4 77. Plaintiff repeats and re-alleges every allegation above as if set forth
5 herein in full.

6
7 78. This claim is brought by Plaintiff and the California Subclass to
8 obtain restitution and injunctive relief from Citi for acts and practices, as alleged
9 herein, that violated §17200 of the California Business and Professions Code,
10 commonly known as the UCL.
11

12 79. The UCL prohibits any “unlawful,” “fraudulent,” or “unfair” business
13 act or practice.
14

15 80. The acts and practices of Citi as alleged above have caused Plaintiff
16 and the other members of the California Subclass to lose money or property by
17 being assessed a cash advance fee, being subject to a higher interest rate, and
18 increased interest charges as a consequence of not being availed of an interest
19 grace period that applies to standard purchase transactions. Citi’s acts and practices
20 are actionable under the “fraudulent”, “unlawful” and “unfair” prongs of the UCL,
21 as alleged with more specificity below.
22
23

24 81. Citi has been unjustly enriched as a result of its wrongful acts of
25 unfair competition. Plaintiff and the other members of the California Subclass are
26 accordingly entitled to injunctive relief prohibiting Citi from continuing such
27
28

1 practices including the insufficient disclosure of the costs of credit. Plaintiff and
2 the other members of the California Subclass are also entitled to further equitable
3 relief, including accounting, restitution and/or disgorgement of all revenues and
4 profits that may have been obtained by Citi as a result of such business acts and
5 practices, pursuant to California Business and Professions Code §§17203 and
6 17204.
7

8
9 **Fraudulent Prong**

10 82. By omitting to disclose its transaction categorization of MEP App
11 payments funded by a Citi credit card and otherwise giving Plaintiff and the
12 Subclass the false impression that MEP App payments would be processed as
13 standard purchase transactions, Citi deceptively leads Plaintiff and the other
14 members of the California Subclass to reasonably believe that their MEP App
15 payments would not incur a cash advance fee and applicable interest for such
16 transactions.
17
18

19 83. As a consequence of Citi's failure to disclose the categorization of
20 MEP App payments as cash advance transactions, Plaintiff and other members of
21 the California Subclass unwittingly incurred cash advance fees and higher interest
22 charges than they otherwise would have.
23
24

25 84. Citi's conduct is deceptive within the meaning of the UCL's
26 fraudulent prong as the public is likely to be deceived by Citi's practice of not
27
28

1 clearly and conspicuously disclosing MEP App payment transactions may be
2 subject to cash advance fees and corresponding higher interest charges.

3 85. Citi's undisclosed categorization of MEP App payments as a cash
4 advance transaction is a material fact that has a direct effect on the cost of credit to
5 a reasonable consumer. As such, a reasonable consumer would be deceived by
6 Citi's failure to clearly and conspicuously disclose its processing of Venmo and
7 PayPal mobile electronic payments as cash advance transactions.
8
9

10 **Unlawful Prong**

11 86. Liability under the UCL is also established through a predicate
12 violation of a relevant statute applicable to the underlying unfair and deceptive
13 conduct.
14

15 87. A violation of a relevant statute is an independently actionable
16 violation of the UCL.
17

18 88. As discussed more fully above, Citi is alleged to have violated
19 material provisions of TILA that go to clear and conspicuous disclosure of terms
20 and conditions that affect the cost of credit used by Plaintiff and Subclass
21 members.
22

23 89. Citi's conduct is unlawful within the context of the unlawful prong of
24 the UCL.
25
26
27
28

1 93. Plaintiff and the other members of the California Subclass were
2 economically harmed by Citi’s alleged violations of the “unfair” prong of the UCL
3 through their absorption of cash advance fees and higher interest charges without
4 the benefit of a grace period.
5

6 94. On behalf of himself and all other members of the California
7 Subclass, Plaintiff accordingly seeks relief seeks restitution of the fees and interest
8 charges Citi received because of Citi’s violations and injunctive relief to correct or
9 modify the disclosures in Citi’s Card Agreements concerning standard purchase
10 and cash advance transactions.
11
12

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for a judgment:

- 15 A. Certification of this case as a class action on behalf of the National
16 Class and the California Subclass, and certification of Plaintiff as an
17 adequate Class Representative and his counsel as Class Counsel for
18 both the National Class and the California Subclass;
19
20 B. Issuance of a Court order finding Defendant in breach of its
21 contract with Plaintiff and the other members of the National
22 Class;
23
24 C. Issuance of a Court order finding Citi in violation of TILA 15
25 U.S.C. §§1601, 1632, 1637, *et seq.*
26
27 D. Issuance of a Court order finding Citi in violation of the UCL as
28

1 to Plaintiff and the other members of the California Subclass;

2 E. Issuance of a Court order awarding appropriate equitable relief
3 to Plaintiff and the other members of the Classes, including
4 injunctive relief compelling Citi to proffer adequate public
5 consumer disclosure about the costs of using its credit cards for
6 mobile payment transactions; and restitution and disgorgement
7 of Citi's receipt of cash advance fees and interest stemming from
8 its insufficient and misleading disclosure of the cost of mobile
9 electronic payments;

10 F. An award of costs and reasonable attorneys' fees; and

11 G. Such other and further relief as this Court finds necessary and
12 proper.

13
14
15
16
17 **JURY TRIAL DEMANDED**

18 Plaintiff demands a trial by jury on all issues so triable as permitted under
19 applicable law.

20
21 Dated: May 7, 2021

22 **MANFRED, APC**

23 s/ Manfred P. Muecke
24 Manfred P. Muecke (SBN: 222893)
25 mmuecke@manfredapc.com
26 1350 Columbia Street, Suite 603
27 San Diego, CA 92101
28 Telephone: (619) 550-4005
Fax: (619) 550-4006

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

CARLSON LYNCH LLP

Todd D. Carpenter (SBN: 234464)

tcarpenter@carlsonlynch.com

Scott G. Braden (SBN: 305051)

sbraden@carlsonlynch.com

1350 Columbia Street, Suite 603

San Diego, CA 92101

Telephone: (619) 762-1910

Fax: (619) 756-6991

Attorneys for Plaintiff