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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

11 BRANDON GRAY individually and on behalf of  
12 all others similarly situated,

13 Plaintiff,

14 v.

15 CREDIT UNION OF SOUTHERN CALIFORNIA

16 Defendant.  
17  
18  
19  
20  
21

Case No.:

**CLASS ACTION**

**CLASS ACTION COMPLAINT FOR:**

1. Breach of the Duty of Good Faith and Fair Dealing
2. Unjust Enrichment
3. Violation of the California Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)
4. Violation of the California Unfair Competition Law (Bus. & Prof. Code §§ 17200, *et seq.*)

Jury Trial Demanded

22 Brandon Gray (“Plaintiff”), individually and on behalf of the Class as defined below of  
23 similarly situated persons, alleges the following against Defendant Credit Union of Southern  
24 California (“CU SoCal” or “Defendant”), based upon personal knowledge with respect to himself  
25 and on information and belief derived from, among other things, investigation of counsel and  
26 review of public documents as to all other matters:  
27  
28

1 **NATURE OF THE ACTION**

2 1. When dealing with consumer contracts, normally presented on a take-it-or-leave-it  
3 basis, legislatures around the nation have statutorily prohibited companies from taking advantage of  
4 customers through unfair acts. In the context of consumer fees, whether a fee is considered unfair  
5 frequently turns on a simple principle: if the consumer will not receive a commensurate benefit  
6 from the fee, then the consumer must have a practical opportunity to avoid the fee.

7 2. Nowhere can this principle be seen more clearly than in the banking sector. Financial  
8 institutions earn profits by charging fees for their services. For example, banks allow customers to  
9 write checks, and in return the customers promise that there will be funds in their account to cover  
10 the check when it is deposited. If a customer breaks this understanding and writes a check without  
11 the funds to cover it (i.e., bounces a check), the bank will charge a fee to the customer that wrote the  
12 check, which the customer could have avoided by ensuring sufficient funds were in the account.

13 3. On the other side of the transaction, however, the recipient of the check typically has  
14 no way to know whether a check he or she deposits is going to bounce. Because the depositor could  
15 not have reasonably known the check was bad, it is unfair to charge the depositor a fee for returning  
16 the check.

17 4. Nevertheless, this is exactly what CU SoCal did through what it refers to as “Return  
18 Deposit Item Fees.” By charging Return Deposit Item Fees, CU SoCal unfairly targeted its  
19 members with financial penalties for faulty checks that the members had no hand in issuing.  
20 Plaintiff was shocked when he was charged these Fees because he did nothing wrong yet was  
21 penalized by CU SoCal. There was nothing Plaintiff could do to avoid — or even anticipate — a  
22 Return Deposit Item Fee assessed by CU SoCal at the time the deposit was made.

23 5. By charging its customers significant fees in situations where the customers did  
24 nothing wrong and could not have avoided the fee through reasonable diligence, CU SoCal acted in  
25 a manner that is unfair, oppressive, and against public policy.

26 6. Recent guidance from the Consumer Financial Protection Bureau (“CFPB”) has  
27 reaffirmed the unlawful nature of CU SoCal’s Return Deposit Item Fee policy. In October 2022, the  
28 CFPB issued a compliance bulletin stating that it is an unfair act or practice for an institution to

1 have a blanket policy of charging Return Deposit Item Fees anytime a check is returned unpaid,  
2 irrespective of the circumstances or patterns of behavior on the account; the CFPB noted that these  
3 fees cause substantial monetary injury for each returned item, which consumers cannot reasonably  
4 avoid because they lack information about and control over whether a check will clear.<sup>1</sup>

5 7. California, among other States, has recognized the unfair nature of these fees and  
6 recently amended the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code  
7 § 17200, *et seq.*, to expressly prohibit “junk fees” where a business reveals unavoidable fees later in  
8 the buying process. As California Attorney General Rob Bonta noted in a press release: “These  
9 deceptive fees prevent us from knowing how much we will be charged at the outset. They are bad  
10 for consumers ... [and] cost Americans tens of billions of dollars each year.”<sup>2</sup>

11 8. Accordingly, Plaintiff, on behalf of himself and the Class (defined below), now seeks  
12 to hold CU SoCal accountable for its unlawful and unfair policy, and seeks damages, restitution,  
13 and injunctive relief, as set forth below.

14 **PARTIES**

15 9. Plaintiff Brandon Gray is an individual citizen of the State of California and, during  
16 the applicable limitations period, was a member of CU SoCal and held a Classic Checking account  
17 with CU SoCal.

18 10. Defendant CU SoCal is a credit union headquartered in Anaheim, California that  
19 operates in Los Angeles, Orange, Riverside, and San Bernadino counties. In its 2022 annual report,  
20 CU SoCal states it has over 143,000 members with assets of over \$2.5 billion.<sup>3</sup> As of December 31,  
21 2022, CU SoCal realized over \$12 million in fees and charges.

22 **JURISDICTION AND VENUE**

23 11. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the  
24

25  
26 <sup>1</sup> Consumer Financial Protection Bulletin 2022–06, Unfair Returned Deposited Item Fee Assessment Practices (Oct. 26,  
27 2022), available at: <https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices/> (last accessed March 6, 2024).

28 <sup>2</sup> Attorney General Bonta’s Sponsored Bill to Ban Hidden Fees in California Signed into Law (Oct. 7, 2023),  
<https://oag.ca.gov/news/press-releases/attorney-general-bonta%E2%80%99s-sponsored-bill-ban-hidden-fees-california-signed-law> (last accessed March 15, 2024).

<sup>3</sup> CU SoCal Annual Report (2022) at 3. Available at: <https://anyflip.com/xtni/wyxc> (last accessed March 15, 2024).

1 California Constitution.

2 12. Venue is proper in this county under Code of Civil Procedure §§ 395 and 395.5 because  
3 Defendant conducts business in this county and has its principal place of business in this county. In  
4 addition, Defendant executed the unlawful policies and practices which are the subject of this action  
5 in this county.

6 **FACTUAL BACKGROUND**

7 **I. RETURN DEPOSIT ITEM FEES**

8 13. Return Deposit Item Fees are levied when a check is returned because it cannot be  
9 processed against the originator's account. In other words, when Person A writes a check to Person  
10 B and the check bounces or is returned unpaid, the bank charges Person B a fee even though Person  
11 B had no reasonable means of knowing the check would not clear. There are a multitude of reasons  
12 why a check someone received would bounce, nearly all of which lie entirely outside the control of  
13 the depositor. The reason could be insufficient funds, a stop payment order issued by the check  
14 writer, a closed or foreign account, or even a minor discrepancy on the check itself. Even though  
15 the depositor has no control over the check, the Return Deposit Item Fees charged can range from  
16 \$5 to over \$30 and often vastly exceed the actual cost of processing the returned check.

17 14. Return Deposit Item Fees are widespread within the banking industry. Most major  
18 banks and financial institutions levy them as part of their standard fee structure. In fact, these fees  
19 are nothing more than veiled revenue-generating tools that penalize innocent depositors for the  
20 actions of others.

21 15. Recognizing the potential for abuse, the CFPB issued published Bulletin 2022-06 on  
22 November 7, 2022 (the "Bulletin"). The Bulletin, entitled *Unfair Returned Deposited Item Fee*  
23 *Assessment Practices*, highlights the CFPB's concerns about deceptive practices related to Return  
24 Deposit Item Fees, particularly in instances where fees are disproportionate to the actual costs  
25 incurred by the bank, or where customers are not adequately informed about the fees and their  
26 potential applicability.

27 16. The CFPB deemed these fees unfair under the Consumer Financial Protection Act  
28

1 (“CFPA”). It took issue with financial institutions, like CU SoCal, that charge consumers Return  
2 Deposit Item Fees “for all returned transactions irrespective of the circumstances of the transaction  
3 or patterns of behavior on the account.” The Bulletin provides in relevant part:

4 The Consumer Financial Protection Act (CFPA) prohibits covered  
5 persons from engaging in unfair acts or practices. Congress defined an  
6 unfair act or practice as one that (A) “causes or is likely to cause  
7 substantial injury to consumers which is not reasonably avoidable,”  
8 and (B) “such substantial injury is not outweighed by countervailing  
9 benefits to consumers or to competition.”

10 Blanket policies of charging Returned Deposited Item fees to  
11 consumers for all returned transactions irrespective of the  
12 circumstances of the transaction or patterns of behavior on the  
13 account are likely unfair.

14 Fees charged for Returned Deposited Items cause substantial injury to  
15 consumers. Under the blanket policies of many depository  
16 institutions, Returned Deposited Item fees cause monetary injury, in  
17 the range of \$10-19 for each returned item. **Depository institutions  
18 that charge Returned Deposited Item fees for returned checks  
19 impose concrete monetary harm on a large number of customers.**

20 In many of the instances in which Returned Deposited Item fees are  
21 charged, consumers would not be able to reasonably avoid the  
22 substantial monetary injury imposed by the fees. **An injury is not  
23 reasonably avoidable unless consumers are fully informed of the  
24 risk and have practical means to avoid it.** Under blanket policies of  
25 many depository institutions, Returned Deposited Item fees are  
26 charged whenever a check is returned because the check originator  
27 has insufficient available funds in their account, the check originator  
28 instructs the originating depository institution to stop payment, or the  
29 check is written against a closed account. **But a consumer depositing  
30 a check would normally be unaware of and have little to no  
31 control over whether a check originator has funds in their  
32 account, will issue a stop payment instruction, or has closed the  
33 account.** Nor would a consumer normally be able to verify whether a  
34 check will clear with the check originator’s depository institution  
35 before depositing the check or be able to pass along the cost of the fee  
36 to the check originator.

37 87 FR 66940, 66941 (emphases added).<sup>4</sup>

38 17. The CFPB focused on the lack of benefit to consumers and the disproportionality  
39 associated with these fees, finding that “[c]heck processing is a service made broadly available to  
40 all depositors of checks, and *there is no separate benefit to consumers from having a deposited*

41 \_\_\_\_\_  
42 <sup>4</sup> The Bulletin is available at <https://www.federalregister.gov/documents/2022/11/07/2022-23933/bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices> (last accessed March 6, 2024).

1 *check returned, as opposed to paid.*” *Id.* The CFPB further found that these fees are *not* “well-  
2 tailored to recoup costs” because “the fee is charged to depositors even where the depository  
3 institution incurs no such loss from the returned transaction, and institutions usually do not collect  
4 the fee in those limited circumstances where they actually incur a loss.” *Id.* Evidently, the CFPB has  
5 signaled its intention to impose stricter oversight and raise legal challenges against these unfair and  
6 predatory practices.

7 **II. CU SOCAL IMPOSTED A BLANKET “JUNK FEE” ON ALL RETURNED**  
8 **CHECKS, REGARDLESS OF CAUSE**

9 18. CU SoCal operates a network of 20 branches across Southern California. Within this  
10 network, CU SoCal offers a range of products and services to its members like Plaintiff and the  
11 putative Class members.

12 19. Upon opening a deposit account with CU SoCal, each member receives a “General  
13 Disclosure Information About All of Our Accounts and Services” document (“Deposit  
14 Agreement”).<sup>5</sup> The Deposit Agreement forms the contract between CU SoCal and its members and  
15 provides the terms and conditions governing each deposit account held with CU SoCal. *Id.*

16 20. The Deposit Agreement does not mention the Return Deposit Item Fees. Rather, it  
17 states simply that “[a]ll accounts shall be subject to service charges in accordance with fee  
18 schedules adopted by the Credit Union as amended from time to time.” *Id.* at 8.

19 21. The Schedule of Fees provides that in practice CU SoCal uniformly charged its  
20 members a blanket \$10 fee for items that are returned by no fault of the member.

21 22. The primary concern with CU SoCal’s policy lies not just in its existence, but in the  
22 lack of transparency surrounding the fee. While the Deposit Agreement mentions the existence of  
23 the Return Deposit Item Fee, it does not state the amount of the charge and, instead, forces members  
24 to refer to the applicable fee schedule. This hidden cost can be particularly frustrating for members  
25 who do not expect to incur a fee based on no fault of their own. Members may reasonably expect to  
26 pay a fee in circumstances where they could have taken action to avoid it, but it is unfair and  
27 deceptive to charge them a fee that is unavoidable regardless of their actions.

28 \_\_\_\_\_  
<sup>5</sup> See CU SoCal Deposit Agreement, effective May 2019, at 3, attached hereto as Exhibit A.

1           23.     When depositing a check, customers naturally anticipate receiving the funds in their  
2 accounts. However, factors entirely outside their control can lead to a deposit being returned unpaid.  
3 This can occur due to the originator lacking sufficient funds, a stop-payment order issued by the  
4 originator, or even processing errors. These unpredictable circumstances can expose the depositor to  
5 unfair and unavoidable financial repercussions.

6           24.     Consumers attempting to deposit funds, such as Plaintiff, lacked any control over  
7 whether the deposit would be returned, and had no way of protecting themselves against the  
8 possibility of the deposit being returned and being charged a fee. Depositors could not realistically  
9 verify with the originator's institution whether there were sufficient funds in the issuer's account  
10 before depositing an item.

11           25.     CU SoCal's blanket policy of charging Return Deposit Item Fees on all returned  
12 deposits, regardless of the origin of the check or the cause of its return, is unfair because it penalizes  
13 members for circumstances outside of their control.

### 14           **III.     CU SOCIAL CHARGED PLAINTIFF RETURN DEPOSIT ITEM FEES**

15           26.     Prior to the applicable limitations period, Brandon Gray opened a Classic Checking  
16 account with CU SoCal.

17           27.     On or around September 30, 2022, Mr. Gray attempted to deposit a check into his  
18 Checking account.

19           28.     At the time Mr. Gray attempted to deposit the check into his Checking account, he  
20 had no reason to believe that the check would be returned unpaid.

21           29.     A few days later, on October 5, 2022, to Mr. Gray's surprise and by no fault of his  
22 own, the check was returned unpaid. CU SoCal charged Mr. Gray a Return Deposit Item Fee of  
23 \$10.00. The Return Deposit Item Fee was deducted from Mr. Gray's account.

24           30.     Because the Return Deposit Item Fee which CU SoCal charged Mr. Gray was  
25 assessed pursuant to CU SoCal's blanket policy of assessing such fees irrespective of the facts and  
26 circumstances surrounding his attempt to deposit the check into his account, the Return Deposit  
27 Item Fee was unfair and unlawful.

### 28           **CLASS DEFINITION AND ALLEGATIONS**

1 31. Plaintiff brings this action pursuant to California Code of Civil Procedure § 382 on  
2 behalf of himself and on behalf of all other persons similarly situated.

3 32. Plaintiff proposes the following Class definitions, subject to amendment as  
4 appropriate:

5 **Return Deposit Item Class (the “Class”)**

6 All California individuals who, during the applicable statute of  
7 limitations, had or have accounts with CU SoCal and were charged a  
8 Return Deposit Item Fee by CU SoCal.

9 33. Excluded from the Class is Defendant, its parents, subsidiaries, affiliates, officers  
10 and directors, and judicial officers and their immediate family members and associated court staff  
11 assigned to this case.

12 34. Plaintiff reserves the right to modify or amend the definitions of the proposed Class  
13 before the Court determines whether certification is appropriate.

14 35. The proposed Class meets the criteria for certification under California Code of Civil  
15 Procedure § 382.

16 36. **Numerosity**. This action is appropriately suited for a class action. The members of  
17 the Class are so numerous that the joinder of all members is impracticable. Plaintiff is informed,  
18 believes, and thereon alleges, that the proposed Class contains thousands of members who have  
19 been damaged by Defendant’s conduct as alleged herein, the identity of whom is within the  
20 knowledge of Defendant and can be easily determined through Defendant’s records.

21 37. **Commonality**. This action involves questions of law and fact common to the Class.  
22 The common legal and factual questions include, but are not limited to, the following:

- 23 a. Whether Defendant’s assessment of Return Deposit Item Fees within  
24 the applicable statute of limitations was unfair, deceptive, or  
25 misleading;
- 26 b. Whether Defendant breached its Implied Covenant of Good Faith and  
27 Fair Dealing by assessing Return Deposit Item Fees;
- 28 c. Whether Defendant was unjustly enriched as a result of charging  
Plaintiff and the Class Return Deposit Item Fees;
- d. Whether Plaintiff and the Class suffered damages as a result of  
Defendant’s assessment of Return Deposit Item Fees;



- e. Whether Defendant's conduct, as alleged herein, constitutes a violation of Cal. Civ. Code §§ 1750, *et seq*;
- f. Whether Defendant's conduct, as alleged herein, constitutes a violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*;
- g. The proper method or methods by which to measure damages and/or restitution and/or disgorgement; and
- h. Whether Plaintiff and the Class are entitled to declaratory and injunctive relief and the nature of the relief.

38. **Typicality**. Plaintiff's claims are typical of the claims of the members of the Class, because, *inter alia*, all Class members have been injured through the uniform misconduct described above and were charged improper and deceptive fees as alleged herein. Moreover, Plaintiff's claims are typical of the Class's because Plaintiff is advancing the same claims and legal theories on behalf of himself and all members of the Class. In addition, Plaintiff is entitled to relief under the same causes of action and upon the same facts as the other members of the proposed Class.

39. **Adequacy of Representation**. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff and the members of the Class maintained an account with Defendant and were harmed by Defendant's misconduct in that they were assessed unfair Return Deposit Item Fees. Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained competent counsel experienced in complex litigation and class action litigation. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

40. **Superiority**. A class action is superior to other methods for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendant. It would be virtually impossible for a member of the Class, on an individual basis, to obtain effective redress for the wrongs done to him or her. Further, even if the Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay

1 and expense to all parties and the court system from the issues raised by this action. By contrast, the  
2 class action device provides the benefits of adjudication of these issues in a single proceeding,  
3 economies of scale, and comprehensive supervision by a single court, and presents no management  
4 difficulties under the circumstances here.

5 41. Plaintiff seeks monetary damages, including compensatory damages on behalf of the  
6 Class, and other equitable relief on grounds generally applicable to the Class. Unless a Class is  
7 certified, Defendant will be allowed to profit from its unfair and unlawful practices, while Plaintiff  
8 and the members of the Class will have suffered damages. Unless a Class-wide injunction is issued,  
9 Defendant may continue to benefit from these violations, and the members of the Class and the  
10 general public may continue to be unfairly treated.

11 42. Defendant has acted and refused to act on grounds generally applicable to the Class,  
12 making final injunctive relief appropriate with respect to the Class as a whole.

13 43. All conditions precedent to bringing this action have been satisfied and/or waived.

14 **COUNT I**  
15 **BREACH OF THE IMPLIED COVENANT AND GOOD FAITH AND FAIR DEALING**  
16 **(On behalf of Plaintiff and the Class)**

17 44. Paragraphs 1 through 43 herein are re-alleged and incorporated by reference into this  
18 First Count.

19 45. Plaintiff and each member of the Class entered into a Deposit Agreement with  
20 Defendant. Whether by common law or statute, all contracts impose upon each party a duty of good  
21 faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and  
22 discharging performance and other duties according to their terms, means preserving the spirit —  
23 not merely the letter — of the bargain. Thus, the parties to a contract are mutually obligated to  
24 comply with the substance of their contract in addition to its form. Evading the spirit of the bargain  
25 and abusing the power to specify terms, constitute examples of bad faith in the performance of  
26 contracts.

27 46. The material terms of the Deposit Agreement therefore included the implied  
28 covenant of good faith and fair dealing, whereby Defendant covenanted that it would, in good faith  
and in the exercise of fair dealing, deal with Plaintiff and each member of the Class fairly and





1           63. Paragraphs 1 through 62 herein are re-alleged and incorporated by reference into this  
2 Third Count.

3           64. Plaintiff Gray brings this claim individually and on behalf of the members of the  
4 Class against Defendant.

5           65. The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or  
6 practices undertaken by any person in a transaction intended to result or which results in the sale or  
7 lease of goods or services to any consumer.”

8           66. The deposit accounts that Plaintiff and the members of the Class opened with  
9 Defendant are “services” as defined in Cal. Civ. Code § 1761(b).

10          67. Defendant is a “person” as defined by Cal. Civ. Code § 1761(c).

11          68. Plaintiff and the members of the Class are “consumers” as defined in Cal. Civ. Code  
12 § 1761(d).

13          69. As alleged herein, Defendant engaged in unfair and deceptive acts or practices  
14 insofar as it assessed Plaintiff and the members of the Class with Return Deposit Item Fees.

15          70. Defendant’s conduct as described herein was and is in violation of the CLRA.  
16 Defendant’s conduct violates at least the following enumerated CLRA provisions:

17           a. Cal. Civ. Code § 1770(a)(5): Representing that goods or services have  
18 characteristics, uses, benefits, or quantities that they do not have or that a  
19 person has a sponsorship, approval, status, affiliation, or connection that the  
20 person does not have;

21           b. Cal. Civ. Code § 1770(a)(14): Representing that a transaction confers or  
22 involves rights, remedies, or obligations that it does not have or involve, or  
23 that are prohibited by law; and

24           c. Cal. Civ. Code § 1770(a)(19): Inserting an unconscionable provision in the  
25 contract.

26          71. The provision in the Deposit Agreement regarding the assessment of Return Deposit  
27 Item Fees is unconscionable and unlawful under California law as described herein. Defendant’s  
28 practice of charging unfair and deceptive Return Deposit Item Fees misrepresents the nature of their

1 services. These fees create a misleading impression of control over deposited funds and a successful  
2 transaction when, in reality, unforeseen circumstances beyond a member’s control can result in  
3 them being unfairly penalized with unexpected charges. Further, these fees are unfair under the  
4 CFPA.

5 72. The Return Deposit Item Fees that Defendant charged Plaintiff and the Class  
6 members was unfair because Defendant charged these Return Deposit Item Fees irrespective of the  
7 facts and circumstances surrounding Plaintiff and the Class members’ attempt to deposit checks into  
8 their account.

9 73. The Return Deposit Item Fees that Defendant charged Plaintiff and the Class  
10 members were deceptive because the Deposit Agreement failed to adequately disclose Defendant’s  
11 practice of charging these fees. The Deposit Agreement failed to provide sufficient information for  
12 Plaintiff and the Class members to understand that they would be charged these fees, which was  
13 material to Plaintiff and the Class members’ decision making and actions.

14 74. The CFPB – through Bulletin 2022-06 – has determined that Return Deposit Item  
15 Fees, such as those charged by Defendant, are materially unfair and deceptive because they cause  
16 substantial injury to consumers and fall within the CFPA’s definition of unfair acts and practices  
17 because such fees cause substantial financial injury to accountholders, are not reasonably avoidable  
18 by accountholders, and do not provide a benefit that outweighs the injury they cause.

19 75. The CFPA defines an “unfair” act or practice as one that “causes or is likely to cause  
20 substantial injury to consumers which is not reasonably avoidable,” and “such substantial injury is  
21 not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1).  
22 By imposing such fees on its members, Defendant imposes on its members the false impression that  
23 they are liable for actions beyond their control that have nothing to do with them and everything to  
24 do with the originator of the check. It is deceptive and unconscionable for Defendant to burden its  
25 members financially with no option to avoid the fee.

26 76. Thus, pursuant to the CFPB’s Bulletin 2022-06, Defendant’s practice of charging  
27 Return Deposit Item Fees is deceptive and unfair and constitutes a violation of the CLRA.

28

1 77. Defendant's conduct proximately caused injuries to Plaintiff and the Class that were  
2 charged Return Deposit Item Fees and suffered harm as alleged herein.

3 78. Plaintiff and the members of the Class were injured and suffered ascertainable loss,  
4 injury-in-fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff  
5 and the Class members incurred costs in the amount of the Return Deposit Item Fees.

6 79. Defendant's unlawful acts and practices complained of herein affect the public  
7 interest.

8 80. Plaintiff and the Class members' injuries were proximately caused by Defendant's  
9 unlawful and deceptive business practices.

10 81. On February 9, 2024, a CLRA demand letter was delivered to Defendant pursuant to  
11 Cal. Civ. Code § 1782. This letter provided notice of Defendant's violation of the CLRA and  
12 demanded the Defendant correct the unlawful and deceptive practices alleged herein. While  
13 Defendant offered a refund to Plaintiff and represented that it would eliminate the Return Deposit  
14 Item Fee for its members going forward, Defendant did not offer any monetary remedy to each  
15 Subclass member. Accordingly, Plaintiff, on behalf of the Class, seeks all monetary relief available  
16 under the CLRA.

17 82. Plaintiff Gray and the members of the California Subclass are entitled to  
18 reimbursement in amounts to be determined at a later date, but not less than the full amount of the  
19 fees, and interest thereon, which Defendant has taken from Plaintiff Gray and members of  
20 California Subclass, as well as reasonable attorneys' fees and costs, punitive damages, and any  
21 other relief the Court deems proper, pursuant to California Civil Code § 1780.

22 **COUNT IV**  
23 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW ("UCL")**  
24 **BUS. PROF. CODE §§ 17200, ET SEQ.**  
25 **(On behalf of Plaintiff and the Class)**

26 83. Paragraphs 1 through 82 herein are re-alleged and incorporated by reference into this  
27 Fourth Count.

28 84. Plaintiff Gray brings this claim individually and on behalf of the members of the  
Class against Defendant.

1           85. California’s UCL, codified at Business and Professions Code §§ 17200, *et seq.*,  
2 prohibits and provides civil remedies for unfair competition. Its purpose is to protect both  
3 consumers and competitors by promoting fair competition in commercial markets for goods and  
4 services. In service of that purpose, the Legislature framed the UCL’s substantive provisions in  
5 broad, sweeping language. By defining unfair competition to include any “any unlawful, unfair or  
6 fraudulent business act or practice,” the UCL permits violations of other laws to serve as the basis  
7 of an independently actionable unfair competition claim and sweeps within its scope acts and  
8 practices not specifically proscribed by any other law.

9           86. The UCL expressly provides for injunctive relief and contains provisions denoting its  
10 public purpose. A claim for injunctive relief under the UCL is brought by a plaintiff acting in the  
11 capacity of a private attorney general. Although the private litigant controls the litigation of an  
12 unfair competition claim, he or she is not entitled to recover compensatory damages for his or her  
13 own benefit, but only disgorgement of profits made by the defendant through unfair competition in  
14 violation of the statutory scheme, or restitution to victims of the unfair competition.

15           87. As alleged herein, Defendant’s conduct violates the UCL because charging members  
16 “junk fees” that provide no tangible service or benefit to them violates public policy. Defendant’s  
17 conduct was not motivated by any legitimate business or economic need or rationale. The harm and  
18 adverse impact of Defendant’s conduct on their members was neither outweighed nor justified by  
19 any legitimate reasons, justifications, or motives. The harm to Plaintiff Gray and the members of the  
20 Class arising from Defendant’s unlawful practices relating to the imposition of the improper, unfair,  
21 and predatory Return Deposit Item Fees outweighs the utility, if any, of those practices.

22           88. Charging Return Deposit Item Fees is a predatory practice that impacts thousands of  
23 consumers throughout southern California and disproportionately impacts vulnerable consumers.  
24 These blanket fees exploit consumers and can reinforce financial inequality. Defendant’s unlawful  
25 business practices are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or  
26 substantially injurious to Plaintiff Gray and the members of the Class. Defendant’s conduct  
27 damaged Plaintiff Gray and the members of the Class as they have collectively been forced to pay  
28



1 thousands of dollars in improper fees. Defendant's unlawful acts and practices complained of herein  
2 affect the public interest.

3 89. Moreover, Defendant's conduct violates the UCL to the extent it was unfair to  
4 implement a blanket practice of charging Return Deposit Item Fees to consumers for all returned  
5 checks irrespective of the circumstances or any action taken by the accountholder.

6 90. As a direct and proximate result of Defendant's violations of the UCL, Plaintiff Gray  
7 and the members of the Class have been charged improper and unlawful Return Deposit Item Fees,  
8 which were automatically debited from their accounts, and Defendant has received income, profits,  
9 and other benefits, which it would not have received if it had not violated the UCL. Plaintiff Gray  
10 and the members of the Class suffered an ascertainable loss and actual damages as a result of  
11 Defendant's conduct.

12 91. Further, unless the Court grants injunctive relief compelling Defendant to disgorge  
13 itself of the ill-gotten gains, Plaintiff and other existing accountholders, and the general public, will  
14 suffer from and be exposed to Defendant's conduct violative of the UCL.

15 92. Plaintiff Gray, on behalf of the members of the Class, requests that he be awarded all  
16 relief as may be available by law, pursuant to Cal. Bus. Prof. Code § 17203.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, respectfully requests that the Court enter judgment against  
19 Defendant as follows:

- 20 A. For an order certifying this action as a class action under California Code of Civil  
21 Procedure § 382 and naming Plaintiff as a representative of the Class and Plaintiff's  
22 undersigned attorneys as Class Counsel to represent the Class members;
- 23 B. For an Order declaring that Defendant's conduct violated the laws referenced herein;
- 24 C. For an Order finding in favor of Plaintiff and the Class on all counts asserted herein;
- 25 D. For an Order awarding actual, statutory, and punitive damages as applicable;
- 26 E. For an Order awarding pre-judgment and post-judgment interest on all amounts  
27 awarded;
- 28 F. For injunctive relief as pleaded or as the Court may deem proper;

- 1 G. For disgorgement and restitution to Plaintiff and the Class members of all monies
- 2 received or collected from Plaintiff and the Class members and all other forms of
- 3 equitable relief;
- 4 H. For an Order awarding reasonable attorneys' fees and expenses and costs of suit;
- 5 I. Damages in an amount to be determined at trial; and
- 6 J. For such other and further relief as the Court may deem proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands trial by jury as to all triable issues.

9 DATED: April 16, 2024

10 Respectfully submitted,

11  
12 By: /s/Kyle D. McLean  
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