

Sophia M. Rios, CSB #305801
Email: srios@bm.net
BERGER MONTAGUE PC
401 B Street, Suite 2000
San Diego, California 92101
Telephone: (619) 489-0300
Facsimile: (215) 875-4604

ELECTRONICALLY
FILED
SUPERIOR COURT OF CALIFORNIA
2/21/2024 11:09 AM
County of Tehama
Kevin Harrigan, Clerk of the Court
By Brittany Richards, Deputy
EFILED

[Additional Counsel Appear on Signature Page]

Attorneys for Plaintiff and the Proposed Class

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TEHAMA

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

Plaintiff,

v.

COMERICA BANK, a foreign corporation,
CONDUENT BUSINESS SERVICES, LLC, a
foreign limited liability corporation,
CONDUENT STATE & LOCAL SOLUTIONS,
INC., a foreign corporation,

Defendants.

NO. 24CI-000031

CLASS ACTION COMPLAINT

- 1. BREACH OF CONTRACT**
- 2. VIOLATION OF UNFAIR
COMPETITION LAW**

DEMAND FOR JURY TRIAL

I. NATURE OF ACTION

1. Plaintiff Paula Sparkman is a single mother who relies on the child support funds she receives through California's "Way2Go Card" program to care for her daughter. The Way2Go Card is a prepaid debit card issued by Defendants Comerica Bank, Conduent Business Services, LLC and Conduent State & Local Solutions, Inc. (hereafter "Defendants").

2. Defendants provide an automated (IVR) telephone line for Way2Go card holders to contact customer service.

1 3. Ms. Sparkman and other parents receiving child support funds in California on a prepaid
2 card must receive those funds through the Way2Go Card offered by Defendants. They cannot choose a
3 different provider.

4 4. Defendants takes advantage of these captive child support recipients by imposing unfair
5 charges that they cannot reasonably avoid by going to a different provider.

6 5. Defendants nickel and dined Ms. Sparkman and other parents receiving child support
7 funds on California Way2Go Cards by charging them a \$0.50 fee for using Defendants' IVR telephone
8 system to report account errors or check their balances.

9 6. Ms. Sparkman brings this action on behalf of herself and other Californians who were
10 charged Defendants' fees to use their IVR phone system.

11 **II. JURISDICTION AND VENUE**

12 7. This Court has jurisdiction over Defendants because this action is based on Defendants'
13 contracting to do business with California Child Support Services, and Defendants' contacts with
14 California. Defendants are corporations authorized to do business in California and conduct substantial
15 business in California.

16 8. This is the proper venue under California Code of Civil Procedure § 395.5 because a
17 substantial part of the events or omissions giving rise to Ms. Sparkman's and the Class's claims
18 occurred in Tehama County.

19 **III. PARTIES**

20 9. Plaintiff Paula Sparkman is a resident of Tehama County, California, and a citizen of
21 California.

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

1 11. Defendant Conduent State & Local Solutions, Inc. is a New York corporation with its
2 principal place of business in Florham Park, New Jersey.

3 12. Defendant Conduent Business Services, LLC is a Delaware limited liability corporation
4 with its corporate headquarters in Florham Park, New Jersey.

5 **IV. FACTUAL ALLEGATIONS**

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

7 14. All child support payments in California are made through California Child Support
8 Services. California Child Support Services contracts with Defendants to disburse child support
9 payments to recipients through prepaid debit cards.

10 15. Ms. Sparkman receives court ordered child support from her child's father through
11 California's Way2Go Card® Prepaid Mastercard.® Ms. Sparkman has had a Way2Go Card since
12 approximately 2020 when California Child Support Services contracted with Defendants to issue
13 payments by prepaid debit card. Ms. Sparkman did not choose to use Defendants' services. Defendant is
14 the only provider that Ms. Sparkman can use to receive child support funds on a prepaid debit card. Ms.
15 Sparkman has used a prepaid debit card to access child support funds since 2015.

16 16. Defendants' Terms of Use provide that a card holder can "Contact Go Program Customer
17 Services by calling 1-844-318-0740, by mail at P.O. Box 245997, San Antonio, TX 78224-5997 or visit
18 GoProgram.com."

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

21 18. Ms. Sparkman tried to call Defendants at 844-318-0740 at approximately 2:31 p.m. to
22 resolve this issue. The call was disconnected.

23 19. Ms. Sparkman called Defendants back at 844-318-0740 approximately 4 minutes later
24 and was told the gas station was holding her funds and she need to address the issue with the gas station.
25

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

4 21. Ms. Sparkman called back at 2:49 p.m. and spoke with one of Defendants' customer
5 service agents.

6 22. Ms. Sparkman made no other calls to Defendants at 844-318-0740 during the month of
7 June 2023.

8 23. Defendants' Terms of Use disclose a \$0.50 "per call" charge for "customer service" calls
9 to their IVR line. But the terms state "You are allowed three (3) calls to the IVR per month for no fee.
10 There is no additional fee for transferring to a live customer service agent."

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

16 V. CLASS ACTION ALLEGATIONS

17 25. Ms. Sparkman brings this case as a proposed class action under California Code of Civil
18 Procedure § 382. The proposed Class and Sub-Class are defined as follows:

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

21 **IVR Surcharge Sub-Class:** All members of the IVR Surcharge
22 Class whose accounts Defendants charged at least one \$0.50 fee for
23 calling Defendants' IVR telephone system without allowing the
consumer at least three free calls in a month before imposing the
24 charge.
25

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

4 27. This action is properly maintained as a class action because there is a well-defined
5 community of interest in the litigation and the proposed class is easily ascertainable.

6 28. Ascertainable Class The definitions of the Class are clear, and members of the Class are
7 easily identifiable on the basis of objective information.

8 29. Numerosity The members of the Class are so numerous that their individual joinder is
9 impracticable. Plaintiff is informed and believes that there are at least hundreds if not thousands of
10 Californians who receive payments on California Way2Go Cards issued by Defendants and have been
11 charged Defendants' IVR surcharge. The number of class members, their identities, and their contact
12 information can be found in Defendants' records.

13 30. Commonality and Predominance There are numerous questions of law and fact common
14 to the class members that predominate over any questions requiring individual analysis, including:

15 a) Whether Defendants have a pattern or practice of charging Way2Go card holders
16 fees for using their IVR telephone system without allowing the consumer at least three no charge calls to
17 the IVR line within a single month;

18 b) Whether Defendants practice of charging consumers a \$0.50 fee to using
19 Defendants' IVR telephone system is unfair;

20 c) Whether Defendants breached their agreement;

21 d) Whether Defendants business practices were unlawful or unfair under California's
22 Unfair Competition Law; and

23 e) The remedies available to Plaintiff and the Class.
24
25

1 31. Typicality Ms. Sparkman's claims are typical of the proposed Class members. Ms.
2 Sparkman was issued a Way2Go Card by Defendants and was charged a \$0.50 fee for calling
3 Defendants' IVR telephone system without allowing her at least three free calls in a month before
4 charging her. Ms. Sparkman's claims and the claims of the class members are based on the same legal
5 theories and arise from the same unlawful conduct, resulting in the same injury.

6 32. Adequacy Ms. Sparkman is an adequate class representative because she will fairly and
7 adequately protect the interests of the Class members. She has no interests that conflict with the interests
8 of other Class members, and is not subject to unique defenses. She has retained counsel who are
9 experienced trial lawyers, have prosecuted many consumer class actions, and have the resources to
10 vigorously prosecute the action.

11 33. Superiority Ms. Sparkman and members of the Class have all suffered and will continue
12 to suffer harm and damages as a result of Defendants' unlawful and wrongful conduct. A class action is
13 superior to other available methods for the fair and efficient adjudication of the controversy. A class
14 action is superior to individual actions because the damages suffered by each Class member are likely to
15 be relatively small and absent class litigation, many members of the proposed Class would likely receive
16 no relief at all. Class treatment of common questions of law and fact is also superior to multiple
17 individual actions and piecemeal litigation in that it conserves the court's and litigants' resources, and
18 promotes consistency and efficiency of adjudication.

19 **FIRST CAUSE OF ACTION**
20 **(Breach of Contract)**
 (On behalf of the IV Surcharge Sub-Class)

21 34. Ms. Sparkman incorporates by reference all preceding allegations.

22 35. Under Defendants' Terms of Use, Ms. Sparkman and the IVR Surcharge Sub-Class are
23 entitled to call Defendants' IVR customer service line three times in a month without incurring a fee.
24
25

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

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

6 38. As a direct and proximate result of Defendants' breach Ms. Sparkman and members of
7 the Class are entitled to an award of nominal and actual damages.

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

12 39. Ms. Sparkman incorporates by reference all preceding allegations.

13 40. Defendants' acts or practices, including charging IVR Surcharge Class members a \$0.50
14 for calling an automated voice "customer service" system, and charging the \$0.50 fees for using
15 Defendants' IVR telephone system are unfair.

16 41. Defendants' acts or practices, including charging the IVR Surcharge Sub-Class members
17 a \$0.50 for calling an automated voice "customer service" system, and charging the \$0.50 fees for using
18 Defendants' IVR telephone system without allowing them their promised three free calls within in a
19 month are unfair.

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

22 43. The charges cannot be reasonably avoided. Way2Go cards are issued under Defendants'
23 contract with a state agency—card holders cannot choose a different pre-paid card provider to receive
24 payments. Way2Go card holders must use the IVR customer service line to correct mistakes made on
25 their accounts, often due to Defendants' conduct, and to ensure that their accounts accurately reflect

1 transactions and payments. Defendant profited from imposing the unfair charges on Way2Go card
2 holders without incurring any costs itself as the IVR line is automated.

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

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

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

16 VI. PRAYER FOR RELIEF

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

18 A. An order certifying this case as a class action, appointing Ms. Sparkman as Class
19 Representative and her attorneys as Class Counsel;

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

22 C. Prejudgment interest;

23 D. Restitution;

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

F. Injunctive relief precluding Defendants from continuing to engage in the acts or practices described throughout this complaint when handling calls received from California Way2Go card holders.

VII. DEMAND FOR JURY TRIAL

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

RESPECTFULLY SUBMITTED AND DATED this 21st day of February, 2024.

BERGER MONTAGUE PC

By: /s/ Sophia M. Rios

Sophia M. Rios, CSB #305801

Email: srios@bm.net

401 B Street, Suite 2000

San Diego, California 92101

Telephone: (619) 489-0300

Facsimile: (215) 875-4604

Beth E. Terrell, CSB #178181

Email: bterrell@terrellmarshall.com

Blythe H. Chandler, *Pro Hac Vice Forthcoming*

Email: bchandler@terrellmarshall.com

Jasmin Rezaie-Tirabadi, *Pro Hac Vice Forthcoming*

Email: jrezaie@terrellmarshall.com

TERRELL MARSHALL LAW GROUP PLLC

936 North 34th Street, Suite 300

Seattle, Washington 98103-8869

Telephone: (206) 816-6603

Facsimile: (206) 319-5450

Daniel A. Schlanger, *Pro Hac Vice Forthcoming*

Email: dschlanger@consumerprotection.net

SCHLANGER LAW GROUP LLP

80 Broad Street, Suite 1301

New York, New York 10016

Telephone: (212) 500-6114

Facsimile: (646) 612-7996

Attorneys for Plaintiff and the Proposed Class