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6 **UNITED STATES DISTRICT COURT**
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8 **CENTRAL DISTRICT OF CALIFORNIA**

9 SUPPORT ANIMAL HOLDINGS, LLC, and
LENNYS CASITA, LLC, individually, and on
10 behalf of all other similarly situated,

11 Plaintiffs,

12 vs.

13 DISCOVER FINANCIAL SERVICES, DFS
SERVICES, LLC, DISCOVER BANK, and
DOES 1-100,

14 Defendants.
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) Case No.:

) **CLASS ACTION COMPLAINT**

) **FOR:**

) (1) Breach of Contract; (2) Breach of the
) Implied Covenant of Good Faith and Fair
) Dealing; (3) Unjust Enrichment; and
) (4) Violation of Cal. Bus. & Prof. Code §17200,
) *et seq.*

) **DEMAND FOR JURY TRIAL**
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17 **Nature of the Action**

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19 1. The allegations herein are based upon public information, investigation of counsel, and
20 information and belief, except those allegations which pertain to Plaintiffs’ conduct, which allegations are
21 based on personal knowledge.

22 2. This is a class action brought by Plaintiffs to assert their own claim, and in their capacity as
23 the class representatives of all other persons and entities similarly situated.

24 3. This class action seeks monetary damages, restitution, specific performance, and injunctive
25 relief to stop and correct defendants’ misconduct alleged herein.

26 4. Upon information and belief, Discover Financial Services, DFS Services, LLC, and Discover
27 Bank (collectively, “Discover”) incorrectly charged Plaintiffs and the other members of the Class (defined
28 below) inflated fees by systematically and knowingly misclassifying certain Discover credit cards into the

1 incorrect fee category, therefore inflating Discover's fees. This misclassification harmed Plaintiffs and the
2 Class in the form of overcharges and reduced revenues, thus unjustly benefitting Discover to the detriment of
3 Plaintiffs and the Class.

4 5. Discover admitted to this conduct in their regulatory filings, which became available to the
5 public on July 19, 2023. (See Discover Financial Services Form 8-K, available at
6 <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001393612/a4db3f93-d8e8-44b2-a895-03b271e7be60.pdf> (last
7 accessed on August 21, 2023.))

8 6. Pursuant to this regulatory filing, Defendants admitted:

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10 Beginning around mid-2007, Discover incorrectly classified certain
11 credit card accounts into our highest merchant and merchant acquirer
12 pricing tier. Incremental revenue resulting from this card product
13 misclassification amounted to less than 1% of our cumulative discount and
14 interchange revenue, gross, since that time, or less than two basis points as a
15 percentage of sales over this timeframe. The misclassification affected
16 pricing for certain merchants and merchant acquirers, but not for
17 cardholders. Based on information available as of June 30, 2023, the
18 Company determined that the revenue impact of the incorrect card product
19 classification was not material to the consolidated financial statements of the
20 Company for any of the impacted periods. Notwithstanding, for go-forward
21 comparative purposes, the Company corrected the recognition of discount
22 and interchange revenue as well as the related impacts to assets, liabilities
23 and retained earnings in all prior periods presented. After adjusting for tax
24 effects, the cumulative impact to beginning retained earnings as of April 1,
25 2023, was a decrease of \$255 million, and the impact to net income for the
26 quarter ended March 31, 2023, was a reduction of \$8 million. As of June 30,
27 2023, the Company's consolidated financial statements reflect a liability of
28 \$365 million within accrued expenses and other liabilities to provide refunds
to merchants and merchant acquirers as a result of the card product
misclassification.

21 7. According to Defendant's own admissions, the Defendants misclassified transactions in
22 order to collect additional fee revenue that would have been obtained absent the misclassification.

23 8. Discover's conduct directly caused millions of dollars in financial damages to the Plaintiffs
24 and the Class.

25 **Parties**

26 9. Support Animal Holdings is a limited liability corporation with its principal place of
27 business in Los Angeles, California. Plaintiff is a resident of California. Plaintiff has accepted Discover cards
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1 from its customers since at least 2019 and paid inflated fees to Discover as a result of Discover’s misconduct
2 alleged herein.

3 10. Lenny’s Casita is a limited liability corporation with its principal place of business in Los
4 Angeles, California. Plaintiff is a resident of California. Plaintiff has accepted Discover cards from its
5 customers since at least 2021 and paid inflated fees to Discover as a result of Discover’s misconduct alleged
6 herein.

7 11. Defendant Discover Financial Services is a Delaware corporation with headquarters in
8 Riverwood, Illinois. Discover Financial Services is the parent company of subsidiaries, including Defendants
9 DFS Services LLC and Discover Bank.

10 12. Defendant Discover Bank is a federally insured online bank chartered and incorporated in
11 Delaware, with headquarters in Riverwood, Illinois. On information and belief, Discover Bank acts as the
12 Issuing Bank for transactions that take place on the Discover card network. Discover Bank issues and
13 services Discover credit card accounts.

14 13. Defendant DFS Services LLC is a Delaware Limited Liability Company with headquarters
15 in Riverwood, Illinois. On information and belief, DFS Services LLC operates the Discover network, which
16 processes Discover credit card transactions, including by assigning an Interchange Fee to such transactions.
17 DFS Services LLC is the servicing agent of Discover Bank, and one of the world’s largest payment
18 networks.

19 14. Without limitation, defendants DOES 1 through 100 include agents, partners, joint ventures,
20 subsidiaries and/or affiliates of Discover. As used herein, where appropriate, the term “Discover” is also
21 inclusive of Defendants DOES 1 through 100.

22 15. Plaintiffs are unaware of the true names of defendants DOES 1 through 100. Defendants
23 DOES 1 through 100 are thus sued by fictitious names, and the pleadings will be amended as necessary to
24 obtain relief against defendants DOES 1 through 100 when the true names are ascertained or as permitted by
25 law or by the Court. The named defendants (including DOES) are acting in concert. Therefore, there is a
26 unity of interest and ownership, such that any individuality and separateness ceases to exist.
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FACTUAL ALLEGATIONS

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2 22. From at least 2019, Plaintiffs experienced inflated fees and reduced revenues on Discover
3 customers' card transactions processed. This was a direct result of Discover's misclassification of Plaintiffs'
4 card type (described below), which caused Plaintiffs to be charged at a higher rate and thus deprived
5 Plaintiffs and the Class of portions of the transaction amounts they were rightfully entitled to receive.

6 23. This deliberate misclassification scheme involved Discover falsely representing to various
7 parties, including the Plaintiffs, card processors, acquirers, and the general public, that certain card
8 transactions fell into higher pricing tiers than where they truly belonged (the misclassification scheme).

9 24. Discover recently disclosed this misclassification scheme (*see above*).

10 **THE MISCLASSIFICATION SCHEME**

11 *i. Discover's Dual Roles: Issuing Bank and Card Network*

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13 25. Discover stands apart from other major credit card providers by directly issuing its cards to
14 consumers rather than through third-party banks. As a result, Discover serves as both an issuing bank, the
15 party who provides the credit, and a card network, the communication network administering the card
16 transaction. Discover assigns an "Interchange Fee" when processing a transaction, primarily determined by
17 the applicable "Interchange Rate" multiplied by the transaction amount. For instance, an Interchange Rate of
18 2.50% on a transaction amount of \$1,000 would result in an Interchange Fee of \$25 and a \$0.10 flat fee. This
19 fee and rate are determined systematically using Discover's internal automated system.

20 26. Following this, Discover, acting as the issuing bank, charges the customer's account for the
21 full transaction amount. The issuing bank then forwards the amount, minus the Interchange Fee, to the
22 acquirer. In most cases, the acquirer or processor directly passes this Interchange Fee to the merchant in the
23 form of a reduced payment. For some, the charge is indirect, but it still results in a reduced merchant
24 payment.

25 27. Therefore, for a typical Discover card transaction, the merchant ultimately receives the
26 transaction amount less the Interchange Fee retained by Discover, the processor's markup, and any acquirer's
27 assessment. The Interchange Fee for a given transaction is set by the card network, Discover in this case, and
28 depends on several factors, such as the processing method (e.g., if the card is present or not), the type of

1 merchant, and the category of the card. Discover publishes a specific Interchange Rate Sheet, openly
2 outlining the Interchange Rates for card transactions, depending on the card's classification. For example,
3 according to the Interchange Rate Sheet, a card identified as "Discover Consumer Credit" would have an
4 Interchange Rate of 1.56% of the transaction amount plus a flat fee of \$0.10 if the card is present during the
5 transaction. Conversely, a card identified as "Discover Commercial Credit" would be assigned an
6 Interchange Fee of "2.30% + \$0.10" under the same circumstances.

7 28. These Interchange Rate Sheets and other publications provide Plaintiffs and the Class with
8 certain contractual and quasi-contractual rights to pay the appropriate fees and thereby receive their
9 contracted transaction amounts.

10 ii. *Discover Systematically Misclassified Card Categories for Certain Discover*
11 *Transactions*

12 29. Since at least 2007, Discover has been in direct violation of its promises and obligations to
13 the Plaintiffs and the Class by systematically and knowingly applying the incorrect Interchange Rates and
14 Interchange Fees to Discover card transactions. These rates and fees were higher than those detailed in
15 Discover's Interchange Rate Sheet, accepted by the Plaintiffs and the Class. This action has caused direct
16 harm to the Plaintiffs and the Class through fee overcharges and has unjustly benefited Discover by inflating
17 their fees.

18 30. Discover executed this by knowingly and systematically misidentifying the card type or
19 category for specific transactions. Since at least 2007, Discover has intentionally applied higher Interchange
20 Rates and Interchange Fees, typically associated with Commercial Discover card transactions, to certain
21 transactions that should have been subject to lower rates and fees because they did not involve Commercial
22 cards.

23 31. For example, Discover's practice during the Class Period was to wrongfully classify
24 Consumer credit cards as Commercial cards to assign artificially higher fees and collect higher revenues.
25 Upon information and belief, this occurred if the cardholder using the Consumer credit card also maintained
26 a Commercial account with Discover. Even though Discover was aware, and its systems indicated, that the
27 cardholder utilized a Consumer credit card for the transaction, Discover nonetheless misclassified the card as
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1 a Commercial card. They misrepresented that the transaction in question involved a Commercial card and
2 improperly assigned a higher-than-applicable Interchange Rate and Interchange Fee linked to Commercial
3 card transactions. This practice led to payment of elevated fees by the Plaintiffs and other merchants in the
4 Class. As a result, they received a smaller portion of the transaction amount than they should have, which
5 would not have occurred without Discover's misconduct and breach. This practice led to improper, inflated
6 revenues, thereby unjustly benefiting Defendants.

7 32. Throughout the Class Period, Plaintiffs incurred fees, including the Interchange Fee, on each
8 Discover card transaction they processed. These charges included overcharges due to Discover's
9 misclassification conduct, reducing the amounts that Plaintiffs and the Class should have received. Multiple
10 Discover card transactions were misclassified, leading to several overcharges and situations where Plaintiffs
11 were deprived of portions of the transaction amounts they were entitled to under various agreements and
12 good faith obligations.

13 33. It is believed that Discover has been aware of this misclassification issue and the consequent
14 overcharges to Plaintiffs and the Class since 2007 or for many years at least. Despite this awareness,
15 Discover intentionally chose not to correct the issue or provide any retrospective remedy to Plaintiffs and the
16 Class as of this date.

17 34. Furthermore, Discover's internal database(s) reportedly contain the information necessary for
18 the Class Period to identify both the instances of card misclassifications and the corresponding overcharges
19 to Plaintiffs and the Class, along with the precise dollar amounts of these overcharges.
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21 **CLASS ACTION ALLEGATIONS**

22 35. Plaintiffs bring this case as a class action pursuant to Federal Rules of Civil Procedure
23 23(a)(b)(1), (b)(2) and (b)(3) on behalf of all merchants who, at any time from 2007 to the present (the
24 "Class Period"), accepted Discover credit cards and were charged fees for one or more transaction(s) that
25 were higher than the Interchange Fees applicable to such transaction(s) under Discover's Interchange Rate
26 Sheet (the "Class"). Additionally, this case is brought by Plaintiffs on behalf of all merchants within
27 California who, at any time from 2007 to the present, accepted Discover credit cards and were charged fees
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1 for one or more transaction(s) that were higher than the fees applicable to such transaction(s) under
2 Discover's contemporaneous Interchange Rate Sheet (the "California Subclass").

3 36. Excluded from the Class and California Subclass are: (1) any entity in which Defendants (or
4 any of them) have a controlling interest; (2) officers or directors of Defendants; (3) this Court and any of its
5 employees assigned to work on the case; and (4) all employees of the law firms representing Plaintiffs and
6 the Class.

7 37. The members of the Class are so numerous that the joinder of all members is impracticable.
8 Plaintiffs currently lack exact information regarding the numbers of Class and California Subclass members
9 and anticipate that this data can only be obtained through proper discovery. However, it is believed that each
10 of these groups will likely consist of thousands of members. This belief is founded on the fact that Discover
11 ranks among the largest card issuers in the United States.

12 38. Plaintiffs' claims are typical of the claims of the members of the Class and California
13 Subclass as all members of the Class are similarly affected by Defendants' continuous and systematic
14 misclassification of cardholders, such that the claims made by the Class and California Subclass arise under
15 the same legal theories.

16 39. Plaintiffs will fairly and adequately protect the interests of the Class members and has
17 retained counsel competent and experienced in class action litigation to ensure such protection.

18 40. Common questions of law and fact exist as to all members of the Class and predominate
19 over any questions solely affecting individual members of the Class. Among the questions of law and fact
20 common to the Class are:
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- 22 a. Whether Discover owed the Plaintiffs and the Class any contractual obligations to assess
23 proper fees in accordance with the terms thereof;
- 24 b. Whether, alternatively, Discover had a quasi-contractual obligation to Plaintiffs and the
25 Class;
- 26 c. Whether Discover breached its obligation to Plaintiffs and the Class by assigning and
27 charging fees that were higher than those specified in Discover's published rate sheets;
- 28 d. Whether Discover has been unjustly enriched by its conduct alleged herein; and

1 e. Whether Discover has engaged in unfair, unlawful, and/or fraudulent conduct in violation of
2 Cal. Bus. & Prof. Code § 17200 et seq. by its conduct alleged.

3 41. A class action is superior to all other available methods for the fair and efficient adjudication
4 of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by
5 individual Class members may be relatively small, the expense and burden of individual litigation make it
6 impossible for members of the Class to individually redress the wrongs done to them. There will be no
7 difficulty in the management of this action as a class action.

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10 **FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

11 **(Against all Defendants on Behalf of the Entire Class)**

12 42. Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

13 43. Discover, Plaintiffs, and the Class each have contractual rights and obligations, pursuant to
14 various agreements and quasi-contractual agreements.

15 44. Under these contractual rights, Plaintiffs and the Class performed their obligations by paying
16 appropriate fees and otherwise complying with all applicable requirements.

17 45. Discover, on the other hand, breached its contractual obligations to Plaintiffs and the Class
18 by overcharging transaction fees.

19 46. Discover breached the terms of its contracts with Plaintiffs and the Class by misclassifying
20 certain card transactions and improperly calculating Discover’s fees.

21 47. These misclassifications resulted in reduced revenues for Plaintiffs and the Class.

22 48. Plaintiffs, on behalf of itself and the Class, seeks damages for Discover’s breaches of
23 contract alleged herein, in an amount to be proven at trial.

24 49. Plaintiffs, on behalf of itself and the Class, seeks an order requiring specific performance by
25 Discover of its obligations under its Interchange Rate Sheets.

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27 **SECOND CAUSE OF ACTION**

28 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

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(Against all Defendants on Behalf of the Entire Class)

50. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

51. Also, under the terms of the contracts described herein, Discover owed to Plaintiffs and the Class an implied covenant of good faith and fair dealing.

52. The covenant of good faith and fair dealing places a burden on the contractual parties to execute their obligations in the spirit of the agreement, even when the terms of the agreement might permit an abuse. In other words, a party to an agreement should not abuse their rights and misinterpret the terms of the agreement in a way that violates the spirit of the agreement, and results in one party unfairly losing value due to the bad faith and lack of honesty of the other party.

53. Here, Discover breached the implied covenant of good faith and fair dealing in its contracts with Plaintiffs and the Class by knowingly misclassifying certain card transactions. These misclassifications resulted in paying Plaintiffs and the Class reduced transaction amounts, as a result of Discover's breach of the implied covenant of good faith and fair dealing.

54. Plaintiffs, on behalf of itself and the Class, seeks damages for Discover's breaches of contract alleged herein, in an amount to be proven at trial.

55. Plaintiffs, on behalf of itself and the Class, seeks an order requiring specific performance by Discover of its obligations under its Interchange Rate Sheets.

THIRD CAUSE OF ACTION - UNJUST ENRICHMENT

(Against all Defendants on Behalf of the Entire Class)

56. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

57. To the extent required, this cause of action is pled in the alternative.

58. From time to time, Discover published certain rate sheets. These rate sheets had the effect of creating contractual and quasi-contractual obligations to Plaintiffs and the Class.

59. As alleged herein, for Plaintiffs and the Class, Discover misclassified certain card transactions and charged higher fees to Plaintiffs and the Class.

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DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of itself and the Class and California Subclass, demand a trial by jury on all issues so triable.

DATED: August 29, 2023

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