

3. Penny Arcades are integral to TD Bank's brand of "convenience." Moreover, TD Bank has created campaigns around the Penny Arcades to encourage customers and non-customers to use the machines for coin-counting. TD Bank even promotes Penny Arcades as a green, environmentally friendly practice.

4. Penny Arcades are used throughout the year and are accessible during normal banking hours.

5. Due to the immense popularity of Penny Arcades, and high volume of coins counted by the machines, the accuracy of Penny Arcades directly impacts the customers who use the machines.

6. The use of Penny Arcades is free for all TD Bank customers. However, there is an 8% usage fee for non-customers. When non-customers bring the receipt to the teller, the 8% usage fee is deducted. If non-customers opt to open an account at TD Bank, the usage fee is waived.

7. Despite TD Bank's claim that it tests Penny Arcades at least two times a day, NBC's Today Show aired a segment on April 6, 2016, on coin-counting machine accuracy, which revealed that four Penny Arcades in the New York City area were tested and there were shortages at every machine, up to 15%. In comparison, a Penny Arcade competitor, Coinstar, tested accurately.

8. However, this was not an isolated incident. Upon information and belief, TD Bank has received complaints from customers regarding the accuracy of the Penny Arcades. Specifically, customers have complained to TD Bank about being shortchanged by the machines.

9. In anticipation of the television segment, on April 5, 2016, TD Bank took all Penny Arcades out of service. The Penny Arcades were taken out of service in order for TD Bank to evaluate the testing methodology to increase accuracy.

10. Notably, TD Bank did not just take the four Penny Arcades in the New York City area out of service. Rather, TD Bank decommissioned every single Penny Arcade that TD Bank operates nationwide and promised that the machines will not be brought back into service until the bank is satisfied that they meet performance requirements. As of the date of this filing, all of TD Bank's Penny Arcades are still out of commission. Upon information and belief, TD Bank is uncertain whether Penny Arcades will be brought back into service.

11. Upon information and belief, during the existence of Penny Arcades, TD Bank either did not accept coin deposits to be made with a bank teller, or accepted only *de minimis* amount of coins. Thus, Penny Arcades were the primary (if not only) mechanism for coin deposits.

12. Penny Arcades were never originally designed or even intended for high-volume commercial coin-counting. Upon information and belief, TD Bank Penny Arcades were originally intended for use by children to encourage them to count their change and save their money. Nevertheless, TD Bank offered the coin-counting services of Penny Arcades to its customers, non-customers, adults and children, and represented Penny Arcade as a convenient and reliable method for coin-counting.

JURISDICTION AND VENUE

13. Jurisdiction is proper pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d), because members of the proposed Plaintiff Class are citizens of states different from TD Bank's home state, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

14. This Court has personal jurisdiction over TD Bank, pursuant to Florida Statutes §§ 48.193(1)(a)(1), (2), and (6), because it conducts substantial business in this District, some of the

actions giving rise to the Complaint took place in this District, and some of Plaintiffs' claims arise out of TD Bank's operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to property in this state arising out of TD Bank's acts and omissions outside this state and at or about the time of such injuries TD Bank was engaged in solicitation or service activities within this state or products, materials, or things processed, serviced, or manufactured by TD Bank anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

15. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, TD Bank has caused harm to Plaintiffs and Class Members residing in this District, and TD Bank is a resident of this District under 28 U.S.C. 1391(c)(2) because it is subject to personal jurisdiction in this District.

THE PARTIES

16. Plaintiff Juan Carlos Macias is a resident and citizen of Miami-Dade County, Florida. Plaintiff Macias used TD Bank's Penny Arcade at 11480 North Kendall Drive, Miami, FL, 33176 on or about March 19, 2016, which unknown at the time of the transaction, was operated by TD Bank with defects. Upon information and belief, the amount reflected on Plaintiff Macias' receipt from the aforementioned transaction was less than the amount of money put into the machine. As a result of said defects, Plaintiff Macias was shortchanged.

17. Plaintiff Crossroad Foundation is a 501(c)(3) non-profit organization located at 1152 Victory Boulevard, Staten Island, New York 10301. Plaintiff Crossroad Foundation regularly used TD Bank's Penny Arcades, to count approximately \$75,000 in coins per year, at

various locations in Staten Island, which unknown at the time of the transactions, was operated by TD Bank with defects. Upon information and belief, the amount reflected on Plaintiff Crossroad's receipts from the aforementioned transactions was less than the amount of money put into the machine. As a result of said defects, Plaintiff Crossroad Foundation was shortchanged.

18. Plaintiff Andrew Sobczak is a resident and citizen of Indian River County, Florida. Plaintiff Sobczak primarily used TD Bank's Penny Arcade at 1238 US Highway 1, Vero Beach FL 32960, to count approximately \$100,000 in coins per year, which unknown at the time of the transactions, was operated by TD Bank with defects. Upon information and belief, the amount that Plaintiff Sobczak received from the aforementioned transactions was less than the amount of money put into the machine. As a result of said defects, Plaintiff Sobczak was shortchanged.

19. Plaintiff Alexis Mullen is a resident and citizen of Philadelphia County, Pennsylvania. Plaintiff Mullen was previously a resident and citizen of Hunterdon County, New Jersey. Plaintiff Mullen used TD Bank's Penny Arcade at various locations in Pennsylvania and New Jersey, which unknown at the time of the transactions, was operated by TD Bank with defects. Upon information and belief, the amount that Plaintiff Mullen received from the aforementioned transactions was less than the amount of money put into the machine. As a result of said defects, Plaintiff Mullen was shortchanged.

20. Plaintiff Tracy Olechowski is a resident and citizen of Delaware County, Pennsylvania. Plaintiff Olechowski used TD Bank's Penny Arcade at various locations in Pennsylvania, which unknown at the time of the transactions, was operated by TD Bank with defects. Upon information and belief, the amount that Plaintiff Olechowski received from the

aforementioned transactions was less than the amount of money put into the machine. As a result of said defects, Plaintiff Olechowski was shortchanged.

21. TD Bank, N.A. is a national association, federally chartered pursuant to the National Bank Act, 12 U.S.C. § 38 *et seq.*, with a principal place of business in Cherry Hill, New Jersey, authorized to do business in the State of Florida, New York, New Jersey and Pennsylvania and maintaining a network of retail branches within the District.

CLASS REPRESENTATION ALLEGATIONS

22. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23 on their own behalf and on behalf of the following Classes:

NATIONWIDE CUSTOMER CLASS:

All persons or entities who used TD Bank's Penny Arcade coin-counting services as a customer of TD Bank within four years prior to the filing of this action through the date of certification.

FLORIDA CUSTOMER CLASS:

All persons or entities in the State of Florida who used TD Bank's Penny Arcade coin-counting services as a customer of TD Bank within four years prior to the filing of this action through the date of certification.

NEW YORK CUSTOMER CLASS:

All persons or entities in the State of New York who used TD Bank's Penny Arcade coin-counting services as a customer of TD Bank within three years prior to the filing of this action through the date of certification.

PENNSYLVANIA CUSTOMER CLASS:

All persons or entities in the State of Pennsylvania who used TD Bank's Penny Arcade coin-counting services as a customer of TD Bank within six years prior to the filing of this action through the date of certification.

NEW JERSEY CUSTOMER CLASS:

All persons or entities in the State of New Jersey who used TD Bank's Penny Arcade coin-counting services as a customer of TD Bank within six years prior to the filing of this action through the date of certification.

Hereinafter, the above identified customer classes are collectively referred to as "the Classes."

23. Excluded from the Classes are: (1) TD Bank, any entity or division in which TD Bank has a controlling interest, and its legal representatives, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates of TD Bank; (2) the Judge to whom this case is assigned and the Judge's staff; and (3) governmental entities. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveal that the Class should be expanded, divided into additional subclasses, or modified in any other way.

Numerosity and Ascertainability

24. This action satisfies the requirements of Fed. R. Civ. P. 23(a)(1). Plaintiffs are informed and believe that there are tens of thousands of Penny Arcade users nationwide. Individual joinder of all Class members is impracticable.

25. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court.

26. Each of the Classes is ascertainable because its members can be readily identified using transaction receipts, account history, machine records, and other information kept by TD Bank, and/or third parties in the usual course of business, and within their control.

Typicality

27. Plaintiffs' claims are typical of the claims of the Class Members, and arise from the same course of conduct by TD Bank. The representative Plaintiffs, like all Class Members, have been damaged by TD Bank's misconduct in that they have incurred losses relating to the defective Penny Arcade machines. Furthermore, the factual bases of TD Bank's misconduct are common to all Class Members and represent a common thread of misconduct resulting in injury to all Class Members. The relief Plaintiffs seek is typical of the relief sought for the absent Class Members.

Adequate Representation

28. Plaintiffs will fairly and adequately represent and protect the interests of the Classes. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions.

29. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Classes, and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Classes.

Predominance of Common Issues

30. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, the answers to which will advance resolution of the litigation as to all Class Members. These common legal and factual issues include the following:

- a. Whether TD Bank's Penny Arcades inaccurately provided coin-counting services;
- b. Whether TD Bank had a duty to ensure Penny Arcades were accurately counting coins;

- c. Whether TD Bank's use of Penny Arcades, which inaccurately counted coins, was a deceptive or unfair trade practice based on the operative claims;
- d. Whether a reasonable person would likely be misled into believing the Penny Arcades accurately counted coins; and
- e. Whether Plaintiffs and Class Members were damaged as a result of TD Bank's deceptive or unfair practices.

Superiority

31. The common questions of law and of fact regarding the Penny Arcades and TD Bank's conduct and responsibility predominate over any questions affecting only individual Class members.

32. Plaintiffs and Class Members have all suffered damages as a result of TD Bank's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

33. Absent a class action, Class Members would likely find the cost of litigating their individual claims prohibitively high and would therefore have no effective remedy at law. Because the damages suffered by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class members to redress the wrongs done to each of them individually, such that most or all class members would have no rational economic interest in individually controlling the prosecution of specific actions, and the burden imposed on the judicial system by individual litigation by even a small fraction of the Class would be enormous, making class adjudication the superior alternative under Fed. R. Civ. P. 23(b)(3)(A).

34. The conduct of this action as a class action presents far fewer management difficulties, far better conserves judicial resources and the parties' resources, and far more

effectively protects the rights of each Class member than would piecemeal litigation. Compared to the expense, burdens, inconsistencies, economic infeasibility, and inefficiencies of individualized litigation, the challenges of managing this action as a class action are substantially outweighed by the benefits to the legitimate interests of the parties, the court, and the public of class treatment in this court, making class adjudication superior to other alternatives, under Fed. R. Civ. P. 23(b)(3)(D).

CAUSES OF ACTION

COUNT I

Violation of New York General Business Law § 349 (On behalf of the New York Subclass)

35. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

36. New York General Business Law (“GBL”) § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York State.

37. Defendant conducted a business within the meaning of GBL § 349 by operating its branch locations within New York State.

38. Defendant’s conduct – offering the Penny Arcade as an accurate, coin-counting service, while the Penny Arcade did not accurately provide this service – is an unfair and deceptive practice. Moreover, Defendant misled customers about the accuracy of the Penny Arcades and, upon information and belief, concealed the material inaccuracy of its service.

39. Defendant’s deceptive acts would likely mislead a reasonable consumer acting under similar circumstances.

40. By virtue of Defendant's deceptive and unfair conduct, Plaintiff Crossroad Foundation and the New York Class have been injured.

41. Plaintiff Crossroad Foundation and the New York Class are entitled to recover their actual damages or fifty dollars per claim, whichever is greater, discretionary treble damages up to one-thousand dollars and attorneys' fees, and any other just and proper relief available under GBL § 349.

COUNT II

**Violation of New Jersey's Consumer Fraud Act § 56-8:1 *et seq.*
(On behalf of the New Jersey Subclass)**

42. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

43. New Jersey's Consumer Fraud Act ("CFA") prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice....

N.J. Stat. § 56:8-2.

44. Defendant's principal place of business is New Jersey and is a person under the meaning of the CFA.

45. Defendant's conduct – offering the Penny Arcade as an accurate, coin-counting service, while the Penny Arcade did not accurately provide this service – is an unfair and deceptive practice. Moreover, Defendant misled customers about the accuracy of the Penny Arcades and, upon information and belief, concealed the material inaccuracy of its service.

46. Defendant's deceptive acts would likely mislead a reasonable consumer acting under similar circumstances.

47. By virtue of Defendant's deceptive and unfair conduct, Plaintiff Mullen and the New Jersey Class have been injured.

48. Plaintiff Mullen and the New Jersey Class are entitled to recover their actual damages, discretionary treble damages, punitive damages, reasonable attorneys' fees and costs, and any other just and proper relief available under the CFA.

COUNT III
Violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law
73 P.S. § 201-1, *et seq.*
(On behalf of the Pennsylvania Subclass)

49. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

50. Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL") prohibits "fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 Pa. Stat. § 201-2.

51. Defendant's conduct – offering the Penny Arcade as an accurate, coin-counting service, while the Penny Arcade did not accurately provide this service – is an unfair and deceptive practice. Moreover, Defendant misled customers about the accuracy of the Penny Arcades and, upon information and belief, concealed the material inaccuracy of its service.

52. Defendant's deceptive acts would likely mislead a reasonable consumer acting under similar circumstances.

53. Plaintiffs Mullen and Olechowski and the Pennsylvania Class justifiably relied on Defendant's deception that the Penny Arcades provided an accurate, coin-counting service, and

used the Penny Arcades for coin-counting, and as a result, Plaintiffs Mullen and Olechowski and the Pennsylvania class have been injured.

54. Plaintiffs Mullen and Olechowski and the Pennsylvania Class are entitled to recover their actual damages, discretionary treble damages, punitive damages, reasonable attorneys' fees and costs, and any other just and proper relief available under the UTPCPL.

COUNT IV
Unjust Enrichment
[All Classes against TD Bank]

55. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

56. Plaintiffs and the Classes conferred benefits to TD Bank by receiving less in cash or a deposit than the amount of coins put into the Penny Arcades. Despite customer complaints that they were shortchanged by the Penny Arcade, TD Bank knowingly and willingly retained the undisclosed differences from consumers.

57. Under the circumstances, it would be inequitable for the TD Bank to retain this monetary benefit at the expense of Plaintiffs and the Classes.

58. Moreover, no adequate legal remedy exists.

59. As a direct result of TD Bank's unjust enrichment, Plaintiffs and the Classes have suffered injury and are entitled to reimbursement, restitution and disgorgement by TD Bank of the benefit conferred by Plaintiffs and the Classes.

COUNT V
Breach of Implied-In-Fact Contract
[All Classes Against TD Bank]

60. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

61. TD Bank tacitly promised Plaintiffs and the Classes, as inferred in whole or in part by its conduct, that the Penny Arcades would accurately count customers' coins.

62. By providing the Penny Arcades as a service to its customers, TD Bank understood and intended that its customers use the Penny Arcades to accurately count their coins in exchange for cash or a deposit.

63. Under the circumstances, and as customers of TD Bank, Plaintiffs and the Classes presumed based on TD Bank's conduct that the Penny Arcades would accurately count customers' coins.

64. TD Bank breached the implied contract by providing Penny Arcades that inaccurately counted customers' coins.

65. As a result of TD Bank's breach, Plaintiffs and the Classes were damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, request that the Court enter judgment against TD Bank, which:

1. Certifies the proposed Classes, designates Plaintiffs as the named representatives of the Classes, and designates undersigned counsel as Class Counsel;
2. Awards to Plaintiffs and the Classes compensatory, actual and other damages, including interest thereon, in an amount to be proven at trial;

3. Awards attorneys' fees and costs, as allowed by law;
4. Awards pre-judgment and post-judgment interest, as provided by law; and
5. Awards such other relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demands a trial by jury on all issues so triable as a matter of right on all counts in this Complaint.

Dated: May 16, 2016

Respectfully Submitted,

/s/ Michael E. Criden
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CERTIFICATE OF SERVICE

I certify that on May 16, 2016, I electronically filed the foregoing document with the clerk of the court for the United States District Court, Southern District of Florida, using the electronic case filing system of the Court.

/s/ Michael E. Criden
Michael E. Criden, Esq.