

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David McEnerney

DEFENDANTS

T.D. Bank, N.A.

(b) County of Residence of First Listed Plaintiff Palm Beach County, FL (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Camden County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Radice Law Firm, 34 Sunset Blvd., Long Beach, NJ 08008, (646) 245-8502

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-2 (4)(ix) and (xxi)
Brief description of cause: Consumer fraud and breach of contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Jerome B. Simandle DOCKET NUMBER 16-cv-2374

DATE 05/23/2016 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DAVID MCENERNEY, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

TD BANK, N.A.

Defendant.

Civil Action No.:

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

For years, TD Bank has aggressively marketed itself as “America’s Most Convenient Bank,” claiming that “unparalleled convenience and legendary customer service is what TD Bank is all about.” In order to promote its image as a convenient bank, TD offered “free Penny Arcade coin counting machines,” which TD lauded as “one of the bank’s most unique features and delivers the convenience for which TD Bank is so well known.” Until recently, the machines had been “conveniently located next to the teller counter at most TD Bank stores.”

However, in April 2016, widespread reports emerged that the coin-counting machines were cheating customers by consistently undercounting coin deposits by up to 18% or more. In response to these public revelations, TD suspended the coin-counting service. On May 19, 2016, TD announced that, after reassessing the machines, it had decided to retire the service altogether, stating that “with thousands of individual customers using more than 1,000 Penny machines from Maine to Florida each day, TD was concerned Penny may not always meet its standard for outstanding customer service.”

This class action complaint is filed on behalf of Penny Arcade users in the U.S. that have been harmed by the inaccuracy of TD’s Penny Arcade machines and induced to use them by TD’s willful or negligent misrepresentations about the accuracy of its Penny Arcade coin-counting machines, used collectively by class members millions of times per year.

THE PARTIES

1. Plaintiff David McEnerney is an individual who resides in Delray Beach, Florida. During the applicable Class Period, Mr. McEnerney used TD’s Penny Arcade coin counting service multiple times, including within the Class Period at TD’s branch at 8301 Henry Ave, Philadelphia, PA 19128.

2. Defendant TD Bank, N.A. (“TD,” “TD Bank,” or “Defendant”) is a national association, federally chartered pursuant to the National Bank Act, 12 U.S.C. § 38 et seq., with its principal place of business in Cherry Hill, New Jersey, authorized to do business in the State of New Jersey and maintaining a network of retail branches within the District. TD is a subsidiary of Toronto-Dominion Bank, based in Toronto, Canada.

JURISDICTION AND VENUE

3. Jurisdiction is proper pursuant to 28 U.S.C. §1332(d) because there is diversity of citizenship between at least one member of the proposed Class and TD’s home state, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

4. This Court has personal jurisdiction over TD because TD’s principal place of business in New Jersey and it has numerous branches and business dealings within the state. TD Bank has numerous offices and conducts substantial business in New Jersey, has had systematic and continuous contacts with New Jersey, promotes its products in New Jersey, and has agents and representatives that can be found in New Jersey.

5. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b)(2) because numerous acts, omissions, events, and transactions giving rise to these claims occurred in this District, TD has caused harm to Plaintiff and other Class members residing in this District, and TD is a resident of this District under 28 U.S.C. 1391(c)(2) because it is subject to personal jurisdiction in this District.

FACTUAL ALLEGATIONS

6. TD is a national bank headquartered in Cherry Hill, N.J. that offers retail, small business, and commercial banking products and services at approximately 1,300 locations in

Connecticut, Delaware, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Washington, D.C.

7. Nearly one half of the TD Bank locations are concentrated in the three states of New Jersey, New York, and Pennsylvania.

8. For many years, TD has aggressively marketed itself as “America’s Most Convenient Bank.”

9. A key component of its convenience-based marketing has long been its Penny Arcade coin-counting machine, touted by TD as “one of the bank’s most unique features” in delivering “the convenience for which TD Bank is so well known.” To attract customers, TD states that this “efficient coin-counting machine is free to TD Bank customers!”

10. The machines are simple to use. The consumer deposits coins into the tray and the machine counts the coins and prints a receipt that is supposed to reflect the total value of the deposited coins. The consumer then takes the receipt to the bank’s teller to either exchange it for either cash or deposit in an account.

11. TD offers the coin-counting service free as an “exclusive benefit” to TD accountholders, and charges 8% for non-accountholders. However, consumers can (and often do) become TD accountholders on the spot to avoid the 8% fee.

12. Until recently, TD’s Penny Arcade has been extremely popular and very effective at attracting customers to TD locations. In 2012, for instance, the TD machines counted more than *29 billion* coins, “enough to fill 6,500 tractor-trailers” which “lined up end-to-end ... would stretch for 99 miles!” as (formerly) touted on TD’s website.

13. TD had over 1,000 Penny Arcade machines in operation, and the dollar volumes exchanged in a given month for a single location could easily exceed \$1,000,000.

14. To dispel any concerns about the machines' accuracy, TD has represented on its website and other public statements that it tests each Penny Arcade multiple times per day to confirm accuracy, performing routine and "needs-based" maintenance. Class members entrusting their coin savings to these machines relied on these representations and reasonably expected that, when they deposited their coins into the machines, they would be counted accurately. But in fact, TD's representations were false. In reality, TD's machines have for years been short-changing customers by up to 18% or more, and despite TD's (until recently, successful) efforts to conceal this reality from public knowledge, the pervasive counting inaccuracies have now been exposed.

15. As detailed in this Complaint, TD has taken active steps to conceal the flaws in its machines and avoid widespread public scrutiny.

16. However, in April 2016 the miscounting was exposed and made national news. An investigative reporter inserted exactly \$300.00 worth of quarters, dimes, nickels, and pennies into five separate TD machines. What he found was shocking: *all of them* were inaccurate, and *all of the counting errors were in the bank's favor*, in one case by \$43.10 (almost 15% less than the true value of the coins deposited).

17. Other investigative journalists in the Philadelphia area reported similar findings pursuant to their parallel investigations. For instance, a Royersford family had been saving every penny for souvenirs for their family's first trip to Disney World, \$248 by their count. But when they dumped their coins into the TD machine in Royersford, Pennsylvania, they got only \$204. A loss of \$44, nearly 18% of the family's coin savings.

18. In the wake of these exposés, TD took all their coin counting machines out of circulation for servicing and testing to evaluate their “performance.”

19. Then, on March 19, 2016, TD issued a news release with the headline “TD Bank Announces It Will Retire All Penny Arcade Coin-Counting Machines.” TD noted that “[i]n early April, TD suspended its coin-counting service following news reports identifying inaccuracies with some of its machines.” TD said that although providing “coin-counting to our customers has been a longstanding service at TD . . . recent accounts regarding the performance of our Penny machines have led us to reassess this offering.” Specifically, TD said it had “determined that it is difficult to ensure a consistently great experience for our customers,” and thus had “decided to retire the fleet and provide alternative coin-counting solutions to our customers.”

20. TD claimed that its “protocol has included daily testing of each Penny machine, with routine and needs-based maintenance” but admitted that “with thousands of individual customers using more than 1,000 . . . machines from Maine to Florida each day, TD was concerned [the machines] may not always meet its standard for outstanding customer service.”

21. TD had to have known, or was negligent in not knowing, the widespread inaccuracies of their coin-counting machines. For instance, TD knew, or was negligent in not knowing, of the discrepancies between the contents of the coin-counting machines, and the payments made to users in exchange for their coins. This alone would be sufficient to alert TD of the inaccuracies. TD should have warned consumers of the inaccuracies and/or pro-actively taken steps to ensure the accuracy of the machines years ago. Instead, TD continued to publicly tout the reliability of its machines, purporting to test the machines for accuracy multiple times per day, intentionally conveying that the machines were accurate and reliable even when it knew (or should have known) that they were, in fact, woefully unreliable. And, while TD was publicly

proclaiming its rigorous self-regulation of the machines, the bank excluded the public regulators seeking to test the machines to protect consumers. TD has for years concealed the inaccuracies of its machines so it could continue to 1) collect windfall revenues from its short-changing of accountholders and non-accountholders alike, 2) collect the 8% fees from non-accountholders, and 3) gain new TD accountholders (and new revenue from, among other things, TD's monthly account maintenance fees and/or yields on the new account holders' deposits) drawn specifically to the convenience and value of "free" coin-counting services available exclusively to TD accountholders.

22. Economic analysis confirms the substantial value of the coins processed through Penny Arcades and therefore the resulting harm to consumers from TD's undercounting.

23. In 2012, the value of all U.S. currency coins in general circulation in the United States (*i.e.*, held by individuals or businesses and not banks or the government) was approximately \$42 billion.

24. Figure 1, below, shows orders for new coins, by denomination for pennies through quarters, during each of the years 2008 to 2012, inclusive. Figure 2, below, shows orders for \$1 coins, during each of the years 2007 to 2011, inclusive. Using data from the end of this time period (2011-2012), allows the calculation of the approximate distribution of coins in circulation. For example, at the end of this time period new coin orders were distributed in the following percentages: 6% quarters; 17% dimes; 10% nickels; 63% pennies; and 4% \$1 coins.

Figure 1: New coin orders (pennies through quarters)

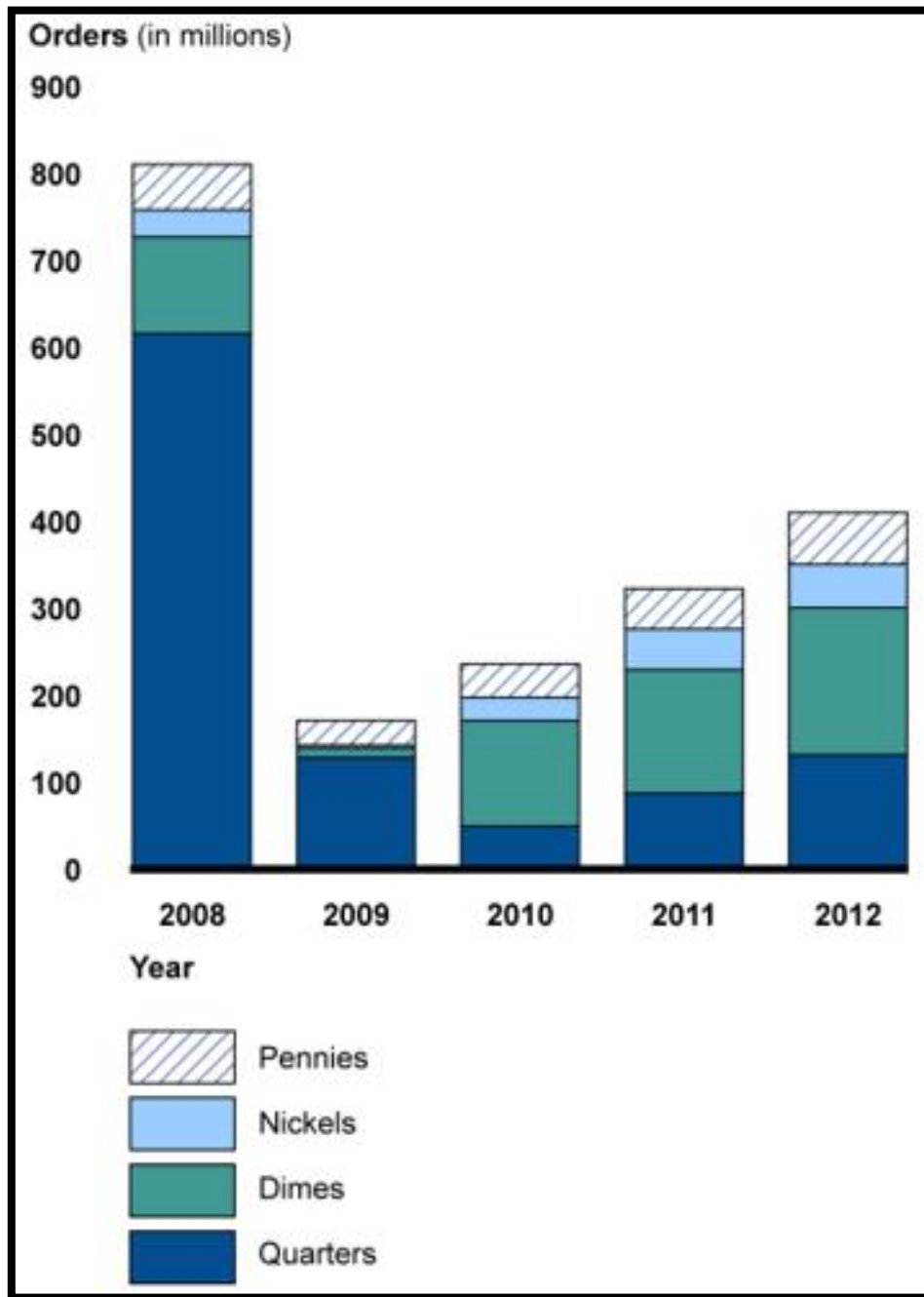
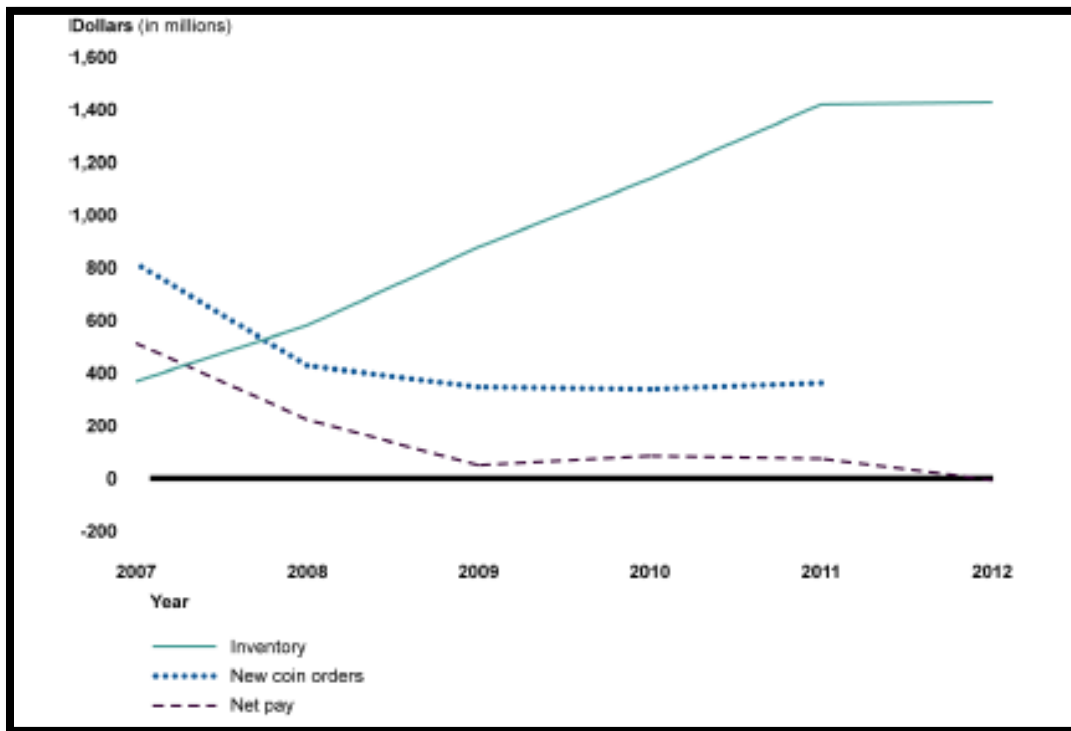


Figure 2: New coin orders (\$1 coins)

25. Using the coin distribution figures detailed above and calculating a weighted average of the dominations, the average value of a coin during that time period was approximately 8.5 cents.

26. As detailed above, TD counted more than *29 billion* coins in 2012. Assuming an average value of 8.5 cents per coin, those 29 billion coins equate to a value of nearly \$2.5 billion of coins counted by TD in 2012 alone.¹

¹Note that, according to TD, 49% of the 29 billion coins processed through its machines in 2012 were pennies, which is significantly lower than the 63% assumed for purposes of this preliminary economic analysis. The assumed 8.5 cents per coin weighted average, therefore, is conservative and likely understates the true measure of damages.

27. Even an average 1% undercounting by TD would yield an undercount of nearly \$25 million during 2012 alone. An undercount of 18%, as reported by some sources, would yield an undercount of nearly \$450 million during 2012 alone.

28. These undercount figures are in addition to the substantial 8% fee that TD charged non-account-holders for a coin-counting service that TD did not adequately perform.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and members of a Class comprised of two sub-classes under Rule 23 of the Federal Rules of Civil Procedure:

Pennsylvania Subclass:

All persons who (1) used TD Bank's Penny Arcade coin-counting services in the Commonwealth of Pennsylvania for personal, family, or household use within four years of the filing of this complaint (the "Pennsylvania Class Period"), and (2) did not receive the full value of the coins they deposited in the machine, or if a non-TD account holder, the full value of the coins less any service fee.

Nationwide Subclass:

All persons and entities who (1) used TD Bank's Penny Arcade coin-counting services anywhere in the United States, including New Jersey or Pennsylvania, within six years of the filing of this complaint ("Nationwide Class Period") and (2) did not receive the full value of the coins they deposited in the machine, or if a non-TD account holder, the full value of the coins less any service fee.

30. Due to the nature of the trade or the commerce involved, Plaintiff does not know the exact number of Class members involved, however, Plaintiff believes that Class members are sufficiently numerous and geographically dispersed so that joinder of all Class members is impracticable.

31. Plaintiff is a member of the Class, Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff and other Class members have used TD's Penny Arcade coin-counting machine(s) one or more times during the Class Period and have been harmed by the unlawful conduct alleged herein; in particular, they have lost a percentage of their coin deposits, and (with respect to non-accountholders) have paid for coin-counting services that were not properly provided. Plaintiff's interests are coincident with and not antagonistic to those of the other members of the Class.

32. Plaintiff is a member of the Pennsylvania Subclass, Plaintiff's claims are typical of the claims of the Pennsylvania Subclass members, and Plaintiff will fairly and adequately protect the interests of the Pennsylvania Subclass. Plaintiff and other Pennsylvania Subclass members have used TD's Penny Arcade coin-counting machine(s) one or more times in the Commonwealth of Pennsylvania during the Pennsylvania Class Period and have been harmed by the unlawful conduct alleged herein; in particular, they have lost a percentage of their coin deposits, and (with respect to non-accountholders) have paid for coin-counting services that were not properly provided. Plaintiff's interests are coincident with, and not antagonistic to, those of the other members of the Pennsylvania Subclass.

33. Plaintiff is a member of the Nationwide Subclass, Plaintiff's claims are typical of the claims of the Nationwide Subclass members, and Plaintiff will fairly and adequately protect the interests of the Nationwide Subclass. Plaintiff and other Nationwide Subclass members have used TD's Penny Arcade coin-counting machine(s) one or more times during the Class Period and have been harmed by the unlawful conduct alleged herein; in particular, they have lost a percentage of their coin deposits, and (with respect to non-accountholders) have paid for coin-

counting services that were not properly provided. Plaintiff's interests are coincident with, and not antagonistic to, those of the other members of the Nationwide Subclass.

34. Plaintiff is represented by counsel who are competent and experienced in the prosecution of complex class action litigation.

35. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendant.

36. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability, damages, and restitution. Among the questions of law and fact common to the Class are:

- a. whether TD's Penny Arcade machines provided inaccurate coin counting services;
- b. whether TD was aware that its Penny Arcade machines provided inaccurate coin counting services;
- c. when TD became aware that its Penny Arcade machines provided inaccurate coin counting services;
- d. what measures TD took when it became aware that its Penny Arcade machines provided inaccurate coin counting services;
- e. whether TD had a duty to ensure that its Penny Arcade machines were providing accurate coin-counting services;
- f. whether TD's use of inaccurate Penny Arcade machines was a deceptive trade practice;
- g. whether TD fraudulently concealed the inaccuracy of its Penny Arcade machines; and
- h. whether Plaintiff and the Class were injured by Defendant's conduct and, if so, the appropriate classwide measure of damages for Class members.

37. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many Class members who could not individually afford to litigate the claims asserted in this Complaint. This Class action likely presents no difficulties in management that would preclude maintenance as a class action. Finally, the Class is readily ascertainable.

38. The claims asserted herein are also appropriate for class certification under the laws of each of the states under which claims are asserted.

FRAUDULENT CONCEALMENT

39. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

40. By its very nature, the unlawful activity, alleged herein, that TD engaged in was self-concealing. Plaintiff could not in the exercise of due diligence have discovered TD's wrongdoing as alleged herein. Because TD's manipulative behavior was self-concealing and it took further active steps to conceal the unlawful behavior, Plaintiff and Class members remained unaware of the violation during the limitations period.

41. Because TD employed acts and techniques that were calculated to wrongfully conceal the existence of such illegal conduct, Plaintiff and the Class could not have discovered the existence of this unlawful conduct any earlier than the public disclosure of the Today Show investigation in April 2016.

42. Due to TD's fraudulent concealment, any applicable statute of limitations affecting or limiting the rights of action by Plaintiff or members of the Class has been tolled during the period of such fraudulent concealment.

FIRST CAUSE OF ACTION -
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW
(UTPCPL)
73 P.S. § 201-2 (4)(ix)
(Pennsylvania Subclass only)

43. Plaintiff and the Pennsylvania Subclass repeat and reiterate each and every preceding paragraph as if each paragraph were fully set forth herein.

44. TD Bank represented to the public through advertisements in its bank branches and on its website that its Penny Arcade machine would accurately count any coins deposited into the machine, and would then print out a receipt that correctly reflected the value of the coins put into the machine.

45. TD Bank's responsible personnel were in a position to know (1) the programming code of the Penny Arcade machine, (2) the performance of the Penny Arcade machine, (3) testing results of the Penny Arcade machine, (4) consumer complaints about the Penny Arcade machine, and (5) the difference between the total value of the coins obtained from the Penny Arcade machines and the amount paid to the customers who used the machines (adjusting for the 8% service fee for non-account holders).

46. TD Bank's responsible personnel therefore would clearly have had knowledge of the fact that the Penny Arcade machine often failed to accurately count coins and print a receipt for their full value.

47. TD Bank advertised the Penny Arcade service with the intent not to provide it as advertised (to fairly pay bank customers for their coins and to pay non-customers fairly with an 8% service fee), but instead to provide the Penny Arcade Service with flaws that resulted in the customers' underpayment for TD Bank's enrichment.

48. TD Bank's advertisement of services with intent not to sell them as advertised is unlawful under the UTPCPL, 73 P.S. § 201-2 (4)(ix) and 73 P.S. § 201-3.

49. It was reasonable for Plaintiff and other members of the Pennsylvania Subclass to rely on representations made by TD Bank, which is a major American bank chain with branches in several states.

50. Plaintiff and other members of the Pennsylvania Subclass suffered an ascertainable loss as a result of TD Bank's misrepresentations about the Penny Arcade machine when they used the Penny Arcade machine in reliance on TD Bank's representations about the machine and did not receive the value for their coins that was promised to them.

51. TD Bank's misrepresentations were the proximate cause of the losses experienced by Plaintiff and the other members of the Pennsylvania Subclass, because if they were informed that the Penny Arcade service would pay them less than their coins were worth (or less than they were worth after deducing the 8% service fee for non-account holders), they would not have used it.

52. The Penny Arcade service was intended primarily for personal, family, or household use, and Plaintiff and the other members of the Pennsylvania Subclass used the Penny Arcade service for personal, family, or household use.

53. In light of the above, Plaintiff and the other members of the Pennsylvania Subclass are entitled to damages including (1) actual damages, (2) treble damages, (3) statutory damages, (4) punitive damages, and (5) attorney's fees and costs.

SECOND CAUSE OF ACTION -
PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW
73 P.S. § 201-2 (4)(xxi)
(Pennsylvania Subclass only)

54. Plaintiff and the Pennsylvania Subclass repeat and reiterate each and every preceding paragraph as if each paragraph were fully set forth herein.

55. TD Bank represented to the public that its Penny Arcade machine would accurately count any coins deposited into the machine, and would then print out a receipt that correctly reflected the value of the coins put into the machine.

56. TD Bank made this representation in order to induce members of the public to use the Penny Arcade machine.

57. The Penny Arcade machine did not in fact both accurately count coins deposited into the machine and print out a receipt that correctly reflected the value of the coins put into the machine.

58. As a result, a significant fraction of users of the machine lost money due to either not having all of their coins properly counted, or due to the machine printing out a receipt that was lower than the actual amount of money deposited.

59. TD Bank's misrepresentations were therefore deceptive conduct that created a likelihood of confusion or of misunderstanding for customers.

60. TD Bank's misrepresentations in connection with the Penny Arcade service were an unlawful practice under the UTPCPL, 73 P.S. § 201-2 (4)(xxi) and 73 P.S. § 201-3.

61. It was reasonable for Plaintiff and other members of the Pennsylvania Subclass to rely on representations made by TD Bank, which is a major American bank chain with branches in several states.

62. Plaintiff and other members of the Pennsylvania Subclass suffered an ascertainable loss as a result of TD Bank's misrepresentations about the Penny Arcade machine when they used the Penny Arcade machine in reliance on TD Bank's representations about the machine and did not receive the value for their coins that was promised to them.

63. TD Bank's misrepresentations were the proximate cause of the losses experienced by Plaintiff and the other members of the Pennsylvania Subclass, because if they were informed that the Penny Arcade service would pay them less than their coins were worth (or less than they were worth after deducing the 8% service fee for non-account holders), they would not have used it.

64. The Penny Arcade service was intended primarily for personal, family, or household use, and Plaintiff and the other members of the Pennsylvania Subclass used the Penny Arcade service for personal, family, or household use.

65. In light of the above, Plaintiff and the other members of the Pennsylvania Subclass are entitled to damages including (1) actual damages, (2) treble damages, (3) statutory damages, (4) punitive damages, and (5) attorney's fees and costs.

THIRD CAUSE OF ACTION
COMMON LAW FRAUD
(Nationwide Subclass only)

66. Plaintiff repeats and reiterates each and every preceding paragraph as if each paragraph were fully set forth herein.

67. TD represented to the public that its Penny Arcade machine would accurately count any coins deposited into the machine, and would then print out a receipt that correctly reflected the value of the coins put into the machine.

68. TD made this representation in order to induce members of the public to use the Penny Arcade machine.

69. The Penny Arcade machine did not in fact both accurately count coins deposited into the machine and print out a receipt that correctly reflected the value of the coins put into the machine.

70. TD's responsible personnel were in a position to know (1) the programming code of the Penny Arcade machine, (2) the performance of the Penny Arcade machine, (3) testing results of the Penny Arcade machine, (4) consumer complaints about the Penny Arcade machine, and (5) the difference between the total value of the coins obtained from the Penny Arcade machines and the amount paid to the customers who used the machines (adjusting for the service fee for non-account holders).

71. TD's responsible personnel therefore would clearly have had knowledge of the falsity of TD's representation that the Penny Arcade machine accurately counted coins and

printed a receipt for their full value (or the fair value after deducting the service fee for non-account holders).

72. TD made such misrepresentation with the intent that potential users of the Penny Arcade machine rely on that misrepresentation, and instead perceive that they would receive a fair value for the coins put into the machine.

73. It was reasonable for Plaintiff and other members of the Nationwide Subclass to rely on representations made by TD, which is a major American bank chain with branches in several states.

74. Plaintiff and other members of the Nationwide Subclass suffered an ascertainable loss as a result of TD's misrepresentations about the Penny Arcade machine when they used the Penny Arcade machine in reliance on TD's representations about the machine and did not receive the value for their coins that was promised to them.

75. TD's misrepresentations were the proximate cause of the losses experienced by Plaintiff and the other members of the Nationwide Subclass, because if they were informed that the Penny Arcade service would pay them less than their coins were worth (or less than they were worth after deducting the service fee for non-account holders), they would not have used it.

76. TD's actions therefore constitute common law fraud.

77. In light of the above, Plaintiff and the other members of the Nationwide Subclass are entitled to damages including (1) actual damages, (2) punitive damages, and (3) attorney's fees and costs.

FOURTH CAUSE OF ACTION
BREACH OF CONTRACT
(Nationwide Subclass only)

78. Plaintiff repeats and reiterates each and every preceding paragraph as if each paragraph were fully set forth herein.

79. TD's offer to pay fair value to customers who insert coins in its machine (or the fair value after deducting the service fee for non-account holders) constituted a unilateral contract.

80. The Penny Arcade machine did not in fact both accurately count coins deposited into the machine and print out a receipt that correctly reflected the value of the coins put into the machine.

81. As a result, a significant fraction of users of the Penny Arcade machine lost money due to either not having all of their coins properly counted, or due to the machine printing out a receipt that was lower than the actual amount of money deposited.

82. Plaintiff and other Nationwide Subclass members accepted TD's unilateral contract offer when they put money into the Penny Arcade machine.

83. TD breached this unilateral contract by not paying Plaintiff and the other Nationwide Subclass members the full value of the coins they deposited (or the full value less the 8% service fee for non-account holders).

84. TD is therefore liable to Plaintiff and the other Nationwide Subclass members for breaching that contract.

85. In light of the above, Plaintiff and the other members of the Nationwide Subclass are entitled to recover damages for the breach of contract.

86. Additionally, non-account holders in the Nationwide Subclass paid a service fee to have their coins properly counted and valued. The fact that their coins would not be properly counted and valued was a material fact, because the non-account holders would not have paid for the service if they were aware of that fact. TD knowingly misrepresented that fact. It was reasonable for non-account holders in the Nationwide Subclass to rely on representations made by TD, which is a major American bank chain with branches in several states. TD Bank's material representation and the non-account holders' justifiable reliance makes the unilateral contract TD Bank had with the non-account holders voidable, and non-account holders are entitled to a return of their 8% service fees in addition to other remedies that they may have.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the Pennsylvania Subclass, and the Nationwide Subclass, requests that the Court enter judgment in Plaintiff's favor adjudging and decreeing that:

- A. This action may proceed as a class action, with Plaintiff as the designated Class representative and its counsel as Class Counsel;
- B. Defendant has violated the Pennsylvania Unfair Trade Practices And Consumer Protection Law;
- C. Defendant has committed common law fraud;
- D. Defendant has breached its unilateral contract with Plaintiff and the Class members;
- E. Defendant's unilateral contract with non-account holder members of the Nationwide Subclass is voidable;

F. Defendant, its subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf be permanently enjoined and restrained from continuing and maintaining or resuming the conduct challenged herein;

G. Plaintiff and other Class members be awarded pre-judgment and post-judgment interest, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

H. Plaintiff and other Class members have been harmed by the conduct challenged herein and are awarded damages as provided under the laws governing the enumerated claims above, including but not limited to the recovery of excess coin deposits wrongfully retained by TD and (in the case of non-accountholders) refund of all service fees paid.

I. Plaintiff and other Class members are entitled to recover their costs of this suit, including reasonable attorneys' fees as provided by law; and

J. receive such other or further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues triable by jury.

Dated: May 23, 2016

RADICE LAW FIRM, P.C.

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