

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHERYL L. KOBLESKI, Individually and Case No.
on Behalf of All Others Similarly Situated,

Plaintiff,

CLASS ACTION COMPLAINT

v.

JURY TRIAL DEMANDED

CITIGROUP INC., CITICORP, and
CITIBANK (SOUTH DAKOTA), N.A.,

Defendants.

Plaintiff CHERYL L. KOBLESKI, individually and on behalf of all others similarly situated (the “Class”), brings this class action against Defendants CITIGROUP INC., CITICORP and CITIBANK (SOUTH DAKOTA), N.A. (collectively referred to as “CITI” or the “Company”). Plaintiff seeks certification of this matter as a class action. Plaintiff, by and through her attorneys, submits this Class Action Complaint (the “Complaint”) against the defendants named herein and alleges as follows:

NATURE OF THE ACTION

1. This class action stems from the illicit activities undertaken by CITI while marketing and selling products associated with their credit cards known as “Credit Protect,” “Credit Protector,” “Payment Protector,” “PaymentAid,” “PaymentAid Plus,” and other monikers that all offer similar coverage (hereinafter collectively referred to as “Payment Protection”).

2. Although CITI’s Payment Protection is indistinguishable from a contract of credit insurance, Payment Protection is not marketed or sold as insurance. According to the State of

Wisconsin Office of the Commissioner of Insurance (“COI”) CITI does not register Payment Protection with the COI, thereby avoiding state regulation.

3. CITI violated the law, not only by selling a product that should be subject to insurance regulations and for CITI’s evasion of the state law requiring such regulation by the COI, but also by the deceptive and misleading manner in which CITI offers the Payment Protection plan to consumers, and the manner in which CITI administers claims for benefits by consumers.

4. On information and belief, CITI has arranged the processes by which consumers apply for and receive a Citi credit card so that a consumer can easily sign up for Payment Protection unknowingly and unintentionally.

5. CITI markets Payment Protection through direct mail and telemarketing. It represents Payment Protection as a service that pays the required minimum monthly payment due on the subscriber’s credit card account and excuses the subscriber from paying the monthly interest charge and the Payment Protection plan fee for a limited period of time, preventing the account from becoming delinquent. CITI claims that this service provides “[s]o much protection and peace of mind for so little!” <https://www.paymentaidplus.citi.com/details.aspx?ordsrc=D1083>, last viewed on June 14, 2010.

6. Despite its simple explanation for marketing purposes, CITI’s Payment Protection plan is a dense maze of limitations, exclusions and restrictions, making it impossible for consumers to determine what Payment Protection covers and whether it is a sound financial choice.

7. CITI makes no effort to determine whether a cardholder is eligible for Payment

Protection benefits at the time of sale. As a consequence, the Company bills thousands of retired persons (many of whom are senior Citizens), along with the unemployed, those employed by family members, and part-time or seasonal Wisconsin residents, as well as disabled individuals, for Payment Protection coverage, even though their employment or health status prevents them from receiving benefits under the terms of the plan.

8. Further, CITI makes no effort to determine whether subscribers become ineligible for Payment Protection benefits after they are enrolled in the plan. Accordingly, when subscribers' employment or health status changes, they continue to pay for the product even though they are no longer eligible for benefits under the plan.

9. CITI requires customers to enroll for Payment Protection coverage *before* it provides subscribers with the terms and conditions of the plan. After a subscriber is enrolled, the person may then affirmatively cancel the plan through what CITI markets as a "30-day satisfaction guarantee."

10. Days or weeks after the sale of Payment Protection, CITI may in some instances mail written material to the subscriber. Given the confusing way the written materials present the terms and conditions of Payment Protection, it is extremely difficult for a subscriber to decipher those provisions.

11. CITI has established its "customer service" support in such a way that subscribers cannot easily cancel the plan or receive answers to benefit questions. It has established its "claim filing" system such that subscribers cannot easily file claims or receive benefits for filed claims.

12. CITI does not refund Payment Protection premiums after it has denied

subscribers' claims for Payment Protection benefits, nor does it address subscribers' continued obligations to pay the monthly fee for Payment Protection after a claim has been denied.

13. Payment Protection is so confusing as to when coverage is triggered, so restricted in terms of the benefits it provides to subscribers, and processing claims is made so difficult by CITI, that the product is essentially worthless.

14. CITI knows that for those cardholders who choose to pay for Payment Protection, few will ever receive benefits under the plan and even for those that do, the amounts paid in "premiums" will usually exceed any benefits paid out.

15. As a result of its misleading and deceptive marketing practices in connection with sales of Payment Protection, CITI has increased its profits by many millions of dollars, all thanks to a product which provides virtually no benefits to thousands of Wisconsin residents who are nevertheless charged for the product month in and month out.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this matter pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), in that:

- (a) This is a class action involving 100 or more class members,
- (b) Plaintiff, a Citizen of the State of Wisconsin, is diverse in Citizenship from Defendants CITIGROUP INC., CITICORP and CITIBANK (SOUTH DAKOTA), N.A., which are incorporated in Delaware and have principal places of business in New York and South Dakota.

17. This case is properly maintainable as a class action pursuant to and in accordance with Rule 23(a) of the Federal Rules of Civil Procedure in that:

- The class, which includes an unknown number of persons but certainly more than 100, is so numerous that joinder of all members is impractical;

- There are substantial questions of law and fact common to the class including those set forth in greater particularity in Paragraph 75 herein;
- This case is properly maintainable as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, in that:
 - a. questions of law and fact enumerated below, which are all common of the class, predominate over any questions of law or fact affecting only individual members of the class;
 - b. a class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
 - c. the relief sought in this class action will effectively and efficiently provide relief to all members of the class; and
 - d. there are no unusual difficulties foreseen in the management of this class action.

18. The Court has personal jurisdiction over CITI, which has at least minimum contacts with the State of Wisconsin because it has conducted business there and has availed itself of Wisconsin's markets through its promotion, sales, and marketing efforts.

19. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

20. This Court is a proper venue in which to bring this action, pursuant to 28 U.S.C. § 1391, inasmuch as a substantial part of the events or omissions giving rise to the claims occurred within the district in which this Court sits.

PARTIES

21. Plaintiff CHERYL L. KOBLESKI ("Mrs. Kobleski") is a resident of Waukesha County, Wisconsin. Plaintiff applied for and received a Citi Diamond Preferred Rewards Card in her name bearing Payment Protection features.

22. Upon information and belief, Defendant CITIGROUP INC. is a publicly traded holding company incorporated in Delaware with a principal place of business in New York City, New York.

23. Upon information and belief, Defendant CITICORP operates a nationally chartered bank. CITICORP is incorporated in Delaware with a principal place of business in New York City, New York.

24. CITIBANK (SOUTH DAKOTA), N.A. is a national banking association with its principal place of business in Sioux Falls, South Dakota. Among other things, CITIBANK (SOUTH DAKOTA), N.A. is in the business of extending consumer credit to retail customers via credit cards and credit card accounts. It does business in Wisconsin. Upon information and belief, CITIBANK (SOUTH DAKOTA), N.A. is the issuer of Plaintiff's and many, if not all, class members' CITI credit cards.

25. CITI is one of the largest banks in the United States and in the world, with consolidated assets of over 2 trillion dollars. CITI's credit card division is run by its brand, "Citi Cards."

Citi Cards is the world's largest provider of credit cards with more than 150 million accounts generating more than \$144 billion in receivables. Citi Cards is the largest consumer business within Citi. We employ more than 32,000 employees at more than 30 sites across North America. We meet the diverse needs of our customers and our partners with a breadth of products and services unmatched in the industry.¹

FACTUAL ALLEGATIONS

26. Payment Protection is self-described by CITI as a non-insurance product. CITI has not registered or identified Payment Protection as an insurance product with the State of

¹ <http://www.Citigroup.com/Citi/business/brands.htm>, last viewed on June 9, 2010.

Wisconsin Office of the Commissioner of Insurance or other appropriate authorities.

27. However, upon information and belief, prior to developing and marketing Payment Protection, CITI did sell credit insurance products, which it registered with appropriate state authorities. CITI's credit insurance products offered substantially the same type of coverage as what is offered today as Payment Protection. Upon information and belief, the same or a similar product as CITI's Payment Protection plan is marketed and sold in the UK and in Canada, but is still referred to as "insurance" and subject to rules and regulations applicable to other forms of insurance.

28. Even though CITI's previously offered credit insurance products were nearly indistinguishable from what is now offered as Payment Protection, CITI does not designate Payment Protection an "insurance product" so it can avoid state regulation and charge higher fees for the product.

29. Upon information and belief, CITI offers Payment Protection to all its credit card customers, but aggressively markets this product to vulnerable Wisconsin consumers who fall into the subprime credit category, or customers who have low credit limits because of impaired credit ratings.

30. CITI markets Payment Protection as a service that will safeguard subscribers' credit card accounts by crediting the required minimum monthly credit card payments due in certain highly restricted circumstances, or permanently canceling accounts in other circumstances. In such circumstances, the subscribers are also not required to pay the monthly interest charges or the Payment Protection plan fee for the month in question.

31. CITI also markets other "add-on" benefits associated with its PaymentAid Plus

plan, like telephone and online resources to manage personal/professional matters and daily credit monitoring, for an added cost.

32. CITI sells Payment Protection to consumers through a number of different channels, including direct mail marketing, in which it may ask that the consumer “check the box” to initiate the plan, through telemarketing, where the consumer may be asked to press a button on the telephone to approve initiation of the plan, or through unilaterally imposing the Payment Protection feature on a consumer’s credit card.

33. CITI shifts its burden and duty of full disclosure prior to the sale to the customer and requires subscribers to decipher the terms of the product after it has already been purchased and take action to cancel it. It characterizes this sales scheme as a “30-day satisfaction guarantee” such that “[i]f you are not completely satisfied, just cancel in the first 30 days and get a refund of any fee billed.” <https://www.paymentaidplus.citi.com/details.aspx?ordsrc=D1083>, last viewed on June 14, 2010. In fact, the obligation is affirmative: “[u]nless you cancel, this fee will be charged to your enrolled credit card each month.” <https://www.paymentaidplus.citi.com/ProgramSummary.aspx?ordsrc=D1083>, last viewed on June 9, 2010.

34. Even if the subscriber is later provided with written materials from CITI (referred to by CITI as the “Welcome Kit”), it is virtually impossible for the subscriber to determine all of the exclusions and limitations of Payment Protection, or the value of the product, based on what is provided.

35. Upon information and belief, CITI imposed charges for “Payment Protection” upon Wisconsin consumers even though individual consumers did not request the product or clearly assent to pay for the product in writing after getting the opportunity to review its

governing terms.

36. In some instances, Payment Protection has been unilaterally imposed upon consumers. In other instances, no written materials explaining the terms and conditions were ever provided to subscribers. If Payment Protection is imposed and no written materials are provided, the only way subscribers could ever know they have been enrolled in Payment Protection and are being charged for this product is from noticing a line-item fee listed on their monthly credit card statements.

37. The terms of CITI's Payment Protection schemes are varied, complicated and always changing. However, all of the various plans provide for some form of benefit upon the occurrence of "covered events," including *Death, Disability and Income Loss*.

38. Payment Protection also provides payment for a limited period of time upon the occurrence of a *Life Event*, defined strictly by CITI to include marriage, childbirth, adoption, college, a home move, and other life-changing events.

39. The restrictions, limitations and exclusions associated with these "covered events" and the proofs required to establish them are expansive and constantly evolving.

40. The telephone marketing scripts and the written materials provided by CITI are incomplete, indecipherable, misleading and obfuscatory.

41. An example of the misleading and obfuscatory language is CITI's failure to disclose that Payment Protection is actually akin to an insurance product. Despite this fact, CITI's marketing materials carefully avoid any use of the word "insurance." The materials refer to "claims," which indicates that CITI internally regards this as an insurance product. The fees paid for Payment Protection by consumers are actually premiums.

42. According to the written materials, which are only provided after subscribers have already been enrolled in the plan, the following restrictions on Payment Protection are imposed.

- a. Payment Protection does not apply to persons employed by family members;
- b. Payment Protection does not apply to persons employed part time or seasonally;
- c. Payment Protection does not apply to retired persons;
- d. Payment Protection does not apply for the first 30 days of unemployment or disability;
- e. Payment Protection does not apply to persons who have not held their job for at least 90 days;
- f. Payment Protection does not apply if you qualify for state or federal unemployment benefits;
- g. Payment Protection does not apply unless you remain “registered at a recognized employment agency”;
- h. Payment Protection coverage is limited to 12 months;
- i. Payment Protection coverage is limited to one benefit approval per calendar year; and
- j. Payment Protection requires proof of continuous physician’s care for the entire period of benefits.

However, because these restrictions are in small print and in incomplete, indecipherable, misleading and obfuscatory language, they are not readily comprehensible to subscribers

43. Upon information and belief, CITI is in possession of information, such as date of birth and name of last employer, which would assist CITI in knowing whether a particular cardholder is eligible for Payment Protection.

44. However, CITI makes no reasonable efforts and undertakes no investigation, including review of information in its possession regarding the cardholder, to determine if the

cardholder would qualify for Payment Protection coverage. Accordingly, CITI engages in marketing to enroll individuals in Payment Protection even when it has information in its possession indicating that the product may have limited or no value to the consumer.

45. For instance, Wisconsin retired persons, many of whom are senior citizens, are charged for Payment Protection even though they are categorically excluded from receiving most or all of the benefits under the plan. In fact, CITI does not even ask customers whether they are retired.

46. Similarly, the benefits offered to persons employed by family members are limited, but CITI nevertheless fails to affirmatively inform such persons of the limitations in benefits when they are enrolled. In fact, CITI does not even ask customers whether they are employed by family members.

47. Further, part-time or seasonal workers are also limited or categorically excluded from receiving benefits. To qualify for benefits, one needs to work at least 30 hours a week in employment considered to be permanent. However, CITI makes no effort to investigate whether any of the Wisconsin consumers that pay for Payment Protection are part-time or seasonal. These terms are not adequately communicated or defined in any CITI materials.

48. Finally, benefits are unavailable or limited for disabled persons, but CITI nevertheless fails to affirmatively inform these individuals of the limitations in benefits when they are enrolled. In fact, CITI does not even ask customers whether they are disabled.

49. The cost of Payment Protection is a monthly charge of \$0.89 per \$100 of a subscriber's month-ending credit card balance. "Add-on benefits" cost the subscriber an extra \$3.29 per month.

50. For example, if a CITI credit card customer has a balance on a covered account of \$10,000, as a Payment Protection subscriber, the customer owes CITI \$92.29 that month just for Payment Protection coverage.

51. Payment Protection also provides the added benefit to CITI of lowering available credit to its subscribers through the imposition of this additional fee. Further, the imposition of the fee creates a cycle of profitability for CITI, in that the fee itself increases subscribers' monthly credit balances, which in turn increases Payment Protection fees in upcoming months.

52. "Customer service" is available for CITI's Payment Protection subscribers. To access customer service, subscribers can call a 1-800 number or send mail to a P.O. Box in Fort Worth, Texas.

53. Upon information and belief, CITI's Payment Protection call center is based in the Philippines. Employees are trained to assist subscribers with all questions, including inquiries concerning canceling memberships, plan benefits and filing claims.

54. CITI has established its customer service system in such a way that it is difficult for subscribers to cancel Payment Protection, to get detailed information about claim benefits or restrictions, or to file claims.

55. For example, upon information and belief, employees at CITI's Philippines call center are given authority to deny claims immediately over the phone, but do not have authority to approve claimants to receive benefits in the same manner.

56. Moreover, upon information and belief, when subscribers call CITI attempting to cancel Payment Protection, employees at CITI's Philippines call center are trained to attempt to talk the subscriber out of canceling by "selling" the supposed benefits of Payment Protection.

Upon information and belief, the call center employees provide essentially the same information to non-subscribers who request information about Payment Protection or who express interest in enrolling.

57. Further, when claims for Payment Protection benefits are denied, CITI has not implemented a process through which subscribers' Payment Protection premiums are refunded, even if the subscribers are deemed to be *per se* ineligible for Payment Protection benefits. In fact, if subscribers are denied Payment Protection benefits, CITI neither affirmatively removes subscribers from Payment Protection enrollment going forward, nor is it CITI's policy to inform subscribers of their continued obligations pay for Payment Protection even though they have been deemed to be ineligible for benefits.

58. Citi Cards is the largest issuer of credit cards in the world and is responsible for around 40% of CITI's profits overall. Payment Protection is a profit center for CITI and serves the Company's interest in generating fee income, to the detriment of its most vulnerable customers.

59. Although heralded as coverage designed for a subscriber's "protection and peace of mind," the Payment Protection device is designed to prey on the financially insecure and is virtually worthless because of the numerous restrictions that are imposed, because of the exclusions of benefits, and because of the administrative and bureaucratic hurdles that are placed in the way of Wisconsin subscribers who attempt to secure payments from CITI under Payment Protection coverage.

FACTUAL ALLEGATIONS AS TO CHERYL L. KOBLESKI

60. Plaintiff Cheryl L. Kobleski is a resident of Waukesha County Wisconsin.

61. On or about June 2006, Plaintiff applied for a CITI credit card and became a CITI credit card holder. Plaintiff applied for her CITI credit card online. Unbeknownst to Plaintiff, at the time of enrollment, Plaintiff also became enrolled in Payment Protection through CITI's Credit Protector program.

62. At the time Plaintiff became enrolled in Payment Protection, no one from CITI inquired or contacted Plaintiff about her employment status or explained the terms and conditions surrounding Payment Protection.

63. Upon information and belief, Plaintiff never received written materials detailing the terms and conditions of Payment Protection before or after enrollment.

64. In or around July 2009, Plaintiff called CITI customer service to inquire about the Credit Protector charge on Plaintiff's credit card statement. During this call Plaintiff was informed that she had enrolled in Payment Protection and the purported benefits of Payment Protection were explained to Plaintiff.

65. Plaintiff continued to pay for Payment Protection until its cancellation in or around January 2010.

66. Upon information and belief, CITI did not send written confirmation of Payment Protection cancellation or notify the Plaintiff of such cancellation via any other means.

CLASS ACTION ALLEGATIONS

67. Plaintiff brings this action on her own behalf and on behalf of a class of all other persons similarly situated (the "Class"), pursuant to Rule 23 of the Federal Rules of Civil Procedure.

68. Plaintiff brings this action as a class representative to recover damages and/or

refunds from CITI's breach of contract, breach of the covenant of good faith and fair dealing, unconscionability, misrepresentation as expressly defined in Section 100.18, Wis. Stats., injunctive relief and declaratory judgment, and unjust enrichment.

69. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the Federal Rules of Civil Procedure Rule 23(a) and (b).

70. Plaintiff seeks certification of a class comprised of the following Wisconsin Citizens and consumers:

All residents of the State of Wisconsin who (1) were solicited by CITI to purchase Payment Protection; and (2) paid for Payment Protection ("Payment Protection Subscribers") at all times the product was sold.

71. Plaintiff seeks certification of the following subset class comprised of the following Wisconsin Citizens and consumers:

All residents of the State of Wisconsin who were not eligible for full benefits, or whose eligibility for benefits were limited by express exclusions, including but not limited to those Payment Protection subscribers who were retired, self-employed or part time or seasonal workers, or were disabled, either at the time that they were solicited for and made payments to CITI for Payment Protection, or any time thereafter while continuing to pay for Payment Protection.

72. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

73. Excluded from the Class are:

- a. Defendants and any entities in which Defendants have a controlling interest;
- b. Any entities in which Defendants' officers, directors, or employees are employed and any of the legal representatives, heirs, successors or assigns of Defendants;
- c. The Judge to whom this case is assigned and any member of the Judge's

immediate family and any other judicial officer assigned to this case;

- d. Persons or entities with claims for personal injury, wrongful death and/or emotional distress;
- e. All persons or entities that properly execute and timely file a request for exclusion from the Class;
- f. Any attorneys representing the Plaintiff or the Class; and
- g. All governmental entities.

74. Numerosity – Fed. R. Civ. P. 23(a)(1). The Class is comprised of over 100 people and possibly hundreds of thousands of individuals who were CITI customers, the joinder of which in one action would be impracticable. The exact number or identification of the Class members is presently unknown. The identity of the Class members is ascertainable. In addition to rolls maintained by the Defendants and their agents, the Class members may be located and informed of the pendency of this action by a combination of electronic bulletins, e-mail, direct mail and public notice, or other means. The disposition of the claims of the proposed class members through this class action will benefit both the parties and the Court.

75. Predominance of Common Questions – Fed. R. Civ. P. 23(a)(2), 23(b)(3). There is a well-defined community of interest in the questions of law and fact involved affecting members of the Class. The questions of law and fact common to the Class predominate over questions affecting only individual Class members, and include, but are not limited to, the following:

- a) Whether CITI's sales, billing, and marketing scheme as alleged in this Complaint is fraudulent, deceptive, unlawful, and/or unfair in violation of Wisconsin law;
- b) Whether CITI's common and uniform sales, billing, and marketing scheme related to Payment Protection insurance as alleged in this Complaint constitutes a violation of Wisconsin law regulating consumer credit insurance;

- c) Whether the Plaintiff and the Class members are entitled to restitution of all amounts acquired by CITI through its common and uniform scheme;
- d) Whether Plaintiff and the Class members are entitled to injunctive relief requiring the disgorgement of all fees wrongfully collected by CITI;
- e) Whether Plaintiff and the Class members are entitled to prospective injunctive relief enjoining CITI from continuing to engage in the fraudulent, deceitful, unlawful, and unfair common scheme as alleged in this Complaint; and
- f) Whether Plaintiff and the Class members are entitled to recover compensatory and punitive damages as a result of CITI's wrongful scheme.

76. Typicality – Fed. R. Civ. P. 23(a)(3). Plaintiff asserts claims that are typical of the entire Class, having all been targeted by CITI as consumers and who were improperly assessed, and paid, charges for Payment Protection. Plaintiff and the Class members have similarly suffered harm arising from CITI's violations of the law as alleged in this Complaint.

77. Adequacy – Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiff is an adequate representative of the Class because she fits within the class definition and her interests do not conflict with the interests of the Members of the Class he seeks to represent. Plaintiff is passionate about this litigation personally and will prosecute this action vigorously for the benefit of the entire Class. Plaintiff is represented by experienced and able attorneys from coordinated law firms that will collectively and jointly serve as class counsel. Class counsel have litigated numerous class actions, and Plaintiff's counsel intends to prosecute this action vigorously for the benefit of the entire Class. Plaintiff and class counsel can fairly and adequately protect the interests of all of the Members of the Class.

78. Superiority – Fed. R. Civ. P. 23(b)(3). The class action is the best available

method for the efficient adjudication of this litigation because individual litigation of Class Members' claims would be impracticable and individual litigation would be unduly burdensome to the courts. Plaintiff and members of the Class have suffered irreparable harm as a result of CITI's fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of the individual Class members' claims, no Class members could afford to seek legal redress for the wrongs identified in this Complaint. Without the class action vehicle, the Class would have no reasonable remedy and would continue to suffer losses, as CITI continues to engage in the unlawful, unfair, and unconscionable conduct that is the subject of this Complaint, and CITI would be permitted to retain the proceeds of their violations of law. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

COUNT ONE – BREACH OF CONTRACT

76. Plaintiff repeats and realleges the allegations contained in the Paragraphs 1 through 75 above, as if fully set forth herein.

77. Plaintiff and other Class members purchased Payment Protection from Defendant with the justified expectation that they were receiving eligible for the benefits spelled out in Defendant's advertising and marketing. To obtain these purported benefits, Plaintiff and other Class members paid monthly Payment Protection premiums.

78. Plaintiff and the Class members have fulfilled their obligation under the sales contract by paying the Payment Protection premiums.

79. Despite the full performance by Plaintiff and other Class members, Defendants did not, in fact, provide Plaintiff or other Class members with the benefits for which they had paid. Accordingly, Defendants have materially breached their contract with Plaintiff and other Class members, which has resulted in harm to Plaintiff and other Class members, who did not receive the benefit of their bargain.

80. By reason of the foregoing, Defendant has breached the parties' contract and is liable to Plaintiff and the other members of the Class.

COUNT TWO – BREACH OF THE CONVENANT OF GOOD FAITH AND FAIR DEALING

81. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 80 above, as if fully set forth herein.

82. As a direct and proximate result of Defendants' actions as described herein, Plaintiff and the Class have suffered, and continue to suffer, injury in fact and have lost money as a result of Defendants' deception.

83. Plaintiff and other Class members purchased Payment Protection with the expectation that they would receive benefits after a "life changing" event as described in CITI's advertising.

84. Defendants, however, were selling Plaintiff and the Class an insurance policy, from which Plaintiff and the Class would never be able to collect. As such, Plaintiff and other Class members have not obtained the benefit of their bargain from Defendants, and the essential purpose of the Payment Protection sales contract has been frustrated.

85. By reason of the foregoing, Defendants have breached the covenant of good faith and fair dealing and are liable to Plaintiff and the other members of the Class.

COUNT THREE – UNCONSCIONABILITY

86. Plaintiff restates and re-alleges the preceding paragraphs of the Complaint as though set out here word for word.

87. CITI's Payment Protection policies and practices are both substantively and procedurally unconscionable in the following material respects, among others:

- a. CITI unilaterally imposes Payment Protection upon its customers' credit card accounts, thereby failing to disclose to customers that Payment Protection is an optional plan and that they have the option to "opt out" of Payment Protection;
- b. CITI did not obtain affirmative consent from subscribers prior to enrolling them in Payment Protection;
- c. CITI does not provide the terms and conditions of Payment Protection to subscribers until after they have enrolled in the plan;
- d. The written documents that CITI does eventually provide to subscribers, referred to by CITI as a Welcome Kit, do not provide subscribers with sufficient information to understand the terms and conditions of Payment Protection;
- e. The Welcome Kit and related documents are contracts of adhesion in that they are standardized forms, imposed and drafted by CITI, which is a party of vastly superior bargaining strength, and only relegate to the subscriber the opportunity to adhere to them or reject the agreement in its entirety;
- f. The Welcome Kit and related documents provided to customers are ineffective, ambiguous, deceptive, unfair, and misleading, in that they do not require affirmative customer consent (like a signature) and do not unambiguously state that certain customers are *per se* ineligible to receive benefits, even though CITI had the information and means of determining eligibility prior to enrolling these customers in Payment Protection;
- g. CITI does not alert customers that certain individuals are *per se* ineligible

for Payment Protection benefits, including but not limited to retired, unemployed, employed by family members, persons employed on a part-time or seasonal basis and those that are disabled.

- h. The amount charged in fees for Payment Protection is not rationally related to the amount of value Payment Protection provides to subscribers, nor is the value of Payment Protection computable or discernable by subscribers;
- i. CITI charges exorbitant fees for Payment Protection, much more than the value of the benefits offered or paid out to subscribers, and is able to do so because CITI does not identify Payment Protection as an insurance product, which would require it to provide fees and claims-paid data to state authorities for review and regulation;
- j. The formula CITI uses to compute Payment Protection fees is misleading such that subscribers are unable to budget for this product or understand its overall cost in order to determine its value to subscribers; and
- k. CITI operates its customer service centers in such a way as to make it difficult for subscribers to cancel enrollment, obtain information about the terms and conditions of Payment Protection coverage, and file claims, in order for CITI to maximize the number of Payment Protection subscribers and minimize the amount of benefits it pays to these subscribers.

88. Considering the great business acumen and experience of CITI in relation to Plaintiff and the Class, the great disparity in the parties' relative bargaining power, the inconspicuousness and incomprehensibility of the contract language at issue, the oppressiveness of the terms, the commercial unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law.

89. The imposition of Payment Protection fees which excessively exceed the amount of claims-paid by a rate higher than any insurance product would be permitted to charge for premiums is itself unconscionable. Such fees are not reasonably related to CITI's costs of administering the plan and providing the benefits offered.

90. Plaintiff and members of the Class have sustained damages as a result of CITI's unconscionable policies and practices as alleged herein.

COUNT FOUR – FRAUDULENT REPRESENTATIONS AND DECEPTIVE TRADE PRACTICES IN VIOLATION OF § 100.18(1), WIS. STATS.

91. Plaintiff restates and re-alleges the preceding paragraphs of the Complaint as though set out here word for word.

92. Plaintiff was originally enrolled in Payment Protection unknowingly and without Plaintiff's consent.

93. Through advertisements and marketing representations Defendants intended to and did misrepresent to Plaintiff and the Class, at the time of purchase and at all relevant times, the eligibility, terms and conditions of its Payment Protection coverage.

94. Specifically, Defendant's advertisements stated that Plaintiff and class members were eligible, would remain eligible and would receive benefits under Defendants' Payment Protection plan, when these representations were false and misleading.

95. These misrepresentations were also made to Plaintiff on the telephone when she called to inquire about the Payment Protection charge. Prior to her telephone call, Plaintiff had never agreed to enroll in Payment Protection, but had been enrolled unknowingly and without her consent.

96. After and due to seeing and hearing Defendants' advertisements and marketing representations, Plaintiff reasonably believed, and Plaintiff and the Class were reasonably likely to believe, that Plaintiff was eligible, would remain eligible and would receive benefits under Defendants' Payment Protection plan.

97. Defendants intended that Plaintiff and the Class rely upon Defendants' false,

deceptive and misleading representations regarding the quality and character of its Payment Protection plan.

98. Plaintiff and the Class would not have purchased Defendant's Payment Protection altogether, or would have paid less for these products, had they known, or had reason to have known, the terms and conditions pertaining to Defendant's Payment Protection coverage.

99. Defendant's advertisements and marketing concerning its Payment Protection plan and coverage were false, deceptive and/or fraudulent, and induced Plaintiff and the other members of the Class to make purchases that they would not have made otherwise if they had been in possession of all of the material facts

100. As a result of Defendant's deceptive conduct and practices, Plaintiff and the Class suffered pecuniary loss in an amount not less than the purchase price of Defendant's Payment Protection plan, or a portion thereof, plus interest.

**COUNT FIVE – INJUNCTIVE RELIEF
PAYMENT PROTECTION RESTITUTION**

101. Plaintiff restates and re-alleges the preceding paragraphs of this Complaint as though set out here word for word.

102. Plaintiff asks the Court to grant the remedy of restitution to herself and to all members of the Class who made payments to CITI for Payment Protection. The Plaintiff asks the Court to grant the following relief:

- a) a refund of all Payment Protection payments made to CITI;
- b) a refund to any consumers who were retired at the time they were sold Payment Protection by CITI or at any time they paid for Payment Protection;
- c) a refund to any consumers who were ineligible for benefits, or who faced additional restrictions to receive benefits as a result of their health or

employment status, at the time they were sold Payment Protection by CITI or at any time they paid for Payment Protection;

- d) a refund to consumers who were otherwise not eligible for Payment Protection benefits at any time they paid for Payment Protection; and/or
- e) a refund of all amounts CITI assessed for Payment Protection that were in excess of sums which would have been permissible had CITI correctly identified the service as insurance.

103. Further, Plaintiff seeks injunctive relief enjoining CITI from continuing to engage in the fraudulent, deceitful, unlawful, and unfair common scheme described in this Complaint.

COUNT SIX – DECLARATORY RELIEF

104. Plaintiff restates and re-alleges the preceding paragraphs of this Complaint as though set out here word for word.

105. Plaintiff seeks a Declaratory Judgment finding that the conduct of CITI is in violation of Section 100.18(1), Wis. Stats, and enjoining CITI from continuing in such conduct.

COUNT SEVEN – UNJUST ENRICHMENT

106. Plaintiff restates and re-alleges the preceding paragraphs of this Complaint as though set out here word for word.

107. In seeking to sell Payment Protection to Plaintiff and members of the putative Class, CITI withheld material terms from consumers prior to activation of Payment Protection charges, including the express benefits, limitations, restrictions, and exclusions associated with the product.

108. CITI was unjustly enriched by charging Plaintiff and the Class sums for Payment Protection coverage that were in excess of amounts which would have been permissible had CITI properly identified the service as insurance.

109. CITI was unjustly enriched by the practice of signing people up for Payment Protection that never agreed to be plan members.

110. CITI was unjustly enriched by the practice of withholding material terms of Payment Protection until after the product was charged to consumers' credit cards.

111. CITI was unjustly enriched by their business practice of making it so impermissibly difficult for consumers to actually receive coverage under Payment Protection that the service was virtually worthless. Such unconscionable acts include, but are not limited to:

- a) Denying claims over the phone without written explanation;
- b) Denying claims without sufficient investigation;
- c) Requiring claimants to submit excessive and duplicate documentation, and/or;
- d) Establishing a telephone number that does not allow for claimants to speak to a live person, a person in a timely manner, or a person that is properly trained to handle Payment Protection claims, in order for the subscriber to successfully file a claim.

112. CITI was unjustly enriched by charging Plaintiff and the Class members for illusory benefits.

113. CITI was unjustly enriched by charging Plaintiff and the Class members for Payment Protection, even though Plaintiff and the Class members were retired, disabled, unemployed, part-time employees or were otherwise not eligible to receive payments by the terms of the Payment Protection plan.

114. As a result of CITI's actions that constitute unjust enrichment, Plaintiff and Class members suffered actual damages for which CITI is liable. CITI's liability for those damages should be measured by the extent of their unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. That the Court determines that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure. The Plaintiff is a proper class representative, and that the best practicable notice of this action be given to members of the Class represented by the Plaintiff;

B. That judgment be entered against CITI and in favor of Plaintiff and the Class on the Causes of Action in this Complaint, for injunctive relief as requested above, and for actual, compensatory, punitive, and treble damages in an amount to be determined at trial;

C. That judgment be entered imposing interest on damages, litigation costs, and attorneys' fees against CITI;

D. For all other and further relief as this Court may deem necessary and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury consisting of twelve persons on all issues so triable.

DATED: October 4, 2010

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