

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

ROBERT P. SMET, individually and on behalf of all others similarly situated,

Plaintiff,

v.

THE WESTERN UNION COMPANY, a Delaware corporation headquartered in Colorado,

Defendant.

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff, Robert P. Smet, individually and on behalf of all others similarly situated, through his undersigned counsel, complains against defendant, the Western Union Company (“Western Union”), pursuant to the investigation of his attorneys and upon knowledge as to himself and his own acts and otherwise upon information and belief, as follows:

NATURE OF THE ACTION

1. This is a putative class action brought by Plaintiff individually and on behalf of a class, as defined more fully herein, of all persons who attempted to transfer money using Western Union, whose money transfers were unredeemed, and who were never told by Western Union that the money transfers they paid to have sent were unredeemed.

2. When Western Union agrees to wire money for a customer, it takes the customer’s contact information. Sometimes the money transfer does not go through. This lawsuit addresses what Western Union does when it learns a money transfer did not go through.

3. What Western Union should do is contact the customer, inform him or her of this fact, and give him or her an opportunity to correct the error or get a refund of the funds to be transferred.

4. What Western Union does instead is an entirely different story: it holds onto the money and makes use of it until state statutes require the funds to be escheated to the state. Only then, many years later, does Western Union try to notify the customer that the transaction that they paid for never transpired, and only because state law requires it under unclaimed property statutes in advance of escheat.

5. Western Union brags about this unfair and deceptive business practice in its financial statements, telling investors it always has access to more than \$100 million in cash from these unremitted funds that is essentially better than an interest free loan because Western Union gets to both make use of the money and then ultimately, after using the money for years, charge the customer a fee to return the money instead of paying the customer interest. According to Western Union's Form 10-K for the period ending December 31, 2007, such unredeemed funds, or "unsettled money transfers," are classified as "settlement assets" and "are not used to support [Western Union] operations" but are utilized to "earn income" for the company. *Id.* at p. 59. Western Union reported \$203.5 million of such "settlement assets" on hand in 2007 and \$348.8 million on hand in 2006. *Id.* at 85.

6. As alleged more fully herein, Plaintiff seeks damages and equitable relief on behalf of himself and all other Western Union customers who were never told by Western Union that the money transfers they sent were unredeemed, or who were only informed years later.

7. This Complaint alleges claims for violations of Missouri law, or alternatively Colorado law, or alternatively, for violations of substantially similar consumer protection laws, and for unjust enrichment and conversion against defendant Western Union, as well as for declaratory judgment.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction of the claims asserted herein insofar as the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and this is a class action in which members of the class of Plaintiffs are citizens of states different from Defendant Western Union. 28 U.S.C. § 1332(d)(2)(A).

9. This District is the proper venue for adjudication of the claims asserted herein insofar as Defendant Western Union has its principal place of business in this District. 28 U.S.C. § 1391(a)(1).

PARTIES

10. Plaintiff, Robert P. Smet, is a natural person and resident of Springfield, Illinois. Plaintiff is a member of the class of Western Union customers defined herein (the “Class”).

11. Defendant The Western Union Company is a Delaware corporation with its principal place of business in Englewood, Colorado and with its Customer Service Center in Bridgeton, Missouri.

FACTUAL BACKGROUND

12. In or around January 2004, Plaintiff twice used Western Union’s money transfer service to send cash to a child in Vietnam who needed it to pay for hospital expenses. Plaintiff sent two payments of \$50 each.

13. Western Union charged Plaintiff approximately \$10 to transfer each payment (\$20 total).

14. The intended recipient of Plaintiff's money orders never received them. Rather than promptly returning Plaintiff's money to him, however, Western Union quietly held on to it for years, never telling Plaintiff that the transactions that he had paid it to carry out had not been completed or notifying him that he could request a refund.

15. It was not until January 2010, six years after he had paid Western Union to carry out the transactions at issue, that Plaintiff received a letter from Western Union's Missouri Customer Service Center, notifying him that it had not completed the transactions at issue and that it still had his money. The letter stated that Plaintiff could receive a refund of his unclaimed money by returning an attached form. The letter was entirely silent as to why Western Union was only now, six years later, reaching out to Plaintiff when it had been in possession of Plaintiff's contact information the entire time that it had been holding and making use of his money.

16. Upon information and belief, acquired by Plaintiff since he found out that his money had never reached its intended recipient, Western Union had refused to distribute the money to the intended recipient because she was a minor and she was unable to provide certain information to Western Union that it was required to obtain from minors before distributing money to them.

17. Had Western Union told Plaintiff that it had not been able to complete his transaction in a timely fashion, Plaintiff would have taken action to either resolve the issue that was preventing Western Union from delivering the money or would have made alternative arrangements to get the money to its intended recipient for her hospital bills.

18. Shortly after receiving the January 2010 letter from Western Union, Plaintiff returned the refund claim form to Western Union.

19. Several weeks later, Plaintiff received two checks from Western Union. Each check, however, was only for \$20, not the \$50 that he had been expecting.

20. Plaintiff made numerous phone calls to Western Union's customer service center to find out why it had only refunded him \$40, instead of the \$100 that he had paid Western Union to deliver. A Western Union customer service representative explained to Plaintiff that it had withheld \$60 in "administrative charges" for having held Plaintiff's money.

21. According to Western Union's customer service representative, Western Union had held Plaintiff's money without charge for the first year. It then began imposing a fee of \$0.50 per month on each of the two money orders until Plaintiff claimed his money. Western Union, however, did not notify Plaintiff that it was asserting this fee against him until after Illinois's property abandonment law required it to notify him that it still had his money. Even then, Plaintiff had to make numerous phone calls to Western Union before it would explain the fee to him.

22. Not satisfied with Western Union's explanation, Plaintiff continued to request a full refund of his undelivered money. Eventually, he was put in touch with Carol Brown, the Western Union employee in its Missouri customer service center who had signed the refund checks that he had received. Ms. Brown admitted to Plaintiff that holding onto his money had not caused Western Union any hardship and that Western Union could have easily notified him at any time that it still had his money. The only justification she could offer for Western Union's actions was that Western Union was in the business of making money.

23. Western Union's charging Plaintiff a fee for a "service" that it had not told him it was performing was bad enough on its own, but that fee was particularly galling in light of the fact that Western Union had already benefited enormously from its actions at Plaintiff's expense, having had the opportunity to generate income using Plaintiff's money for more than six years.

24. Western Union's behavior was fraudulent, as follows:

Who: Employees of Western Union. Plaintiff is unable to identify at this time the true names and identities of those persons within Western Union who are responsible for the decisions and actions that have harmed Plaintiff and the Class. The identity of such persons is known to Western Union only, and can only be learned in discovery. At minimum, the relevant persons will be those within Western Union who initiated the practices, and undertook the decisions and actions, which damaged Plaintiff and the Class, as alleged herein.

What: Western Union's fraudulent and deceptive business practice of holding unremitted funds without contacting the owner of the funds and making use of those funds for its own benefit while at the same time seeking a fee from the customer in order to return the funds. Western Union accepts money from customers to transfer to others, for a fee. Western Union from time to time fails to successfully transfer its customers' money. Western Union has the contact information for each of its customers. Yet when the money the customer paid to have transferred goes unredeemed, Western Union does not return this unredeemed money to its customers, or notify them that their money has not been redeemed, until after the passage of several years. Western Union's failure to return its customers' money to them or to notify them that their transaction did not complete for years is particularly egregious in light of their longtime emphasis on speed as being a major benefit of their service (for instance, using the slogan: "The fastest way to send money – worldwide."). Due to the large volume of money transfers in which Western Union engages, the total amount of unredeemed money in its possession is very large. The total amount cannot be known to Plaintiff without discovery, but the publicly available information referenced herein suggests it is in the hundreds of millions of dollars. All of this money should rightfully be returned to Western Union's customers, not used as a source of revenue for Western Union.

When: Plaintiff does not know when Western Union began engaging in the practices alleged herein. However, Western Union engaged in the

wrongful conduct since at least 2003 and at all times relevant herein, and still does so.

Where: Western Union undertook the wrongful actions alleged herein at its Customer Service Center, located in Missouri, as well as at its headquarters in Colorado. The letters sent to Plaintiff originated in Western Union's Customer Service Center in Missouri. Plaintiff's contact information, as well as the amount of his unredeemed money, was either stored at or accessible to personnel at the Western Union Customer Service Center in Missouri during the entire five years that Western Union wrongfully held Plaintiff's money. Western Union personnel at the Customer Service Center in Missouri, or elsewhere, aggregated Plaintiff's unredeemed money with unredeemed money from other Class members, and invested and earned interest on that money, and kept that interest as income for Western Union, and maintained a record of all this activity.

How: Western Union failed to timely return the unredeemed money belonging to Plaintiff and the Class, even though it could have done so. Western Union failed to notify Plaintiff and the Class that it had that it was holding their unredeemed money, or only did so after a period of years, even though Western Union could have contacted Plaintiff and the Class at any time. Western Union has been enriched at the expense of Plaintiff and the Class, by keeping the unredeemed money belonging to Plaintiff and the Class, and by earning and keeping interest on unredeemed money that does not belong to it. Western Union has behaved in deceptive fashion toward Plaintiff, the Class and the public at large by not disclosing that it would not return unredeemed money, and would use the unredeemed money to generate income that it would keep for itself.

**MISSOURI LAW OR, IN THE ALTERNATIVE,
COLORADO LAW APPLIES TO THE CLASS**

25. As a federal court exercising diversity jurisdiction, the Court must apply the choice of law rules of Colorado, the forum state.

Missouri Law

26. Missouri's substantive laws may be constitutionally applied to the claims of Plaintiff and the Class Members under the Due Process Clause, 14th Amend., § 1, and the Full

Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. Missouri has the most significant relationship to the occurrence and to the parties, as alleged herein, thereby creating state interests that ensure that the choice of Missouri state law is not arbitrary or unfair.

27. Western Union's Customer Service Center is located in Missouri. Upon information and belief, Western Union carried out all the actions relevant to this Complaint from the Missouri Customer Service center.

28. In light of these facts, Missouri has a paramount interest in regulating Western Union's conduct, and Western Union's decision to locate its Customer Service Center in Missouri and avail itself of Missouri courts and laws render the application of Missouri law to the claims at hand constitutionally permissible.

29. Missouri is the place where the injury was inflicted. Western Union sent the letters to Plaintiff from its Customer Service Center in Missouri years after it first became aware that his money was unredeemed. Western Union's failure to return the unredeemed money, and failure to notify Plaintiff it was holding the unredeemed money, are the injury he and the Class have suffered.

30. The place where the conduct causing the injury occurred is Missouri. The letters Western Union sent to Plaintiff show that Western Union's Customer Service Center had Plaintiff's address at all relevant times herein, and could have notified him at any time that Western Union was holding his unredeemed money. Instead, Western Union held onto Plaintiff's money and earned interest on it and only notified Plaintiff that it was holding his money after a period of five years.

31. The place of business of Western Union that is relevant to the misconduct alleged herein is Missouri. Western Union's Customer Service Center is the source of the letters, which notified Plaintiff that Western Union was holding his unredeemed money. Western Union's Customer Service Center could have notified him at any time and failed to do so.

32. The place where the relationship is centered between Western Union and Plaintiff, relevant to the misconduct alleged herein, is Missouri. Western Union's Customer Service Center in Missouri sent the letters to Plaintiff, was aware that Plaintiff's money had not been delivered, and could have notified him at any time, and did not do so, and instead wrongfully withheld his money.

33. As a result of the foregoing, Missouri is the state with the most significant relationship to the occurrence and the parties.

Colorado Law

34. In the alternative, Colorado's substantive laws may be constitutionally applied to the claims of Plaintiff and the Class Members under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution – if Colorado is determined to have the most significant relationship to the occurrence and to the parties.

35. Western Union's headquarters and principal place of business are located in Colorado. Colorado has a paramount interest in regulating Western Union's conduct, and Western Union's decision to locate its principal place of business in Colorado and avail itself of Colorado courts and laws render the application of Colorado law to the claims at hand constitutionally permissible.

36. If Colorado is the place where decisions regarding the conduct in this Complaint were made, then Colorado is the place the injury occurred.

37. Similarly, if Colorado is the place where the policies of Western Union are set which gave rise to the misconduct alleged herein, the conduct causing the injury occurred in Colorado.

38. Further, Colorado law is appropriately applied to the putative Class here because, on information and belief, Western Union's Terms and Conditions states that its services are "governed by Colorado law, without regard to its rules regarding conflicts of law."

CLASS ACTION ALLEGATIONS

39. *Class Definition.* Plaintiff brings this action individually and on behalf of the following class of similarly situated persons (the "Class"), including subclasses, of which Plaintiff is a member:

(b)(2) Injunctive Relief Class:

All persons and entities who sent money using Western Union's money transfer services, and whose money went unredeemed and was not returned within 60 days.

(b)(3) State Sub-Class

All persons and entities who sent money using Western Union's money transfer services, and whose money went unredeemed and was not returned within 60 days.

Alternative (b)(3) Specific State Sub-Class

All persons and entities in Alabama, Arizona, California, Colorado, Florida, Illinois, Michigan, Missouri, New Jersey, New York, Ohio and Washington, and who sent money using Western Union's money transfer services, and whose money went unredeemed and was not returned within 60 days.

Excluded from the Class(es) are Western Union and any of its officers, directors or employees, the presiding judge, and any member of their immediate families. Plaintiff hereby reserves his right to amend the above class definition based on discovery and the proofs at trial.

40. *Numerosity.* The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds, if not thousands of persons in the Class.

41. *Commonality.* There are questions of law or fact common to the Class including, *inter alia*, the following:

- a. Whether Western Union violated Missouri law, Colorado law, or specific state laws, by failing to timely return customers' monies that were unredeemed;
- b. Whether Western Union was unjustly enriched by failing to timely return customers' monies that were unredeemed and/or generating income for itself on those unredeemed funds and/or not sharing those monies generated with the rightful owner of those funds;
- c. Whether by failing to timely return customers' monies that were unredeemed amounts to conversion of Plaintiff's money for its own benefit;
- d. Whether Plaintiff and Class have been damaged by Western Union's conduct and, if so, what is the proper measure of such damages.

42. *Typicality.* The claims or defenses of Plaintiff are typical of the claims of the Class, alleged herein. Plaintiff, the same as every class member, placed funds to be transferred with Western Union, those funds went unredeemed and Western Union failed to inform Plaintiff

of the unredeemed funds and even generated monies through the use of those funds that Western Union did not share with Plaintiff.

43. *Adequacy.* Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained undersigned counsel who are competent and experienced in the prosecution of complex class action litigation. The interests of the Plaintiff are aligned with, and not antagonistic to, those of the Class.

44. *Fed. R. Civ. P. 23(b)(2) Requirements.* The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Western Union has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

45. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Western Union. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not unlawful. Individual actions may, as a practical matter, be dispositive of the interest of the Class, who would not be parties to those actions.

46. Western Union's actions are generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

47. Western Union's alleged uniform scheme and common course of conduct make declaratory relief with respect to the Class as a whole appropriate.

48. *Fed. R. Civ. P. 23(b)(3) Requirements.* This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate

over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy.

49. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member.

50. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class.

COUNT I
**(Violation of Missouri Consumer Protection Act;
Alternatively, Violation of Various State Consumer Protection Laws)**

51. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class.

52. At all times hereto, there was in full force and effect the Missouri Merchandising Practices Act. Mo. Rev. Stat. § 407.010, *et seq.* ("the Missouri Act").¹

53. The fundamental purpose of the Missouri Act is the protection of consumers and, to promote that purpose, the act prohibits any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.

¹ Should Missouri law not apply to the Class, then this Count is also brought pursuant to substantially similar state consumer protection statutes identical in their material respects – *see e.g.*, Ala. Code § 8-19-1 *et seq.* (Alabama); Cal. Bus. & Prof. Code § 17200 *et seq.*, and Cal. Bus. & Prof. Code § 17500 *et seq.* (California); Fla. Stat. Ann. § 501.201 *et seq.* (Florida); 815 ILCS 505/1 *et seq.* (Illinois); Mich. Stat. Ann § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); N.J. Rev. Stat. § 56:8-1 *et seq.*, N.J. Rev. Stat. § 56:12-1 *et seq.* (New Jersey); N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); Ohio Rev. Code Ann. § 1345.01 *et seq.* (Ohio).

“Merchandise” under the Missouri Act includes services, such as those provided by Western Union.

54. Plaintiff and other Class members, who sent money through Western Union’s services which was unredeemed, and whom Western Union failed to notify that it was holding their money, are protected under the Act, given that Western Union’s business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

55. Western Union intended that Plaintiff and the class would rely on its deception, by purchasing Western Union’s services unaware of the material facts including but not limited to:

- a. that should the money go unredeemed, Western Union would not return the money in a timely fashion,
- b. that should the money go unredeemed, Western Union would not inform Plaintiff and the Class, and
- c. that Western Union would use the unredeemed money to generate income that Western Union would keep for itself.

This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

56. If Western Union had disclosed the above facts to Plaintiff and the Class, they could have (and would have) prevented economic injury by either negotiating a lower price to reflect risk or simply avoiding the risk altogether by going to another money transfer service.

57. Western Union’s conduct alleged herein is furthermore unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

58. The omission of a material fact, such as that alleged here, impacts the public as actual or potential consumers of Western Union's services. All other consumers of Western Union's services are affected the same as the Plaintiff if their money transfers go unredeemed.

59. As a direct and proximate result of the above-described breach, Plaintiff and the Class have been damaged.

COUNT II
**(Violation of Colorado Consumer Protection Act;
Alternatively, Violation of Various State Consumer Protection Laws)**

60. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein, and in the alternative to Count I.

61. At all times hereto, there was in full force and effect the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105 *et seq.* ("the Colorado Act").²

62. Plaintiff and other Class members, whose money sent through Western Union's services went uncollected, are consumers within the meaning of the Colorado Act given that Western Union's business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

63. The Colorado Act renders unlawful the use or employment of any deception [including the] concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact ... in the conduct of any trade or commerce.

² Should Colorado law not apply to the Class, then this Count is also brought pursuant to substantially similar state consumer protection statutes identical in their material respects - see e.g., Ala. Code § 8-19-1 *et seq.* (Alabama); Cal. Bus. & Prof. Code § 17200 *et seq.*, and Cal. Bus. & Prof. Code § 17500 *et seq.* (California); Fla. Stat. Ann. § 501.201 *et seq.* (Florida); 815 ILCS 505/1 *et seq.* (Illinois); Mich. Stat. Ann § 445.901 *et seq.*, Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); N.J. Rev. Stat. § 56:8-1 *et seq.*, N.J. Rev. Stat. § 56:12-1 *et seq.* (New Jersey); N.Y. Gen. Bus. Law. § 349 *et seq.* (New York); Ohio Rev. Code Ann. § 1345.01 *et seq.* (Ohio).

64. Western Union intended that Plaintiff and the Class would rely on the deception by purchasing Western Union's services unaware of the material facts including but not limited to:

- a. that should the money go unredeemed, Western Union would not return the money in a timely fashion,
- b. that should the money go unredeemed, Western Union would not inform Plaintiff and the Class, and
- c. that Western Union would use the unredeemed money to generate income that Western Union would keep for its self.

This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

65. If Western Union had disclosed the above facts to Plaintiff and the Class, they could have (and would have) prevented economic injury by either negotiating a lower price to reflect risk or simply avoiding the risk altogether by going to another money transfer service.

66. Western Union's conduct alleged herein is furthermore unfair insofar as it offends public policy; is so oppressive that the consumer has little alternative but to submit; and causes consumers substantial injury.

67. The omission of a material fact, such as that alleged here, impacts the public as actual or potential consumers of Western Union's services. All other consumers of Western Union's services are affected the same as the Plaintiff if their money transfers go unredeemed.

68. As a direct and proximate result of the above-described breach, Plaintiff and the Class have been damaged.

COUNT III
(Unjust Enrichment)

69. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein, and in the alternative to Counts I and II.

70. In January 2010, approximately six years after accepting Plaintiff's second payment, Western Union notified Plaintiff via a form letter that his payments would be forfeited if he did not request a refund within a specified time period. Prior to receiving the two letters, Western Union never informed Plaintiff that the two payments were unredeemed, and that Western Union had been using them to generate income for itself.

71. Western Union has been unjustly enriched by enjoying the benefits of Plaintiff's and the Class's monies, including utilizing the funds to generate income for itself for nearly six years.

72. Under the circumstances, it is inequitable for Western Union to retain these benefits at the expense of Plaintiff and the Class.

73. Such conduct sounds in equity under the common law of unjust enrichment, or money had and received, and constructive trust.

74. Plaintiff and the Class have no adequate remedy at law.

75. As a direct and proximate result of the above-described breach, Plaintiff and the Class have been damaged.

COUNT IV
(Conversion)

76. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

77. Western Union accepted Plaintiff's money orders and the transfer fees for those services.

78. Plaintiff's money transfers were never completed.

79. Western Union could have notified Plaintiff that the transfers were not completed, or returned the unredeemed money to Plaintiff. Instead, only after a substantial amount of time had passed, Western Union notified Plaintiff that the funds were available to be returned to Plaintiff.

80. During the substantial time that Plaintiff was without his money, Western Union had in fact been using the money for its own benefit to generate income for itself.

81. Western Union's conduct improperly deprived Plaintiff of the rightful access to and use of Plaintiff's money, and constitutes an unlawful conversion of Plaintiff's monies.

82. As a direct and proximate result of the above-described breach, Plaintiff and the Class have been damaged.

COUNT V
(Declaratory Relief Pursuant To 28 U.S.C. § 2201)

83. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

84. There is an actual controversy between Western Union and the Class concerning whether Western Union should be able to hold on to unredeemed funds owned by the Class for a period longer than 60 days.

85. Pursuant to 28 U.S.C. § 2201 this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

86. Western Union has wrongfully held on to money rightfully owned by the Class, without notifying the class it was holding the money, or offering to return the money, for periods of up to and surpassing 5 years all the while using such funds for its own benefit.

87. Accordingly, Plaintiff seeks a declaration that Western Union should be prohibited from holding onto unredeemed funds owned by the Class for any amount of time longer than 60 days.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons defined herein, prays for an Order providing as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and his undersigned counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Western Union;
- D. Granting the relief sought herein and awarding Plaintiff and Class members their individual damages, attorneys' fees and costs, including interest thereon, as allowed by law; and
- E. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: April 2, 2010

Respectfully submitted,

By: s/ Seth A. Katz
One of His Attorneys

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