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9 registered limited liability partnership
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

shierkatz RLLP, a California registered limited
liability partnership,
Plaintiff,
vs.
SQUARE, INC., a Delaware corporation,
Defendant.

Case No. CGC-15-545398

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
CIVIL RIGHTS VIOLATIONS;
UCL INJUNCTION**

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
APR 20 2015
Clerk of the Court
BY: EDNALEEN JAVIER
Deputy Clerk

1 Comes now plaintiff shierkatz RLLP (Bankruptcy Law Firm) on behalf of itself
2 and all others similarly situated and alleges as follows:

3 **The Parties**

4 1. Bankruptcy Law Firm is a California registered limited liability
5 partnership which has its principle place of business in San Francisco, California.

6 2. Defendant Square, Inc. (Credit Card Company) is a Delaware corporation
7 registered with the California Secretary of State as a foreign corporation qualified to do
8 business in the State of California and which has its principle place of business in San
9 Francisco, California.

10 **Charging Allegations**

11 3. Credit Card Company is a business establishment (as that term is
12 otherwise defined in Civil Code section 51(b)), which business establishment is engaged
13 in providing accommodations, advantages, facilities, privileges and/or services to persons
14 within the jurisdiction of the State of California by way of its, *inter alia*, enabling the
15 acceptance of electronic payments by persons throughout the fifty United States and the
16 District of Columbia. See <https://squareup.com/> for a fuller description of the nature of
17 Credit Card Company's business establishment.

18 4. On July 14, 2013, at the solicitation of Credit Card Company, Bankruptcy
19 Law Firm, itself a person within the jurisdiction of the State of California, opened a
20 Credit Card Company account.

21 5. On April 16, 2015, Credit Card Company sent Bankruptcy Law Firm an
22 email which intentionally, finally and wrongfully terminated Bankruptcy Law Firm's
23 Credit Card Company account for the stated reason that "your business is prohibited by
24 Section 6[a] of [Square's] Seller Agreement, which means we cannot accept payments
25 related to your business."

26 6. As of April 16, 2015, the referenced Section 6[a] of Square's Seller
27 Agreement read, in pertinent part, as follows:
28

1 By creating a Square Account, you ... confirm that you will not
2 accept payments in connection with the following businesses or
3 business activities: (1) any illegal activity or goods, (2) buyers or
4 membership clubs, including dues associated with such clubs, (3)
5 credit counseling or credit repair agencies, (4) credit protection or
6 identity theft protection services, (5) direct marketing or
7 subscription offers or services, (6) infomercial sales, (7)
8 internet/mail order/telephone order pharmacies or pharmacy
9 referral services (where fulfillment of medication is performed
10 with an internet or telephone consultation, absent a physical visit
11 with a physician including re-importation of pharmaceuticals from
12 foreign countries), (8) unauthorized multi-level marketing
13 businesses, (9) inbound or outbound telemarketers, (10) prepaid
14 phone cards or phone services, (11) rebate based businesses, (12)
15 up-sell merchants, (13) bill payment services, (14) betting,
16 including lottery tickets, casino gaming chips, off-track betting,
17 and wagers at races, (15) manual or automated cash disbursements,
18 (16) prepaid cards, checks, or other financial merchandise or
19 services, (17) sales of money-orders or foreign currency, (18) wire
20 transfer money orders, (19) high-risk products and services,
21 including telemarketing sales, (20) automated fuel dispensers, (21)
22 adult entertainment oriented products or services (in any medium,
23 including internet, telephone, or printed material), (22) sales of (i)
24 firearms, firearm parts or hardware, and ammunition; or (ii)
25 weapons and other devices designed to cause physical injury (23)
26 internet/mail order/telephone order cigarette, tobacco or vaporizer
27 sales, (24) drug paraphernalia, (25) occult materials, (26) hate or
28 harmful products, (27) escort services, or (28) bankruptcy
attorneys or collection agencies engaged in the collection of debt.

19 7. With the sole exception of Section 6(a)(1) of Square's Seller Agreement
20 (prohibiting acceptance of payments in connection with business or business activities
21 involving illegal activity or illegal goods), each and every other category of
22 business/business activities whose business/business activities Credit Card Company
23 deems a "business [that] is prohibited" are either so vaguely described as to be
24 unintelligible or else constitute an entirely lawful business/business activity under any
25 and all applicable federal and state laws. This specifically includes but is not limited to
26 the business/business activity of Bankruptcy Law Firm, which former entity's
27 business/business activity (as is more fully described at <http://shierkatz.com>) requires
28 licensure by the State Bar, admission to the Federal Bars of the Ninth Circuit and the

1 Northern District of California and is otherwise specifically protected from
2 discrimination of the sort being practiced against Bankruptcy Law Firm by, *inter alia*, 11
3 U.S.C. § 525 as well as the Unruh Civil Rights Act (Civil Code §§51 and 52 [Unruh
4 Law]).

5 8. Neither Bankruptcy Law Firm nor the Class (as that latter term is defined,
6 *supra*) ever either actually or constructively agreed to any version of Square’s Seller
7 Agreement and none of these persons are in any way bound thereby. Thus:

8 ➤ On and before Bankruptcy Law Firm opened a Credit Card
9 Company account on July 14, 2013 (Period One), Credit Card Company had
10 always used a non-hybrid browserwrap approach in Credit Card Company’s
11 efforts to obtain consent to Square’s Seller Agreement. This means the only
12 access to Square’s Seller Agreement on the Credit Card Company’s website at
13 any time during Period One was through a hyperlink located at the bottom of the
14 website labelled “Legal.” Only by clicking on the word “Legal”—which was in
15 no way required in order to open a Credit Card Company account during Period
16 One—would Bankruptcy Law Firm have even been made aware of the existence
17 of Square’s Seller Agreement, let alone thereby been informed that such a person
18 was supposedly agreeing to the terms of Square’s Seller Agreement merely by
19 virtue of such a person’s having opened a Credit Card Company Account. A
20 screenshot of what was *inter alia*, contained at the webpage
21 <https://squareup.com/signup> (Non-Hybrid Credit Card Company Browserwrap
22 [Screenshot 1]) by which Credit Card Company attempted to entrap persons into
23 agreeing to Square’s Seller Agreement during Period One is reproduced below:

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2

3 **Sign Up**

4 Sign up and we'll mail you a free Square Reader.

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6 Email address Password Confirm password Sign Up

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➤ Beginning at some unknown point in time between July 15, 2013, and April 16, 2015 (Period Two), Credit Card Company began using a hybrid browserwrap approach in Credit Card Company's efforts to obtain consent to Square's Seller Agreement. This means the only access to Square's Seller Agreement on the Credit Card Company's website at any time during Period Two was through a hyper-link located at the bottom of the website labelled Seller's Agreement. Only by clicking on the word Seller's Agreement—which was inferentially required for those who did not yet have a Credit Card Company account in order to open a Credit Card Company account—during Period Two would anyone have even been made aware of the existence of Square's Seller Agreement, let alone thereby been informed that such a person was supposedly agreeing to the terms of Square's Seller Agreement merely by virtue of its having opened a Credit Card Company Account. A screenshot of what was otherwise contained at the webpage <https://squareup.com/signup> (Hybrid Credit Card Company Browserwrap [Screenshot 2]) by which Credit Card Company attempted to entrap persons into agreeing to Square's Seller Agreement during Period Two is reproduced below:

Let's get started.

Signing up for Square is fast and free — no commitments or long-term contracts.

✓ Just the basics

Tell us about your business so we can serve you better.

✓ No credit checks

We'll need the last four numbers of your SSN — simply to verify your identity.

✓ Free reader

When you're done, we'll drop your free Square Reader in the mail.

Enter your email

you@example.com

Confirm your email

you@example.com

Create a password

Password

Show

Country



United States



By continuing, I agree to Square's Seller Agreement and E-Sign Consent. Already have a Square account? Sign in.

CONTINUE

9. Credit Card Company is estopped from asserting that, by clicking either “Sign Up” on the face of Screenshot 1 or “Continue” on the face of Screenshot 2 either Bankruptcy Law Firm or the Class (as that latter term is defined, *supra*) was thereby manifesting any actual or constructive assent to Square’s Seller Agreement. Thus:

➤ There is absolutely nothing in Screenshot 1 which suggests anyone click on “Legal” *ab initio*, or which otherwise suggests that a person who clicks on “Sign Up” has thereby agreed to whatever separate content might have been accessed by first clicking on “Legal.”

➤ There is absolutely nothing in Screenshot 2 to suggest that whatever separate content may be viewed by clicking on “Seller’s Agreement” is

1 at variance with the earlier written representation made in Screenshot 2 that
2 **“Signing up for Square is fast and free—no commitments or long-term**
3 **contracts.”** (*Emphasis* added.) This **“no commitments or long-term contract”**
4 warranty, however, entirely misrepresents the meaning and intent of the sixty-four
5 paragraph long Square Seller’s Agreement referenced in Screenshot 2 and
6 accessed by clicking on “Seller Agreement.” That “Seller’s Agreement” is, quite
7 literally, a “commitment”—*i.e.*, “a promise to do something”—here, *inter alia*, to
8 (i) forever waive the right to jury trial, (ii) forever waive any other right of access
9 to the courts, (iii) forever waive any right to aggregate claims either in the courts
10 or in an arbitral setting and (iv) thus is—in very material part—a “long term
11 contract” as jury trial, arbitral and class action waivers all uniformly survive any
12 early termination of other aspects of any written contract in which any such anti-
13 consumer/small business waivers were included *ab initio*.

14 **Class Allegations**

15 10. Bankruptcy Law Firm brings this action on behalf of itself and all others
16 similarly situated.

17 11. The class represented by Bankruptcy Law Firm (Class) is comprised of all
18 persons throughout the United States and the District of Columbia (Class members) to
19 whom Credit Card Company has ever sent a written communication which intentionally,
20 finally and wrongfully terminated said Class member’s account for the stated reason that
21 “your business is prohibited by Section 6 of the Square Seller Agreement, which means
22 we cannot accept payments related to your business” or words to that effect when said
23 recipient had never been engaged in any business/business activity involving “any illegal
24 activity or goods” as prohibited by Section 6(a)(1) of Square’s Seller Agreement (Credit
25 Card Company Wrongful Termination Notices).

26 12. The Class period extends back to cover only those Credit Card Company
27 Wrongful Termination Notices sent by Credit Card Company to Class members within
28 three years last past prior to the filing of the initial complaint herein (Class Period).

1 13. On information and belief Bankruptcy Law Firm alleges that there are tens
2 of thousands of Class members. The identities of Class members can be readily
3 ascertained from the business records of the Credit Card Company.

4 14. On information and belief, Bankruptcy Law Firm estimates that Credit
5 Card Company has incurred not less than \$100,000,000 dollars in minimum statutory
6 liability to Class members during Class Period by sending out Credit Card Company
7 Wrongful Termination Notices in violation of both the Unruh Law and Business and
8 Professions Code sections 17200 *et. seq.* (UCL Law).

9 15. Questions of law and fact common to the Class predominate over
10 questions affecting only individual members, including, *inter alia*:

11 ➤ Whether Class members are entitled to not less than the minimum
12 statutory damages of \$4,000 each on account of their receipt of written Credit
13 Card Company Wrongful Termination Notices.

14 ➤ Whether Class members are entitled to avoid any and/or all of the
15 provisions of Square's Seller Agreement, including jury trial and class action
16 waivers based on design deficiencies in Screenshot 1 and/or Screenshot 2 (or
17 similar screenshots) and/or principles of estoppel.

18 ➤ Whether Class members are entitled to an injunction against Credit
19 Card Company.

20 16. The claims of Bankruptcy Law Firm are typical of the claims of the Class
21 Members as described above.

22 17. Treating this dispute as a class action is a superior method of adjudication
23 since the joinder of all possible absent Class members would be impractical.
24 Additionally, the amount of each restitutionary payment would be modest on an
25 individual basis, although significant in the aggregate. It would be impractical for most
26 of Class members to address the Credit Card Company's wrongdoings individually.
27 There should be no significant difficulties in managing this case as a class action.
28

1 18. Bankruptcy Law Firm can and will fairly and adequately represent and
2 protect the interests of Class members. Bankruptcy Law Firm has retained competent
3 and experienced outside counsel, who will vigorously represent the interests of the Class.

4 **First Cause of Action (Damages [Violation of Civil Rights under Unruh Law])**

5 19. Bankruptcy Law Firm realleges ¶¶ 1-18.

6 20. Credit Card Company's sending Bankruptcy Law Firm one of its Credit
7 Card Company Wrongful Termination Notices was a violation of Unruh Law entitling
8 Bankruptcy Law Firm to not less than \$4,000 in damages under Unruh Law and the Class
9 to its own damages under Unruh Law.

10 Wherefore, Bankruptcy Law Firm prays judgment as hereafter set forth.

11 **Second Cause of Action (Injunction [Violation of Fair Competition Rights under UCL Law])**

12 21. Bankruptcy Law Firm realleges ¶¶ 1-20.

13 22. Credit Card Company's conduct in sending out the written Credit Card
14 Company Wrongful Termination Notices in violation of Unruh Law constitutes unfair
15 competition under UCL Law in that such conduct disjunctively constitutes each of the
16 following: (i) unlawful business acts; (ii) unfair business acts; and (iii) fraudulent
17 business acts, such that Lender is liable to make restitution to Borrower and Class under
18 UCL Law.

19 23. Unless Credit Card Company is enjoined, it will continue to send out
20 Credit Card Company Wrongful Termination Notices in violation of Unruh Law.

21 24. Individual persons and entities, including but not limited to Class
22 members, will suffer irreparable injury unless an injunction is issued to prevent Credit
23 Card Company from sending out further Credit Card Company Wrongful Termination
24 Notices in violation of Unruh Law.

25 Wherefore Bankruptcy Law Firm and Class prays judgment as follows:

26 1. That Class described herein be certified; that Bankruptcy Law Firm be
27 designated lead plaintiff and that Bankruptcy Law Firm's counsel be appointed Class
28 counsel;

1 2. That the Bankruptcy Law Firm and Class be awarded money damages in
2 an amount to be proven at trial pursuant to the Unruh Law.

3 3. That the Court enjoin Credit Card Company under UCL Law from any
4 further violations of UCL Law by way of Credit Card Company's sending out future
5 Credit Card Company Wrongful Termination Notices in violation of Unruh Law.

6 4. For an award of attorney's fees and costs;

7 5. For such other and further relief as the Court may deem just and proper.

8 Dated: April 20, 2015

McGRANE LLP

9
10 By: 

William McGrane

11 Attorneys for Plaintiff shierkatz RLLP, a California
12 registered limited liability partnership.
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