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9 RON DAVIS

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 RON DAVIS, an individual, on behalf of all  
13 himself and all others similarly situated,

14 Plaintiff,

15 vs.

16 VISA, Inc., a Delaware corporation,

17 Defendant.

18 Case No. 3:13-cv-5125

19 **SECOND AMENDED CLASS ACTION**  
20 **COMPLAINT FOR:**

- 21 **1. BREACH OF CONTRACT;**
- 22 **2. BREACH OF COVENANT OF GOOD**
- 23 **FAITH AND FAIR DEALING;**
- 24 **3. VIOLATION OF THE UNFAIR**
- 25 **COMPETITION LAW (BUS. &**
- 26 **PROF. CODE §17200 *et. seq.*).**

27 **DEMAND FOR JURY TRIAL**

1 Plaintiff, Ron Davis, on behalf of himself and all others similarly situated, allege:

2 **I. INTRODUCTION**

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4 1. This lawsuit is about Defendant VISA, Inc. (“VISA”) implementing an internal,  
5 uniform policy which resulted in a breach of its promise to provide VISA brand credit  
6 cardholders with a benefit known as “Auto Rental Collision Damage Waiver—Personal”  
7 (“Auto Rental CDW”).

8 2. VISA markets and promises to its cardholders an Auto Rental CDW benefit.  
9 Essentially, VISA offers to reimburse cardholders for money owed for damage or theft related  
10 to a car rental if the cardholder (a) pays for the rental with a VISA card, and (b) declines the  
11 rental company’s collision damage waiver.

12  
13 3. VISA, however, has a secret, uniform policy of declining to extend the benefit to  
14 VISA cardholders who rent cars through a company known as Zipcar. VISA contends that  
15 Zipcar is not a car rental company, but rather a “car share” company, and thus not covered by  
16 the Auto Rental CDW. While VISA does disclaim certain types of rentals or transactions in its  
17 Auto Rental CDW agreement to consumer, VISA fails to make any disclaimer or exclusion for  
18 rentals made through Zipcar.

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20 4. Regardless of VISA’s internal policy, Zipcar *is* a car rental company, and thus  
21 rentals made through Zipcar are covered by the Auto Rental CDW benefit. Zipcar customers  
22 do not “share” ownership in the cars they rent, and indeed have no ownership rights in the  
23 vehicles whatsoever. For the purposes of the VISA Auto Rental CDW benefit, there is no  
24 meaningful distinction between a rental through Zipcar and rentals made through other  
25 companies which are covered by the benefit.



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**III. JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$5,000,000, and more than two-thirds of the members of the proposed class are citizens of a state different than Defendant.

10. Venue is proper on this District under 28 U.S.C. section 1391 (a) and (c). A substantial part of the events and conduct giving rise to the violations of law alleged herein occurred in this District; VISA is headquartered in this District; and VISA conducts substantial business with consumers in this District.

**IV. FACTUAL ALLEGATIONS**

**A. VISA’s Auto Rental Collision Damage Waiver Benefit**

11. VISA is a global payments technology company. While VISA does not issue credit cards itself, VISA contracts with entities that do. Such cards are branded with the VISA logo and utilize VISA’s payment technology.

12. VISA generates revenue in several manners, one of which is to charge merchants and/or credit providers fees for using VISA’s payment technology. As a result, the more consumers who use VISA branded credit cards, the more revenue VISA stands to earn.

13. Among the ways VISA attracts consumers to VISA branded credit cards over cards which use competing payment technologies is to offer VISA branded cardholders certain benefits.

14. Pertinent to this complaint is the “Auto Rental Collision Damage Waiver – Personal,” referred to in this complaint as “Auto Rental CDW”.



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2 **B. Zipcar Is A Vehicle Rental Service**

3 21. Zipcar is a vehicle rental service.

4 22. Customers of Zipcar do not hold or share title to any of the vehicles in Zipcar's  
5 fleet, nor do they have any rights to the cars beyond the ability to use them at the times and for  
6 the duration agreed to by Zipcar.

7 23. While Zipcar may market itself as a "car sharing" service, Zipcar customers neither  
8 have, nor share, any ownership rights in the vehicles of Zipcar's fleet.

9 24. For the purposes of VISA's Auto Rental CDW, there is no meaningful distinction  
10 between Zipcar and other rental services VISA considers covered by the benefit.

11 25. When Zipcar rents a vehicle to a customer, Zipcar provides *mandatory* insurance as  
12 part of its rental price which the customer has no option to decline. Upon information and  
13 belief, the Zipcar mandatory insurance is provided by a licensed and regulated insurance  
14 company and does not constitute a "collision damage waiver" as used by many rental car  
15 companies.  
16

17 26. A "collision damage waiver" is not the same as insurance in that it is not a product  
18 provided for by a licensed and regulated insurance company, but rather is an agreement by the  
19 rental car company to waive its rights to pursue the customer for damage to the rented vehicle.  
20

21 27. Zipcar's mandatory vehicle insurance includes a deductible the customer must  
22 satisfy before the insurance coverage will begin.

23 28. Accordingly, Zipcar also offers an *optional* insurance to customers to cover any  
24 amount a Zipcar customer must pay toward the deductible of the mandatory insurance.  
25



1           37. By initiating and completing the rental transaction with his Credit Card and  
2 declining the optional deductible insurance,<sup>1</sup> Plaintiff activated VISA's Auto Rental CDW  
3 benefit.

4           38. During the course of Plaintiff's use of his Zipcar rental, the car sustained damage  
5 valued at \$721.70.

6           39. The deductible for Zipcar's mandatory insurance was \$750, meaning that Plaintiff  
7 was responsible for and paid the entirety of the \$721.70 repair bill.

8           40. Plaintiff timely initiated his claim for the \$721.70 against the Auto Rental CDW  
9 benefit provided by his Credit Card.

10           41. Once a claim is initiated under the Auto Rental CDW Benefit, VISA requires  
11 claimants to submit additional paper work to determine whether a claim will be approved, and  
12 for how much. In Plaintiff's instance, such paper work was deemed unnecessary by VISA  
13 because it denied Plaintiff's claim prior to the submission of that paper work.

14           42. Specifically, on December 26, 2012, and on February 6, 2013, VISA sent Plaintiff  
15 letters stating that "it is our position that the ride share agreement into which you entered with  
16 Zipcar, is not eligible for the Collision Damage Waiver," and that "Zipcar is a car sharing  
17 service and not a rental agency for which this benefit is provided and intended."

18           43. VISA also took the additional position that Plaintiff's declination of Zipcar's  
19 optional deductible insurance did not satisfy the condition that the consumer "decline the  
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23 <sup>1</sup> In the event the optional deductible insurance offered by Zipcar is not considered "collision  
24 damage waiver" as described in the Auto Rental CDW Benefit Agreement, its declination is not an  
25 element required to trigger the Auto Rental CDW benefit.

1 collision damage waiver (CDW) coverage if offered by the rental company,” and thus asserted  
2 that the Auto Rental CDW benefit was not available to Plaintiff regardless of what  
3 documentation Plaintiff submitted.

4 44. Accordingly, Plaintiff satisfied all terms and conditions to activate the Auto Rental  
5 CDW benefit but, as a result of its uniform, internal policy to exclude Zipcar rentals from the  
6 benefit, VISA refused to initiate the claims process or review the claim.

7 45. As described above, Zipcar is a vehicle rental company.

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9 46. As also described above, Plaintiff was unable to decline Zipcar’s mandatory  
10 insurance policy, but did decline the optional deductible coverage. Plaintiff only sought  
11 reimbursement for that portion of costs which would have been covered by the declined,  
12 optional deductible coverage. In addition, upon information and belief, the mandatory  
13 insurance offered by Zipcar is an insurance policy provided by a licensed, regulated insurance  
14 entity, not a “collision damage waiver” as described in the Auto Rental CDW Benefit  
15 Agreement. (*see*, <http://www.zipcar.com/how/faqs/whats-deal-insurance>). Thus the  
16 acceptance or declination of that policy is of no moment under the Auto Rental CDW Benefit  
17 Agreement or to Plaintiff’s claim for the benefit.  
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19 **V. CLASS ACTION ALLEGATIONS**

20 47. Plaintiff brings this action under Rule 23 of the Federal Rules of Civil Procedure on  
21 behalf of himself and all persons or entities others who are similarly situated.

22 48. Plaintiff seeks to represent the following proposed Class under Rule 23(b)(2):  
23

24 **Nationwide Declaratory Relief Class (“Declaratory Relief Class”):** All  
25 persons and entities in the United States who maintain a VISA standard,  
26 VISA Rewards and VISA Premium Rewards branded credit card offering

1 automobile rental collision damage waiver (“Auto Rental CDW”) coverage,  
2 and who were denied a claimed benefit based on VISA’s determination that  
3 Auto Rental CDW does not cover claims for rentals made through Zipcar.

4 49. Plaintiff also seeks to represent the following proposed damages class under Rule  
5 23(b)(3):

6 **Nationwide Damages Class (“Damages Class”)**: All persons and entities  
7 in the United States who maintain a VISA standard, VISA Rewards and  
8 VISA Premium Rewards branded credit card offering automobile rental  
9 collision damage waiver (“Auto Rental CDW”) coverage, and who were  
10 denied a claimed benefit based on VISA’s determination that its Auto Rental  
11 CDW does not cover claims for rentals through Zipcar, and who paid out-of-  
12 pocket for otherwise covered damage.

13 50. Subject to additional information obtained through further investigation and  
14 discovery, the foregoing definitions of the Declaratory Relief Class and Damages Class may  
15 be expanded or narrowed by amendment or amended complaint. Specifically excluded from  
16 the each Class is Defendant, its officers, directors, agents, trustees, parents, children,  
17 corporations, trusts, representatives, employees, principals, servants, partners, joint venturers,  
18 or entities controlled by Defendant, and its heirs, successors, assigns, or other persons or  
19 entities related to or affiliated with Defendant and/or its officers and/or directors, or any of  
20 them; the Judge assigned to this action; and any member of the Judge’s immediate family.

21 51. Plaintiff’s action meets the prerequisites of Rule 23(a) because:

- 22 a. **Numerosity**: Each class as defined above consists of thousands of  
23 individuals and is so numerous that joinder of all members as individual  
24 plaintiffs is impracticable. Though the exact number and identity of class  
25

1 members is not presently known, they can be identified through Defendant's  
2 records.

- 3 b. **Commonality:** There are questions of law and fact common to the each  
4 class. Such common questions include, but are not limited to:
- 5 i. Whether the terms of the VISA Auto Rental CDW Benefit  
6 Agreement covers rentals made through Zipcar;
  - 7 ii. Whether VISA has a policy to deny claims made against its Auto  
8 Rental CDW coverage for rentals made through Zipcar;
  - 9 iii. Whether VISA breached its Auto Rental CDW Benefit Agreement  
10 by implementing a policy to deny coverage for claims relating to  
11 Zipcar rentals;
  - 12 iv. Whether VISA breached the duty of good faith and fair dealing  
13 implied in its Auto Rental CDW Benefit Agreement by  
14 implementing a policy to deny coverage for claims relating to Zipcar  
15 rentals; and
  - 16 v. Whether VISA's omission from its CDW Benefit Agreement of the  
17 policy to deny claims made against its Auto Rental CDW coverage  
18 for rentals made through Zipcar is an unfair or fraudulent practice  
19 under the Unfair Competition Law, Bus & Prof. Code § 17200, et  
20 seq.  
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24 52. **Typicality:** As someone who maintains a VISA branded credit card offering Auto  
25 Rental CDW, Plaintiff's claims are typical of each class.

1           53.     **Adequacy:** Plaintiff will fairly and adequately protect the interests of each class.  
2 Plaintiff has no interests that are antagonistic to or in conflict with the interests of the any of  
3 the classes as a whole, and Plaintiff engaged competent counsel experience in class actions and  
4 complex litigation.

5           54.     This action is properly maintainable as a class action for the following independent  
6 reasons and under the following portions of Rule 23:  
7

8           a.     The prosecution of separate actions by members of each class would create a  
9 risk of adjudications with respect to individual members of each class which  
10 would, as a practical matter, be dispositive of the interests of the other  
11 members not parties to the adjudications, or substantially impair or impede  
12 their ability to protect their interests. Fed. R. Civ. P. 23(b)(1)(B).  
13

14           b.     The Defendant acted or refused to act on grounds generally applicable to  
15 each class, thereby making appropriate final injunctive, declaratory, or other  
16 appropriate equitable relief with respect to the each class as a whole. Fed. R.  
17 Civ. P. 23(b)(2).  
18

19           c.     Questions of law and fact common to members of each class predominate  
20 over any questions affecting only individual members, and the class action is  
21 superior to other available methods for the fair and efficient adjudication of  
22 the controversy. Fed. R. Civ. P. 23(b)(3).  
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24           55.     Whatever difficulties may exist in the management of the class action will be  
25 greatly outweighed by the benefits of the class action procedure, including but not limited to  
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1 providing class members with a method for the redress of claims that may not otherwise  
2 warrant individual litigation.

3  
4 **FIRST CAUSE OF ACTION**

5 **(Breach of Contract)**

6 56. Plaintiff, on behalf of himself and the members of each class, re-alleges and  
7 incorporates by reference each and every allegation set forth in the preceding paragraphs as  
8 though alleged in full herein.

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10 57. This claim is brought on behalf of Plaintiff, the Declaratory Relief Class and the  
11 Damages Class.

12 58. VISA entered into the Agreement with Plaintiff, and the members of each class, to  
13 make available the Auto Rental CDW benefit.

14 59. Plaintiff and members of each class gave consideration that was fair and  
15 reasonable, and performed all conditions, covenants and promises required under the  
16 Agreement.

17  
18 60. In the Agreement, VISA promised that it would “provide[] reimbursement for  
19 damage due to collision of theft up to the value of most rental vehicles,” noting that the  
20 “benefit is supplemental to, and excess of, any valid and collectible insurance from any other  
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1 source,” and stating that VISA “will reimburse only for that damage or theft not payable by  
2 any other party.”<sup>2</sup>

3 61. The Agreement does not define the term “rental vehicle.”

4 62. The Agreement does include a section titled “What is *not* covered?” (emphasis in  
5 original); however, that section does not state rentals made through Zipcar, or other forms of  
6 hourly automobile rentals, are excluded.

7 63. The Agreement also includes a section titled “What types of rental vehicles are *not*  
8 covered?” (emphasis in original); however, that section does not state rentals made through  
9 Zipcar, or other forms of hourly rentals, are not covered.

10 64. As alleged herein, VISA breached and continues to breach its contractual promise  
11 by rejecting Auto Rental CDW benefit claims made by cardholders who rented vehicles  
12 through Zipcar based on a uniform, nationwide policy—not stated in the Agreement, and  
13 unsupported by fact—that Zipcar does not meet the definition of a “rental vehicle.”

14 65. By reason of VISA’s breaches, Plaintiff and members of each class were damaged  
15 in that they were denied or not afforded coverage under the promised Auto Rental CDW  
16 benefit.

17 66. VISA directly benefited from, and is unjustly enriched by, the contractual breaches  
18 alleged herein.

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22 <sup>2</sup>See e.g., Auto Rental CDW Benefit Agreement

23 [http://usa.visa.com/personal/cards/benefits/bft\\_dmg\\_waiver\\_personal.html](http://usa.visa.com/personal/cards/benefits/bft_dmg_waiver_personal.html).









**PRAYER FOR RELIEF**

WHEREFORE, on their own behalf and on behalf of the classes, Plaintiff demands judgment as follows:

- A. An Order certifying this action as a class action and appointing Plaintiff and his counsel to represent each class;
- B. An Order finding VISA has breached the Auto Rental CDW Benefit Agreement;
- C. An Order enjoining VISA from continuing and/or permitting such unfair, unlawful, and fraudulent business acts and practices;
- D. An Order providing restitution and disgorgement of profits related to the denial of Auto Rental CDW benefit for rentals made through Zipcar;
- E. An Order requiring VISA to consider Zipcar rentals as qualified rental vehicles under the Auto Rental CDW Benefit Agreement;
- F. An Order requiring VISA to compensate Plaintiff and the members of the Damage Class for actual damages suffered;
- G. Declaratory relief;
- H. Statutory prejudgment interest;
- I. Punitive damages as allowed;
- J. Plaintiffs' attorneys' fees and costs of suit;

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