

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 450-7062

PLAINTIFF(S) / PETITIONER(S): Robert Loiseau

DEFENDANT(S) / RESPONDENT(S): Visa USA Inc

LOISEAU VS. VISA USA INC

NOTICE OF CASE ASSIGNMENT

CASE NUMBER:

37-2009-00085443-CU-BT-CTL

Judge: Ronald L. Styn

Department: C-62

COMPLAINT/PETITION FILED: 03/17/2009

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

1 **Stephen B. Morris (SBN 126192)**
2 **MORRIS and ASSOCIATES**
3 **444 West C Street, Suite 300**
4 **San Diego, California 92101**

5 **Telephone: (619) 239-1300**

6 Attorneys for Plaintiff

FILED 10
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SAN DIEGO COUNTY, CA

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 _____)
11 ROBERT LOISEAU for himself and All)
12 Others Similarly Situated,)
13) Plaintiff,)
14 vs.)
15 VISA U.S.A. INC. and DOES 1 through 20,)
16 inclusive,)
17) Defendants.)
_____)

CASE NO. 37-2009-00085443-CU-BT-CTL
COMPLAINT
(1) **BREACH OF CONTRACT**
(2) **UNJUST ENRICHMENT**
(3) **VIOLATION B&P 17200**
CLASS ACTION

18 Plaintiff alleges as follows:

- 19 1. Plaintiff, ROBERT LOISEAU (herinafter "PLAINTIFF" or "LOISEAU"), is a
20 resident of San Diego County, California
- 21 2. Defendant VISA U.S.A. INC. (herinafter "DEFENDANT" or "VISA") is a
22 corporation organized under the laws of the state of Delaware and doing business throughout the
23 United States.
- 24 3. DOES 1 through 20, inclusive, are, and were at all relevant times hereto,
25 corporations and/or business entities qualified to do business throughout the United States. Each
26 DOE Defendant was the agent and/or employee of the other Defendants, and each of them, and
27 was at all times herein mentioned acting within the course and scope of such agency and
28

1 employment. Each was in some manner responsible for PLAINTIFF's damages.

2 4. Within the four (4) years prior to the time this action was commenced, and
3 continuing, DEFENDANT has had a policy of marketing for sale Visa Gift Cards in the State of
4 California and throughout the United States. These Gift Cards are marketed in various stores,
5 usually being located on racks with other Gift Cards, and sealed in a cardboard packet, which is
6 then hung on the racks. PLAINTIFF purchased a \$25.00 Gift Card in February 2009 for a total
7 price of \$28.95. VISA charges customers \$3.95 as a "Processing Fee" to "activate" the Gift Cards.
8 At the time of purchase, customers, like PLAINTIFF, cannot read the face of the purchased Gift
9 Card because it is sealed in the marketing packet. Nor can customers read the extremely small
10 print contained on an insert leaflet in the package. The exterior packaging and the representations
11 and disclosures contained thereon are identical for all Gift Cards sold.

12 5. Visa Gift Cards contain on their face expiration dates which are not disclosed on the
13 exterior packaging. On the outside of the Gift Card packaging, Visa does not reveal all of the
14 significant and material limitations on the use of its Gift Cards. These are described in full only
15 upon reading, if one can read, the extremely fine print of the insert leaflet. So, for example, while
16 Visa advertises on the exterior packaging that customers can "Use your Visa card anywhere Visa
17 debit cards are accepted," the interior fine print reveals that:

18 If you wish to use your Card for a purchase which is greater than the balance of the
19 funds available on your Card, you must tell the merchant to charge only the exact
20 amount of funds available on the Card to the Card and then you must arrange to pay
21 the difference using another payment method. The merchant may require payment
22 for the difference in cash rather than accepting another card, such as a credit or debit
23 card. Some merchants may not accept these "split transactions."

24 Once a Gift Card is activated, customers cannot return it. Consequently, once customers learn
25 about the material and significant limitations of the Gift Cards after purchasing them, it is too late
26 to return a Gift Card.

27 6. PLAINTIFF is informed and believes and based thereon alleges that Visa designed
28 its Gift Card program such that there is a high probability that Gift Card users will end up with

1 unused "available funds." These funds revert back to Visa unless the Gift Card holder pays Visa
2 \$15.00. Once Visa Gift Cards expire, and if there are funds remaining on the card, Gift Card
3 holders may request a check refund of the balance, but only by paying a \$15.00 "Expired Card
4 Fee." Monthly "maintenance fees" in the amount of \$2.00 are also debited from the Gift Cards
5 beginning in the 13th month after the date of purchase.

6 7. If cards are lost or stolen, customers must pay \$5.95 to receive a replacement card.
7

8 **FIRST CAUSE OF ACTION**

9 **(Breach of Contract)**

10 8. Plaintiff incorporates the allegations of the preceding paragraphs as though set forth
11 here in full.

12 9. At the point of sale when a customer purchases a VISA Gift Card a contract is
13 formed between VISA and/or its agents DOES 1-20 and that customer based upon the
14 representations reasonably able to be read set forth on the exterior packaging of the Gift Card and
15 the monies tendered by the customer. The terms of the contracts entered into between VISA and
16 each customer are identical.

17 10. The fact that Visa Gift Cards have an expiration date is buried in extremely small
18 print on the reverse of the packaging materials. Furthermore, the actual expiration date cannot be
19 determined until the packaging is opened. Customers like PLAINTIFF thus typically only come to
20 appreciate that their purchased Gift Cards have expiration dates when the Cards are removed from
21 their packaging.

22 11. Furthermore, although some of the applicable fees are set forth on the exterior of the
23 Gift Card packaging, others, like the "Check Refund Fee" which is \$15.00, are not disclosed on
24 the exterior packaging.

25 12. PLAINTIFF is informed and believes and on that basis alleges that the existence of an
26 expiration date on the Gift Cards is a material element of the Gift Cards and that the average
27 reasonable consumer does not become aware of this material element until after the Gift Card is
28 taken out of its packaging.

1 13. Likewise, if a Gift Card is stolen or lost and a check refund is requested, the amount
 2 charged by VISA is \$15.00, which, in the case of a \$25.00 Gift Card, for example, represents an
 3 unconscionable charge and, again, one not disclosed on the exterior packaging of the Gift Cards
 4 and not bargained for or agreed to by customers. Too, VISA charges a Replacement Fee for lost
 5 or stolen cards in the amount of \$5.95, which, PLAINTIFF alleges, is an unconscionable charge
 6 and unlawful in California and other states.

7 14. PLAINTIFF is informed and believes and based thereon alleges that the inclusion of
 8 an undisclosed, or inadequately disclosed, expiration date and the inclusion of a \$15.00 “Check
 9 Refund Fee” and/or a “Replacement Fee” are each unconscionable terms and material breaches of
 10 the contract formed at the point of sale in that they are each material terms which dramatically
 11 affect the true value of a purchased Gift Card. The exterior Gift Card packaging does not alert
 12 customers to the fact that there are substantial and material additional Card limitations set forth
 13 inside the packaging. Rather, the exterior packaging says only, “See back for usage restrictions.”
 14 The packaging does not say that additional restrictions not set forth on the back of the packaging
 15 but contained inside the packaging apply as well.

16 15. DEFENDANT has breached the terms of its contract with PLAINTIFF and with each
 17 member of the putative class by failing to deliver to them the value represented and bargained for
 18 on customer Gift Cards, causing PLAINTIFF and the putative class members damages to be
 19 proven at the time of trial.

20
 21 **SECOND CAUSE OF ACTION**

22 **(Unjust Enrichment)**

23 16. Plaintiff incorporates the allegations of the preceding paragraphs as though set forth
 24 here in full.

25 17. VISA designed its Gift Card program to substantially assure itself that Gift Card
 26 users would end up with unused “available funds” on their Gift Cards. These funds revert to
 27 VISA unless unconscionable and undisclosed (at the time of purchase) fees are paid by the Gift
 28 Card purchaser. VISA intentionally and substantially impaired its customers’ ability to “split

1 charges,” i.e. use the balance of the card when purchasing an item of greater value than the card
2 balance. This process, which is not disclosed on the exterior packaging, requires customers to
3 track with precision their Card balances. PLAINTIFF is informed and believes and based thereon
4 alleges that Gift Cards purchased for cash or its equivalent, like the Visa Gift Cards, should be
5 redeemable for cash at no discount, should be replaced at no additional charge upon request and
6 that they should not expire.

7 18. By utilizing expiration dates in its Gift Card program, and by charging replacement
8 charges, Check Refund fees, and maintenance fees under these conditions, VISA retains monies to
9 which it should not be entitled and is unjustly enriched.

10
11 **THIRD CAUSE OF ACTION**

12 **(Violation of Bus. And Professions Code section 17200)**

13 19. Plaintiff incorporates the allegations of the preceding paragraphs as though set forth
14 here in full.

15 20. Civil Code section 1749.45 provides:

16 (A) As used in this title, “Gift Certificate” includes Gift Cards

17 21. Additionally, section 1749.5 provides:

18 (a) It is unlawful for any person or entity to sell a gift certificate to a purchaser
19 that contains any of the following:

20 (1) An expiration date.

21 (b) (1) Any Gift Certificate sold after January 1, 1997, is redeemable in cash
22 for its cash value, or subject to replacement with a new gift
23 certificate at no cost to the purchaser or holder.

24 22. While Civil Code section 1749.45 excludes from its definition of “Gift Certificates”
25 those Gift Cards sold in California usable with multiple sellers, it does so only so long as the Gift
26 Cards adequately disclose any applicable expiration date. While Visa Gift Cards do contain an
27 expiration date printed on the cards themselves, the existence of the expiration date is not
28 adequately disclosed to purchasers until after the card has been purchased, because it is hidden in

1 the packaging, thereby placing Visa Gift Cards within the statutory definition of "Gift Cards," and
2 subject to all the applicable statutory requirements of section 1749.5.

3 23. PLAINTIFF, in this instance, lost his purchased \$25.00 Gift Card, and requested a
4 replacement from VISA. VISA delivered to PLAINTIFF a replacement Card at a cost to
5 PLAINTIFF of \$5.95 in violation of Civil Code section 1749.5, and leaving PLAINTIFF with a
6 card balance of only \$19.05.

7 24. PLAINTIFF alleges that the "lost/stolen" replacement charge of \$5.95 is unfair,
8 misleading and/or unlawful and that all of the ill gotten gains realized by VISA and DOES 1-20
9 be disgorged.

10 25. PLAINTIFF desired to return his Gift Card and to receive his purchase money back
11 but upon investigating VISA's policies learned that Visa Gift Cards are not refundable, in
12 violation of Civil Code section 1749.5.

13 26. PLAINTIFF is informed and believes that the inability to "split charges" effectively,
14 the requirement that Card holders track their own balances instead of being able to do so at a point
15 of sale, the inclusion of charges and fees not adequately disclosed on the exterior packaging, and
16 the charging of fees in violation of Civil Code section 1749.5, taken together or separately,
17 constitute unfair business practices under Business and Professions Code section 17200 et seq
18 entitling PLAINTIFF and the putative class to restitution or disgorgement of profits according to
19 proof.

20 **WHEREFORE**, PLAINTIFF prays as follows:

21
22 **As to the First Cause of Action:**

- 23 1. For compensatory damages according to proof;
24 2. For attorneys's fees and costs of suit;
25 3. For such other relief as the Court deems proper.

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27 **As to the Second Cause of Action:**

- 28 1. For restitution;

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- 2. For attorneys's fees and costs of suit;
- 3. For such other relief as the Court deems proper.

As to the Third Cause of Action:

- 1. For disgorgement of profits;
- 2. For injunctive relief;
- 3. For attorney's fees and costs;
- 4. For such other relief as the court deems proper.

Date: March 16, 2009

MORRIS AND ASSOCIATES

By: Stephen B. Morris
Stephen B. Morris

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

VISA U.S.A. INC. and DOES 1 through 20,
inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTA DEMANDANDO EL DEMANDANTE):**

Robert Loiseau for himself and All Others
Similarly Situated,

FILED
MAR 17 2009
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
Hall of Justice
330 W. Broadway

San Diego, CA 92101

CASE NUMBER:
(Número) 0000-00085443-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

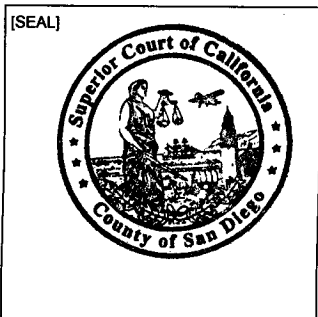
Stephen B. Morris
444 West C Street, Ste 300
(619) 239-1300

MORRIS AND ASSOCIATES
San Diego, CA 92101

DATE:
(Fecha) MAR 17 2009

Clerk, by
(Secretario) A. Racelis, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, S. number, and address):
Stephen B. Morris 126192
MORRIS AND ASSOCIATES
444 West C Street, Ste 300
San Diego, CA 92101
TELEPHONE NO.: (619) 239-1300 FAX NO.: (619) 234-3672
ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Hall of Justice

RECEIVED
MARCH 17 2009
SAN DIEGO COUNTY, CA

CASE NAME: Loiseau v. Visa

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
37-2009-00085443-CU-BT-CTL
JUDGE:
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
- Uninsured motorist (46)

Other P/PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other P/PI/PD/WD (23)

Non-P/PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-P/PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Rule 3.740 collections (09)
- Other collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/Inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 3

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 17, 2009

Stephen B. Morris (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.