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Superior Court of California,
County of San Diego

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION**

DAMIEN RHANEY, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiffs,

vs.

DEL TACO LLC, a California limited liability
company; and DOES 1 through 500, inclusive,

Defendants.

Case No.: 37-2015-00019772-CU-BT-CTL

CLASS ACTION COMPLAINT FOR:

- (1) DECLARATORY AND ANCILLARY
INJUNCTIVE RELIEF (C.C.P. §
1060);
- (2) VIOLATION OF THE CONSUMERS
LEGAL REMEDIES ACT (CIV.
CODE §§ 1770(a)(5), (a)(14));
- (3) UNLAWFUL BUSINESS PRACTICES
(B&P CODE § 17200 et seq.); and
- (4) MONEY HAD AND RECEIVED

1 Plaintiff DAMIEN RHANEY (“RHANEY”) on behalf of himself, a class of all others
2 similarly situated, and the general public, complains and alleges as follows on information and
3 belief, except as to matters pertaining directly to Plaintiff:

4 **A. INTRODUCTION**

5 1. In recent years, gift cards have become increasingly popular, with billions sold
6 annually. However, consumers often do not or are not able to redeem the full value of their gift
7 cards. Accordingly, amounts representing the unredeemed portion of gift cards are customarily
8 swept into retailers’ coffers as revenue, with nothing provided in return.

9 2. To alleviate this inequity, in 2007, the California Legislature passed Senate Bill
10 250. Supporters of SB 250 noted that often a consumer finds him or herself with a gift card with
11 a small amount of money remaining on the card, the retailer refuses to redeem the remaining
12 value of the card for cash, and the consumer often forfeits the remaining value of the card, unless
13 he or she makes an unnecessary purchase which would likely involve additional out-of- pocket
14 costs.

15 3. In light of these concerns, Senate Bill 250 was enrolled as California Civil Code
16 Section 1749.5(b)(2) (“Section 1749.5(b)(2)”), which states in pertinent part, “**...any gift**
17 **certificate with a cash value less than ten dollars (\$10) is redeemable in cash for its cash**
18 **value.”** Section 1749.5(b)(2) took full effect January 1, 2008.

19 4. Despite Section 1749.5(b)(2)’s mandate and clarity of purpose, industry
20 compliance – by accident or by design – has been fleeting, at best. In 2009, three California
21 county District Attorneys conducted an investigation of a sample of coffee retail giant Starbucks,
22 Inc.’s California retail locations, and found more than 60 percent out of compliance with Section
23 1749.5(b)(2). The ensuing lawsuit resulted in a resolution, with Starbucks agreeing to implement
24 additional safeguards to ensure its future compliance, and to pay \$225,000 in civil penalties. In
25 2012, two California county District Attorneys conducted an investigation into similar practices
26 by theater giant Cinemark, Inc., resulting in substantial civil penalties.

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1 5. This putative class action arises from Defendant's failure to comply with Section
2 1749.5(b)(2). Plaintiff alleges that as a result of Defendant's failures to provide cash to gift
3 cardholders wishing to redeem a gift card with a cash value less than \$10, class and public-wide
4 declaratory and permanent injunctive relief is proper.

5 **B. JURISDICTION AND VENUE**

6 6. This court has jurisdiction over this action pursuant to Cal. Const. Art. 6, Sec. 10.
7 This suit seeks, *inter alia*, permanent injunctive relief. Plaintiff has not individually suffered
8 damages of more than seventy-five thousand dollars (\$75,000) as a result of the conduct
9 complained of herein.

10 7. Venue is proper in this court pursuant to California Code of Civil Procedure
11 Sections 395 and 395.5, and California Civil Code Section 1780(d).

12 **C. PARTIES**

13 8. Plaintiff RHANEY is an individual consumer residing in the State of California.

14 9. Defendant DEL TACO LLC ("DEL TACO") is a California limited liability
15 company, with its principal place of business located at 25521 Commercentre Drive, Suite 200,
16 Lake Forest, California 92630. This Defendant transacts business in the State of California,
17 including within San Diego County.

18 10. The true names and capacities, whether individual, corporate, associate or
19 otherwise, of Defendants DOES 1 through 500, are unknown to Plaintiff, who therefore sues
20 these Defendants by such fictitious names. Plaintiff is informed and believes, and thereon
21 alleges that each of the Defendants designated as a DOE is a resident of, or business entity doing
22 business in, the State of California and is responsible in some manner for the events and
23 happenings referred to herein.

24 **D. SUBSTANTIVE ALLEGATIONS**

25 11. Defendant operates more than 500 company-owned and franchised fast food
26 restaurants throughout the United States, with the largest number of restaurants in the State of
27 California. According to industry estimates, Defendant's company-owned and franchised
28 restaurants have gross revenues of over 600 million dollars.

1 12. Like many retailers, Defendant DEL TACO offers gift cards for sale, redeemable
2 for merchandise at its retail locations. On information and belief, Defendant sells thousands of
3 gift cards to California consumers annually.

4 13. Plaintiff received a gift card purchased in the State of California, redeemable at
5 Defendant's retail locations.

6 14. The rear portion of Defendant's gift cards contain the following term: "This card
7 cannot be redeemed for cash and no change will be given unless required by law."

8 15. Effective January 1, 2008, California Civil Code Section 1749.5(b)(2) requires
9 that any gift card "with a cash value of less than ten dollars (\$10) is redeemable in cash for its
10 cash value."

11 16. In or about May 2015, Plaintiff utilized his gift card to effect a transaction at a
12 DEL TACO company-owned restaurant in the State of California. Following the transaction, the
13 gift card retained a balance of less than ten dollars.

14 17. Following the foregoing transaction, Plaintiff requested of the cashier that the
15 remaining balance on the gift card be redeemed for cash. The cashier refused.

16 18. In June 2015, Plaintiff's private investigator visited a second DEL TACO
17 company-owned retail location in the State of California. At this location, she effected a retail
18 transaction utilizing a DEL TACO gift card, bringing the balance of the card to less than ten
19 dollars. She then asked the cashier if she could receive the balance in cash. She was told she
20 could not.

21 19. In June 2015, Plaintiff's private investigator visited a third DEL TACO company-
22 owned retail location in the State of California. At this location, she effected a retail transaction
23 utilizing a DEL TACO gift card, bringing the balance of the card to less than ten dollars. She
24 then asked the cashier if she could receive the balance in cash. She was told she could not.

25 20. In June 2015, Plaintiff's private investigator visited a fourth DEL TACO
26 company-owned retail location in the State of California. At this location, she effected a retail
27 transaction utilizing a DEL TACO gift card, bringing the balance of the card to less than ten
28 dollars. She then asked the cashier if he could receive the balance in cash. She was told she

1 could not.

2 21. In June 2015, Plaintiff's private investigator visited a fifth DEL TACO company-
3 owned retail location in the State of California. At this location, she effected a retail transaction
4 utilizing a DEL TACO gift card, bringing the balance of the card to less than ten dollars. She
5 then asked the cashier if she could receive the balance in cash. She was told she could not.

6 22. In June 2015, Plaintiff's private investigator visited a sixth DEL TACO company-
7 owned retail location in the State of California. At this location, she effected a retail transaction
8 utilizing a DEL TACO gift card, bringing the balance of the card to less than ten dollars. She
9 then asked the cashier if she could receive the balance in cash. She was told she could not.

10 **E. CLASS ALLEGATIONS**

11 23. Plaintiff brings his first, third and fourth causes of action pursuant to California
12 Code of Civil Procedure Section 382, on behalf of himself and the most recent holders of any gift
13 card issued by Defendant and purchased pursuant to a transaction occurring in the State of
14 California during the prior four years. Excluded from the class is any Defendant, its agents, any
15 entity in which any Defendant has or had a controlling interest, its franchisees, and its
16 predecessors in interest or assigns.

17 24. The precise number of persons comprising the class is as yet unknown to Plaintiff.
18 However, based on the magnitude of Defendant's presence in California, Plaintiff is informed
19 and believes and thereon alleges the number of class members to be in the thousands. It is
20 therefore impracticable to bring all members of the class before the court.

21 25. The questions of law or fact common to the class are substantially similar and
22 predominate over the questions affecting the individual members.

23 26. Plaintiff's claims are typical of the claims of the class.

24 27. Plaintiff will fairly and adequately protect the interests of the class in that he has
25 no interests antagonistic to those of the class. Plaintiff has retained counsel experienced in
26 consumer class litigation.

27 28. A class action is superior to other methods for the fair and efficient adjudication
28 of this controversy since the class is so numerous that joinder of all members in a single action

1 would be impracticable and the repetitive testimony of each class member at trial would be
2 unnecessary and an inefficient use of judicial resources. Plaintiff is aware of no difficulty that
3 will be encountered in the administration of this action as a class action.

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief – Cal. Code Civ. P. Sec. 1060)**

6 29. Plaintiff hereby restates and realleges paragraphs 1 through 28 as though fully set
7 forth herein.

8 30. Defendant’s representations upon its gift cards that “it may not be redeemed for
9 cash (except as required by law)...” is a term of contract involving substantive contractual rights.
10 Accordingly, this dispute involves substantive contractual rights, not the enforceability of
11 remedies should a future dispute arise about substantive rights.

12 31. An actual controversy has arisen regarding the propriety of Defendant’s refusals
13 to redeem gift cards for cash when the balance of same is less than ten dollars, and the class
14 members’ rights in connection with those gift cards. An adjudication of the rights and
15 obligations of the parties is necessary to resolve this dispute.

16 32. Plaintiff and the class are entitled, ancillary to their claim for declaratory relief, to
17 an order enjoining Defendant and its related entities from refusing to redeem any gift card with a
18 balance of less than ten dollars for cash.

19 33. Resolution of this claim for declaratory and injunctive relief would have practical
20 consequences for the putative class, the public and Defendant. More particularly, Defendant
21 would be required to modify their behavior to conform to the law on a class and public-wide
22 basis, *to wit*: (a) Defendant would be compelled to comply with the provisions of California
23 Civil Code Section 1749.5(b)(2); and (b) Defendant would be compelled to cease representing to
24 consumers that its gift cards cannot be redeemed for cash.

25 **SECOND CAUSE OF ACTION**

26 **(Violation of Consumers Legal Remedies Act –**
27 **California Civil Code Sections 1770(a)(5), (a)(14))**

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1 34. Plaintiff hereby restates and realleges paragraphs 1 through 33 as though fully set
2 forth herein.

3 35. Defendant's sale and redemption of the subject gift cards constitute
4 "transaction(s) intended to result . . . in the sale of . . . goods" to consumers within the meaning
5 of California Civil Code Section 1770(a).

6 36. Defendant's failures to redeem gift cards with a balance of less than ten dollars
7 for cash violates the Consumers Legal Remedies Act, Civil Code Section 1770(a)(14), for the
8 reason that these failures represent that the "transaction confers or involves rights . . . or
9 obligations which are prohibited by law."

10 37. Defendant's failures to refuse to redeem gift cards with a balance of less than ten
11 dollars for cash violates the Consumers Legal Remedies Act, Civil Code Section 1770(a)(5), for
12 the reason that the Defendant wrongfully represent that "goods . . . have . . . characteristics . . .
13 which they do not have."

14 38. On information and belief, Defendant continues to engage in the above-described
15 unlawful practices, and, unless enjoined by this Court, will continue to do so, to the detriment of
16 Plaintiff and the class.

17 39. Plaintiff has relied to his detriment on the representations of Defendant, *to wit*:
18 (1) that his gift card was not redeemable for cash, a characteristic it did not have; and (2) his gift
19 card would not be redeemed for cash, a right Defendant purported to have which is prohibited by
20 law – Cal. Civ. Code Sec. 1749.5(b)(2).

21 40. Plaintiff has suffered damages within the meaning of California Civil Code
22 Section 1780(a), because he has been denied a cash redemption when he was legally entitled to
23 receive one.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of Bus. & Prof. Code Sec. 17200, et seq.)**

26 41. Plaintiff hereby restates and realleges paragraphs 1 through 40 as though fully set
27 forth herein.

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1 **ON THE THIRD CAUSE OF ACTION:**

2 1. That the Court certify this cause of action as a class action pursuant to California
3 Code of Civil Procedure Section 382;

4 2. That Defendant be enjoined and restrained from refusing cash redemptions on gift
5 cards with a balance of less than ten dollars; and

6 3. For appropriate restitution;

7 4. For restitutionary disgorgement.

8 **ON THE FOURTH CAUSE OF ACTION:**

9 1. That the Court certify this cause of action as a class action pursuant to California
10 Code of Civil Procedure Section 382;

11 2. That the Court order Defendant to return to Plaintiff and the class all sums owing.

12 **ON ALL CAUSES OF ACTION:**

13 1. For costs of suit;

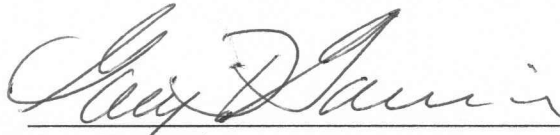
14 2. For prejudgment interest;

15 3. For attorneys' fees pursuant to applicable statute, rule, theory or doctrine,
16 including, without limitation, California Code of Civil Procedure Section 1021.5 and/or
17 California Civil Code Section 1780(e); and

18 4. For such other and further relief as the Court deems just and proper.

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22 Dated: June 12, 2015

LAW OFFICE OF GARY D. GARCIA
PACIFIC JUSTICE CENTER

23
24 By: 

25 Gary D. Garcia
26 Attorneys for Plaintiff
27 DAMIEN RHANEY
28

AFFIDAVIT -- CIVIL CODE SECTION 1780(d)

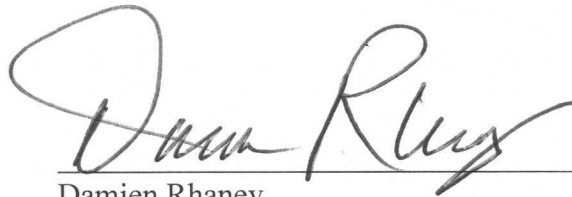
Damien Rhaney declares:

1. I am the plaintiff in this matter. If called upon as a witness, I would and could competently testify to the matters stated herein.

2. There are a number of DEL TACO retail stores in the City of San Diego, County of San Diego, California, and, accordingly, Defendants are doing business there.

3. Accordingly, San Diego County is an appropriate venue for this action.

Executed under penalty of perjury under the laws of the State of California this 9 day of June, 2015.



Damien Rhaney