

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI

**AISHA DECLUE, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**v.**

**HIGHER ONE, INC.,**

Serve: Corporation Service Company  
2711 Centerville Road, Ste 400  
Wilmington, DE 19808

**THE BANCORP BANK,**

Serve: Registered Agent  
1201 N. Market Street  
Wilmington, DE 19801

**TAYLOR CAPITAL GROUP, INC.,**

Serve: Illinois Corporation Service  
801 Adlai Stevenson Drive  
Springfield, IL 62703

**and**

**WRIGHT EXPRESS FINANCIAL  
CORPORATION,**

Serve: Corporation Service Company  
2180 South 1300 East Ste 650  
Salt Lake City, UT 84106

**Defendants.**

Case No.

Div.

**14**  
CLASS ACTION PETITION

**JURY TRIAL DEMANDED**

12SL-CC04229

2012 NOV -5 PM 5:20

JOAN M. GILMER  
CIRCUIT CLERK

RECEIVED  
CIRCUIT COURT  
OF  
ST. LOUIS  
COUNTY

**CLASS ACTION PETITION**

Plaintiff Aisha DeClue, by and through undersigned counsel, on behalf of herself and all others similarly situated, alleges as following:

**PARTIES**

1. Plaintiff Aisha DeClue ("Plaintiff") is a resident of St. Louis County. At all times relevant hereto, Plaintiff is and has been a student at St. Louis Community College ("SLCC")

and received financial aid in order to further her education. Plaintiff was charged unfair, unethical, and deceptive PIN-based transaction fees and ATM fees by Defendants in connection with accessing her financial aid money.

2. Defendant Higher One, Inc. (“Higher One”) is the nation’s largest financial firm providing financial aid refund management services to colleges, including STLCC. Higher One is a Delaware corporation, with its principal place of business in New Haven, Connecticut.

3. Defendant The Bancorp Bank (“Bancorp”) held FDIC-insured bank accounts of Plaintiff and the Class Members through Higher One until April 2012. Bancorp is a Delaware corporation, with its principal place of business in Wilmington, Delaware.

4. Defendant Taylor Capital Group, Inc. (“Taylor Capital”) is a bank-holding Delaware corporation, with its principal place of business in Rosemont, Illinois. Defendant Taylor Capital derives all or nearly all of its revenue from its subsidiary, Cole Taylor Bank (“Cole Taylor”). Cole Taylor has held FDIC-insured bank accounts of Plaintiff and the Class Members through Higher One beginning in April 2012. Cole Taylor is not a separately incorporated entity and, upon information and belief, is wholly owned and operated by Taylor Capital.

5. Defendant Wright Express Financial Services Corporation (“Wright Express”) issued STLCC students an “STLCC OneCard Debit Mastercard” that also served as the students’ ID cards. Wright Express is an Industrial Bank chartered under the laws of the State of Utah.

#### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action because the actions complained of regarding Plaintiff took place in St. Louis County. Mo. Rev. Stat. § 407.025.1.

7. This Court has personal jurisdiction over Defendants because they regularly conduct business in St. Louis County.

8. Venue properly lies in the Circuit Court of St. Louis County, pursuant to Mo. Rev. Stat. § 407.025.1, because the cause of action arose in St. Louis County.

**JURY TRIAL DEMAND**

9. Plaintiff hereby requests a trial by jury on all counts so triable.

**GENERAL ALLEGATIONS**

10. Plaintiff brings this lawsuit on behalf of herself and a class of similarly situated students at St. Louis Community College (“STLCC”), seeking damages and injunctive relief from Defendants. The lawsuit arises from Defendants’ deceptive, unfair, and unethical practices of creating bank accounts for college students without their authorization; depositing students’ scholarship, federal financial aid, and/or loan money (“financial aid”) into those accounts, again without their authorization; deceiving students into activating the accounts; and charging unfair, deceptive, and excessive fees to obtain or use those funds.

11. A financial aid “refund” is the money available to a student from financial aid after tuition and fees have been deducted. Defendants created FDIC-insured bank accounts for Plaintiff and other students at STLCC who receive financial aid. Defendants deposited the students’ refunds into those accounts without the students’ prior authorization.

12. While Higher One referred to these accounts as “Higher One accounts” in emails and other publications, they were actually FDIC-insured checking accounts held, until April 2012, at Bancorp and thereafter at Cole Taylor.

13. Defendants did not inform Plaintiff or other STLCC students about the terms and conditions governing those accounts, including the fees associated with the accounts, before opening them.

14. Higher One sent each student a card, called a "Higher One OneCard Debit MasterCard," which served as the student's official student identification card as well as allowed access to their financial aid refund. Higher One told students that the card was "the key to selecting [their] refund preferences." Wright Express issued the cards.

15. In emails and mailings sent to STLCC students as well as on its web site, Higher One told STLCC students that the only way they could access their refunds instantly was by using their Higher One accounts; if they opted to have their refunds deposited in other accounts, the students would experience a delay in accessing their funds. In reality, however, it was only the actions of Higher One in transferring the funds to another account chosen by the student that caused a refund to be delayed.

16. Because financial aid recipients are dependent on their financial aid money, Higher One coerced students to use Higher One accounts to have immediate access to their funds.

17. To activate or opt out of their accounts, students were required to use a Higher One website, which not only advertised the alleged benefits of a Higher One account but contained the STLCC logo at the top of the page and bore the web address [STLCCOnecard.com](http://STLCCOnecard.com), making it appear to be an official STLCC website when, in fact, it was not. On this website, Higher One represented its account as free and that it would be easy to access their money from Higher One, including making debit purchases and withdrawing cash. It did not tell students that there would be fees incurred for doing so.

18. When students activated and used their Higher One accounts, Higher One proceeded to assess and collect deceptive, unethical, excessive and, in many cases, unavoidable fees on these accounts.

19. Even after students activated the Higher One accounts, Higher One made it difficult for them to learn about the fees. Information about the fees was not conspicuous to the reader, as required by Department of Education policies. Higher One failed to inform students of the average amount of fees incurred by students at STLCC in violation of United States Department of Education policies.

20. The terms of Higher One's accounts were contained in standardized account holder agreements and were made available to students only in "click-through" form on Higher One's website. The Account Agreement was never provided to students in written form, and, upon information and belief, was only provided after a student had been forced to choose the option of using the Higher One account.

21. The Account Agreement was not easy to find. On the student's Account Page, there was no link labeled "Account Agreement" or "Agreement." The agreement was found by scrolling to the bottom of a long page and clicking on one of seven links in small type.

22. Higher One did not make the fee information easily accessible. The fee schedule was a separate document and required a student to click a separate and buried link in a mass of small print. After clicking that link, the student would have to read through a page listing all of the free services offered by Higher One. Only after scrolling past this could one find a table of fee-based services. That table had fourteen rows and four columns. Each row listed a separate fee and most of the fees had no relevance to most students. For example, the first three rows listed fees for stop payments, returned deposits, and "Official Checks." Buried in the middle of

the table were the fees that would most commonly be incurred and that are at issue in this lawsuit, a \$0.50 Merchant PIN-Based Transaction fee and a \$2.50 fee for using a non-Higher One ATM.

23. The contract formation process imposed by Higher One was, thus, procedurally unconscionable and unethical because it concealed the true nature of the contract and the accounts. Such terms were drafted and imposed on college students by Higher One, which had superior bargaining power. These agreements constituted agreements of adhesion.

24. The \$2.50 ATM fee was charged for obtaining money from a non-Higher One ATM. Higher One charged this fee in addition to fees charged by the owners of the ATMs. Accordingly, students could be charged \$4.50 or more for an ATM withdrawal.

25. Charging students these high fees was unethical, oppressive, unscrupulous, and substantially injurious to consumers, especially since Higher One ATMs were rare and not available to students at all hours, on weekends, or during school vacations or holidays. Therefore, students could not reasonably avoid such fees, as they had to use other ATM machines during these periods.

26. Upon information and belief, Higher One intentionally limited access hours of its ATMs by charging schools higher fees for ATMs placed outdoors.

27. At STLCC, the availability of Higher One ATMs was exceedingly limited. At each campus, ATMs were placed in only one building. During nights and weekends when those buildings were closed, students had no access to them.

28. In St. Louis City and St. Louis County, there are only three other Higher One ATMs. They are inside buildings at Webster University in Webster Groves and Sanford-Brown College in Fenton.

29. Higher One did not inform students of when its ATMs would be available as required by federal public policy.

30. At the beginning of each term, when many students received their financial aid, there were commonly long lines at Higher One's ATMs. As a result, those ATMs eventually ran out of money, forcing students to obtain their funds elsewhere and incur Higher One's fees.

31. Although the financial aid money was held in accounts at Bancorp and Cole Taylor bank, which have many convenient ATMs in the St. Louis area, students were still charged a fee if they obtained their money from those banks' ATMs.

32. Charging such ATM fees is not industry practice; the vast majority of banks, including Bancorp Bank and Cole Taylor bank for their non-Higher One account holders, do not charge a similar "out of network" fee.

33. Higher One also charged a "PIN-based transaction fee" of fifty cents for using the Higher One debit card to make purchases. When the user selected "debit" after swiping his or her card, the fee was imposed. Alternatively, the student could select "credit;" in that case, the card was treated like a credit card and the student was not charged the fee.

34. Higher One deceived students into incurring this fee by repeatedly identifying the card as a debit card and the transactions as debit card transactions and by expressly indicating that the card was not a credit card. This information was disseminated on its website, an orientation video, the Account Agreement, its marketing materials, and on the card itself.

35. Charging PIN-based transaction fees is not industry practice. The vast majority of U.S. banks do not charge such a fee.

36. These practices and procedures of Higher One violated the public policy of the United States, as reflected in Department of Education regulations that require (1) a student's

written authorization before opening a bank account in his or her name; (2) informing a student, before an account associated with a card is opened, of the terms and conditions of that card, including any fees and other costs associated with the account; and (3) making each component and term in the authorization conspicuous to the reader, as well as regulations that prohibit (1) charging fees to deliver student aid funds, regardless of how students receive those funds and (2) converting a student's debit card into a credit card or credit instrument.

37. In addition, these practices also violate Department of Education policies that encourage disclosing to students how many surcharge-free ATM's are on their campus, their location, the hours that they are accessible to patrons, and the average annual costs incurred by students for using their cards.

### **CLASS ALLEGATIONS**

38. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Mo. R. Civ. Pro. 52.08. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements.

39. The proposed Class is defined as:

All present and former students at St. Louis Community College who incurred a PIN-based Transaction Fee and/or a Non-Higher One ATM Fee for using their Higher One debit card (the "Class").

Excluded from the proposed Class are Defendants, their officers, directors, and employees, as well as employees of any subsidiary, affiliate, successors, or assignees of Defendant. Also excluded is any trial judge who may preside over this case.

40. Upon information and belief, the class includes more than forty (40) individuals.

The Class comprises many individuals, the joinder of whom is impracticable because of their number and because their identities are known only to Defendants. Moreover, the amount of



damages suffered individually by each member of the Class is so small as to make suit for recovery by each individual member of the Class economically unfeasible.

41. Plaintiff's claims are typical of the claims of the Class. Additionally, the factual basis of Defendants' misconduct is common to all Class Members and form a common thread of unfair, unethical, and deceptive conduct resulting in injury to all members of the Class.

42. There are questions of law and fact predominating over questions affecting only individual members, including, but not limited to:

- a. Whether Defendants opened Higher One accounts for students and deposited their financial aid money into such accounts without their prior authorization;
- b. Whether Defendants intentionally made it difficult for students to opt-out of the Higher One account by delaying access to financial aid funds by students who chose other banking providers;
- c. Whether Defendants concealed facts related to the fees students would incur for using their Higher One accounts;
- d. Whether Defendants deceptively represented that the Higher One card was only a debit card, when in fact Higher One required that it be used as a credit card to avoid fees;
- e. Whether Defendants provided means by which students could reasonably avoid ATM transaction fees;
- f. Whether Defendants charged ATM Transaction Fees even when students used ATMs of the banks where their accounts were held;
- g. Whether Defendants charged students two service fees for every non-Higher One ATM withdrawal;

- h. Whether Defendants violated public policy as expressed in Department of Education regulations and publications;
- i. Whether Defendants actions and omissions constituted violations of the Missouri Merchandising Practices Act;
- j. Whether Defendants engaged in an illegal civil conspiracy resulting in ascertainable loss by Plaintiff and Class Members;
- k. Whether Defendants were unjustly enriched through their policies and practices;
- l. Whether Plaintiff and other Class Members are entitled to restitution and refund of the fees paid to Defendants;
- m. Whether Defendants should be enjoined from such actions complained of in this Petition; and
- n. Whether punitive damages should be assessed against Defendants.

43. Questions of law and fact common to members of the Class, some of which are set forth above, predominate over any questions affecting only individual Class Members. The resolution of common questions in this case will resolve the claims of both Plaintiff and the Class.

44. Plaintiff's claims are typical of the claims of the Class, in that they arise out of the same wrongful practices of Defendants. Plaintiff has suffered the same harm as the Class Members and has no interests antagonistic to the interests of any other Class Members.

45. Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff has no interests antagonistic to those of the Class. Plaintiff has retained competent and experienced counsel in the prosecution of this type of litigation.

46. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because members of the Class are numerous and individual joinder is impracticable. The expenses and burden of individual litigation would make it impracticable or impossible for proposed Class Members to prosecute their claims individually. Trial of Plaintiff's claims is manageable.

47. Unless a class is certified, Defendant will continue to engage in unfair and deceptive practices and continue to commit violations of Missouri law, to the detriment of Plaintiff and proposed Class Members.

48. This action is maintainable as a class action pursuant to Mo. Civ. Pro. R. 52.08 and Mo. Rev. Stat. § 407.025.

#### **COUNT I**

#### **Violation of the Missouri Merchandising Practices Act against Defendant Higher One**

49. Plaintiff hereby incorporates by reference all preceding paragraphs of this Petition as if fully set forth herein.

50. The actions of Higher One alleged herein violated the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*, ("MMPA").

51. Higher One's websites and its communications with Class Members are advertisements, as defined in the MMPA, because they are attempts by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, consumers to enter or acquire any title or interest in any merchandise, specifically Higher One accounts and the use thereof.

52. The accounts and services provided to Plaintiff and the Class by Defendant Higher One are merchandise as defined by the MMPA.

53. Plaintiff and the Class used their Higher One accounts for personal, family, or household purposes.

54. Defendant Higher One has engaged in unfair and deceptive practices within the meaning of the MMPA by misrepresenting and concealing material information about the fees that would be incurred by students in accessing their financial funds, as described *supra*.

55. As a result of Defendant Higher One's unfair and deceptive acts and practices, Plaintiff and Class Members have suffered ascertainable loss, including, but not limited to, being charged the ATM fees and PIN-based transaction fees for accessing their financial aid money, thereby entitling Plaintiff and Class Members to actual damages, punitive damages, and attorney's fees, as provided by Mo. Rev. Stat. § 407.025.

56. Defendant Higher One's conduct was malicious, corrupt, intentional, and/or reckless to a degree sufficient to support an award of punitive damages against Defendant.

WHEREFORE, Plaintiff and the Class pray that this Court grant the relief stated in the Prayer pertaining to all Counts of this Petition (located at the end of this Petition), which is hereby incorporated by reference into this Count.

**COUNT II**  
**Civil Conspiracy against All Defendants**

57. Plaintiff hereby incorporates by reference all preceding paragraphs of this Petition as if fully set forth herein.

58. Defendants engaged in a civil conspiracy among themselves to deceive the members of the Class into obtaining Higher One debit cards and incurring fees as alleged herein and to engage in the unfair practices alleged herein. As a result of their conspiracy, Defendants profited through increased revenue from unfair and excessive fees.

59. This conspiracy had the unlawful objective of deceiving consumers into accepting the Higher One accounts opened for them by Defendants and incurring the unfair fees described herein.

60. Defendants had a meeting of the minds on the object and/or course of the conspiracy, as manifested by their actions.

61. In furtherance of this conspiracy, Defendants committed acts described herein, including, but not limited to:

- a. Deceiving students into obtaining Higher One debit cards; and
- b. Charging excessive and unfair PIN-based transaction fees and non-Higher One ATM fees.

62. As a result of Defendant's actions and omissions in its conspiracy among themselves, Plaintiff and the Class have suffered ascertainable loss, including, but not limited to payment of excessive and unfair fees as described *supra*.

WHEREFORE, Plaintiff and the Class pray that this Court grant the relief stated in the Prayer pertaining to all Counts of this Petition (located at the end of this Petition), which is hereby incorporated by reference into this Count.

### **COUNT III**

#### **Money Had and Received against Defendant Higher One**

63. Plaintiff hereby incorporates by reference all preceding paragraphs of this Petition as if fully set forth herein.

64. Defendant Higher One has received money from Plaintiff and the Class by charging the excessive and unfair fees, which in equity and good conscience ought to be returned to Plaintiff and the Class.

WHEREFORE, Plaintiff and the Class pray that this Court grant the relief stated in the Prayer pertaining to all Counts of this Petition (located at the end of this Petition), which is hereby incorporated by reference into this Count.

**COUNT IV**  
**Unjust Enrichment against Defendant Higher One**

65. Plaintiff incorporates by reference and re-alleges all preceding paragraphs of the Petition as though fully set forth herein.

66. Defendant Higher One was enriched by the receipt of the excessive and unfair fees because of the deceptive and unfair activities of Defendant, as alleged herein.

67. As a result, Defendant Higher One was enriched at the expense of Plaintiff and the Class.

68. Allowing Defendant Higher One to retain the monies it received from these fees would be unjust.

WHEREFORE, Plaintiff and the Class pray that this Court grant the relief stated in the Prayer pertaining to all Counts of this Petition (located at the end of this Petition), which is hereby incorporated by reference into this Count.

**PRAYER FOR RELIEF – ALL COUNTS**

Plaintiff and the Class request the Court enter judgment in their favor and against Defendants as follows:

(A) Ordering that this action be maintained as a class action pursuant to Mo. R. Civ.

Pro. 52.08(b)(2) and 52.08(c), and defining the class as follows:

All present and former students at St. Louis Community College who incurred a PIN-based Transaction Fee and/or a Non-Higher One ATM Fee for using their Higher One debit card (the "Class").

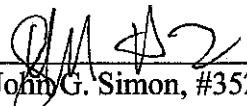
Excluded from the proposed Class are Defendants, their Officers, Directors, and employees, as well as employees of any subsidiary,

affiliate, successors, or assignees of Defendant. Also excluded is any trial judge who may preside over this case.

- (B) Certifying Plaintiff as Class Representative and appointing Plaintiff's counsel as counsel for the Class;
- (C) Declaring Defendants' policies and practices to be illegal, deceptive, unethical and unfair and permanently enjoining Defendants from continuing them;
- (D) Awarding actual damages;
- (E) Awarding restitution of all PIN-based transaction fees and non-Higher One ATM fees paid to Defendants by Plaintiff and the Class as a result of the wrongs alleged herein in an amount to be determined at trial;
- (F) Awarding punitive damages in an amount to be determined;
- (G) Awarding pre-judgment and post-judgment interest at the rate permitted by law;
- (H) Awarding costs incurred by Plaintiff in connection with this action;
- (I) Awarding Plaintiff's attorney's fees; and
- (J) Such other relief as this Court deems just and proper.

**THE SIMON LAW FIRM, P.C.**

By: \_\_\_\_\_

  
John G. Simon, #35231  
Stephanie H. To, #61149  
800 Market Street, Suite 1700  
St. Louis, MO 63101  
P. 314-241-2929  
F. 314-241-2029  
jsimon@simonlawpc.com  
sto@simonlawpc.com

and

**LAW OFFICE OF RICHARD S.  
CORNFELD**

Richard S. Cornfeld, #31046  
1010 Market Street, Suite 1605  
St. Louis, MO 63101  
P. 314-241-5799  
F. 314-241-5788  
rcornfeld@cornfeldlegal.com  
*Attorneys for the Plaintiff*