

HON. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFFREY REICHERT, and GARY MOYER,  
both individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

KEEFE COMMISSARY NETWORK, L.L.C.  
d/b/a ACCESS CORRECTIONS; RAPID  
INVESTMENTS, INC., d/b/a RAPID  
FINANCIAL SOLUTIONS, d/b/a ACCESS  
FREEDOM; and CACHE VALLEY BANK,

Defendants.

NO. 3:17-cv-05848-BHS

SECOND AMENDED COMPLAINT

Plaintiff Jeffrey Reichert and Plaintiff Gary Moyer, each on behalf of himself and all others similarly situated, brings this Class Action Complaint and Demand for Jury Trial against Defendants Rapid Investments, Inc. (doing business as Rapid Financial Solutions and Access Freedom) (hereinafter "Rapid Investments"), Keefe Commissary Network, L.L.C. (doing business as Access Corrections), and Cache Valley Bank (together, "Defendants"). The following allegations are based on personal knowledge as to Plaintiffs' conduct and are made on information and belief as to all other matters based upon the undersigned counsels' investigation.

## I. INTRODUCTION

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1. Defendants Keefe Commissary Network, LLC (“Keefe”), Rapid Investment Solutions (“Rapid”) and Cache Valley Bank (“Cache Valley”) have individually, and at times together, exploited plaintiffs and members of the class at their darkest hour – when they were arrested and subsequently released from jail. Typically, when people are arrested, the cash they have on hand is confiscated by the facility where they are initially held. In the past, the cash was returned to those arrested upon release, or, at the very least, a check was provided for the exact amount of cash. Defendants saw the opportunity to make a money off of this straightforward transaction, solely at the expense of those released.

2. Defendants’ scheme is simple: They would relieve local jails of any obligation to hold, track and account for funds of people while in a facility, at no expense to the facility. All the facilities needed to do was deposit the funds with Defendants upon the person’s arrest, and then hand out the debit cards to those released; Defendants would manage the rest. When the person is released, they are given Defendants’ *activated* debit card. Defendants then imposed various excessive fees on plaintiffs and the classes they represent.

3. Plaintiff Jeffrey Reichert was arrested by Kitsap County officers on October 21, 2016 during a drive home from work. Mr. Reichert was jailed for just four hours at the Kitsap County Jail. Upon his arrest, Kitsap County officers confiscated approximately \$177.66 in cash. When released, Mr. Reichert involuntarily received Defendants’ prepaid debit card loaded with the confiscated amount instead of the cash that had been confiscated. The card was already activated by Defendants when given to him. Before he could get his money back, Defendants took over \$17 in unwarranted fees.

1 4. Plaintiff Gary Moyer was arrested in Kitsap County, Washington. Upon  
2 his arrest, all of Mr. Moyer's cash on his person was confiscated by Kitsap County  
3 officers. When he was released from Kitsap County jail in February of 2019, he did not  
4 receive money in the form of cash. Mr. Moyer was involuntarily provided with a prepaid  
5 debit card. Pursuant to Kitsap County's standard policy in February of 2019, the card,  
6 when provided to Mr. Moyer, was "sealed in the Cardholder Terms and Conditions."  
7 The card was already activated when given to him. Mr. Moyer's card was issued by one  
8 or more of the Defendants. He also had to pay unwarranted fees before obtaining the  
9 return of his money.

10 5. Defendants have engaged in a pattern of unlawful, deceptive, unfair, and  
11 unconscionable profiteering with respect to the activated prepaid release cards that  
12 individuals who are released from jails and prisons receive involuntarily. In so doing,  
13 Defendants have violated the Electronic Fund Transfer Act, 15 U.S.C. §1693, and, for the  
14 Washington Subclass, the Washington Consumer Protection Act, RCW 19.86. In  
15 addition, for the Washington Subclass, Defendants have committed an unlawful taking  
16 of property under the Fifth Amendment, converted funds and have been unjustly  
17 enriched by their conduct.

## 18 II. THE PARTIES

19 6. Plaintiff Jeffrey Reichert lives in and is a citizen of Kingston, Washington.  
20 Mr. Reichert involuntarily received an activated, fee-laden debit card issued by one or  
21 more of the Defendants when he was released from Kitsap County Jail. He did not  
22 receive a "terms and conditions" sheet with the card.

23 7. Plaintiff Gary Moyer lives in and is a citizen of Port Orchard, Washington.  
24 Mr. Moyer involuntarily received an activated, fee-laden debit card issued by one or  
25 more of the Defendants when he was released from Kitsap County Jail. Consistent with  
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1 Kitsap County's standard practice during 2018, he received a "terms and conditions"  
2 sheet with the card. He also received release cards during 2017.

3 8. Defendant Keefe Commissary Network, L.L.C. ("Keefe"), a subsidiary of  
4 Keefe Group, Inc., is a Missouri corporation that does business under various trade  
5 names, including "Access Corrections." Keefe Group, Inc.'s annual revenue totals \$1  
6 billion. Keefe is the nation's biggest operator of commissary stores inside correctional  
7 facilities and offers a wide array of services to correctional institutions, including prepaid  
8 debit release cards. Keefe contracted with Kitsap County to provide correctional  
9 commissary services to the County, including an inmate release prepaid debit card  
10 program that was provided through a third-party company, Rapid Investments, Inc.  
11 Keefe is located at 10880 Linpage Place, St. Louis, Missouri 63132.

12 9. Defendant Rapid Investments is a Utah corporation that does business as  
13 Rapid Financial Solutions and other various trade names, including "Access Freedom."  
14 Rapid Investments states on its website that "the Rapid Processing Engine is designed  
15 to help your company process a variety of digital transactions including: direct deposit,  
16 payroll cards, prepaid debit cards, wire transfers, mobile payments, structured  
17 payments, and e-checks." Rapid Investments markets its prepaid cards to government  
18 entities, including Kitsap County, financial institutions, and other private enterprises.  
19 These entities in turn disseminate Rapid Investments' products to the general public.  
20 Rapid Investments contracted with Keefe to provide AccessFreedom cards to  
21 individuals being released from Kitsap County Jail. Rapid Investments is located at 3065  
22 North 200 West, Ste. 200, North Logan, Utah 84341.

23 10. Defendant Cache Valley Bank is a state chartered bank based in Utah.  
24 Cache Valley Bank is a member of the Federal Deposit Insurance Corporation and has  
25 over \$950 million in assets and 13 offices throughout Utah. Cache Valley Bank has  
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1 contracted with Rapid Investments to issue prepaid debit cards nationwide and is  
2 located at 101 N. Main, Logan, Utah 84321.

3 **III. JURISDICTION AND VENUE**

4 11. This Court has jurisdiction over the subject matter of this action pursuant  
5 to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United  
6 States, namely 42 U.S.C. § 1983 and 15 U.S.C. §1693.

7 12. This Court may exercise supplemental jurisdiction over state law claims  
8 pursuant to 28 U.S.C. § 1367.

9 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because each  
10 Defendant is subject to personal jurisdiction in this District and a substantial part of the  
11 events or omissions giving rise to the claim occurred within this District.

12 **IV. FACTS**

13 **A. Background**

14 14. Over 650,000 individuals are released from state and federal prisons  
15 annually. Local jails nationwide process an estimated 11.6 million people each year. The  
16 vast majority of these inmates are released from custody shortly after they are booked.  
17 Most of the people released from jails are never convicted of any crime.

18 a. Keefe is one of many for-profit players in an increasingly privatized  
19 prison industry. State spending alone on corrections hit \$52.4 billion in 2012.  
20 Hundreds of private sector contractors now provide food, clothing, riot gear,  
21 phone service, computers, and health care, in addition to directly operating many  
22 correctional facilities.

23 b. At least 10 companies, including Rapid Investments, now offer  
24 prepaid release cards to correctional systems.

1           15.     Kitsap County, like all jails, prisons, and detention facilities, keeps an  
2 individual's confiscated cash until his or her release. These funds are held in trust with  
3 the understanding that the State will protect the property on the individual's behalf.

4           16.     Traditionally, when inmates were released from jails, prisons, and other  
5 detention facilities, their jailers returned to them in the form of cash or check any cash  
6 that the jailers confiscated at booking. The jailers also traditionally returned to them, in  
7 the form of cash or check, any monies that had accrued in the individual's inmate trust  
8 account.

9           17.     According to a 2014 Association of State Correctional Administrators  
10 survey, government agencies across the United States that handle inmate funds are  
11 increasingly using prepaid debit cards to return personal funds to former inmates. Over  
12 half of responding agencies reported using prepaid debit cards to return inmates'  
13 property, and a majority of those agencies reported that a fee is charged when using the  
14 debit card to get cash from a bank.<sup>1</sup>

15           18.     Unlike typical consumers, released individuals are not given the choice to  
16 accept a fee-laden financial product like the AccessFreedom Card, and they never fill out  
17 an application for this financial product.

18           19.     Moreover, the typical released individual suffers from poor financial  
19 literacy. A study by the University of Arkansas-Little Rock Anderson Institute on Race  
20 and Ethnicity of Inmates in Arkansas found that only 33.1 percent of inmates could  
21 correctly answer the question, "If you put \$100 in a bank account paying 5 percent  
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25           <sup>1</sup> See Proposed Amendments to Regulation E: Curb exploitation of people released from custody,  
26 Prison Policy Initiative 2, March 18, 2015, <https://static.prisonpolicy.org/releasecards/CFPB-comment.pdf> (last visited October 20, 2017).

1 interest, how much will you have in your account after one year?" In contrast, 79.6  
2 percent of non-incarcerated men got the same question right.<sup>2</sup>

3 20. That Defendants market financial products rife with fees – all so released  
4 individuals can access their own money – is both predatory, unfair, and deceitful.

5 **B. Kitsap County's Inmate Release Card Program**

6 21. Kitsap County contracted with Keefe (formerly known as Keefe Supply  
7 Company) as early as January 1, 2007 for myriad correctional commissary services,  
8 including fair market pricing of goods for inmates, an inmate banking system, inmate  
9 commissary order processing, as well as other services.

10 22. The contract for correctional commissary services was subsequently  
11 renewed on various occasions, and in March 2012, Kitsap County entered into an  
12 agreement with Keefe for provision of prepaid debit cards to all released inmates. Under  
13 the contract, Keefe may change the card brand, issuing bank, or program manager at any  
14 time without the County's approval. Keefe's first contract with Kitsap County listed  
15 OutPay Systems, L.L.C. as the prepaid debit card manager and First California Bank as  
16 the issuing bank. Since the initial 2012 contract, Keefe has switched to Rapid Investments  
17 as the card manager and brand, and Cache Valley Bank as the issuing bank.

18 23. Under the Keefe contract and its amendments, the Kitsap County Sheriff's  
19 Office implemented Defendants' inmate release card program to perform the traditional  
20 government service of returning money relinquished by inmates at booking.

21 24. By no later than March 2012, Kitsap County began providing prepaid debit  
22 cards to released inmates, in lieu of a check. The cards were activated prior to being given  
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25 <sup>2</sup> David Koon, ARKANSAS TIMES, *New UALR survey finds a lack of basic 'financial literacy' among*  
26 *inmates*, <https://www.arktimes.com/arkansas/new-uair-survey-finds-a-lack-of-basic-financial-literacy-amonginmates/Content?oid=3351524>, June 19, 2017 (last visited October 20, 2017).

1 to the released inmate. By February of 2019, Kitsap County would provide the cards to  
2 released inmates along with a copy of the “Cardholder Terms and Conditions.”

3 25. Rapid Investments’ prepaid card services reach over 2 million consumers  
4 and span at least nine different prepaid card programs, including programs for  
5 correctional facilities.<sup>3</sup>

6 26. Rapid Investments contracts with third party commissary companies like  
7 Keefe who, in turn, contract with detention facilities to provide prepaid card programs  
8 to various city, county, and state agencies.

9 27. Rapid Investments also contracts with Cache Valley Bank as an issuing  
10 bank for its cards, and with MasterCard as the payment network sponsor.

11 28. Keefe, Rapid Investments and Cache Valley Bank all work together,  
12 coordinate efforts and share fees.

13 29. Kitsap County chose to subcontract out its inmate property release system  
14 in order to save the personnel time and money associated with check re-issuances, stop  
15 payments, fraud prevention, and checking account maintenance.

16 30. Kitsap County accepted Keefe’s assignation of the County’s duties and  
17 contracted with Defendants to provide the inmate release card program. Pursuant to that  
18 contract, Defendants enjoy a monopoly at the Kitsap County Jail.

19 31. Kitsap County Sheriff’s Office Chief of Corrections, Ned Newlin, entered  
20 into the contract for prepaid debit card services with Defendant Keefe.

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25 <sup>3</sup> Rapid Financial Solutions Partners with Digiliti Money to Deliver Mobile Money Solutions to More  
26 Than 2 Million Cardholders, <https://www.digilitimoney.com/news/press-releases/rapid-financial-solutions-partners-withdigiliti-money-to-deliver-mobile-money-solutions-to-more-than-2-million-cardholders>, July 20, 2016 (last visited October 20, 2017).



1           32. Per their contract, Defendant Keefe serves as Kitsap County's contractor  
2 for prepaid debit card services, and Keefe may choose the card branding, issuing bank,  
3 or prepaid debit card release program manager at its discretion.

4           33. On information and belief, before contracting with Defendants for  
5 maintenance and operation of its release card program, Kitsap County shouldered the  
6 costs associated with the management of the inmate property program and its fiscal  
7 operations.

8           34. Prior to Defendants' involvement, the County did not return an inmate's  
9 cash via a debit card. Instead, released inmates received their funds via a County-issued  
10 check.

11           35. The County agreed to use the AccessFreedom Card in releasing inmates  
12 with as little as \$0.01.

13           36. AccessFreedom Cards can be loaded with up to \$9,700.

14           37. However, the County still issues checks to released inmates when the  
15 inmate is transferred to another facility; when the inmate chooses to release his/or her  
16 funds to someone else; when the inmate chooses to use his/her funds to post bail; or if  
17 Keefe's debit card equipment is not operational.

18           38. The cards are issued with stickers that say, "ATTENTION! This card has  
19 already been activated. Your PIN = 7###." Thus, the cards are activated and ready for  
20 immediate use when released inmates receive them. Card recipients who receive the  
21 card do not assign their own PIN to the card.

22           39. To resolve problems with the cards such as money being put on the wrong  
23 person's account, Defendants have instructed Kitsap County to simply transfer money  
24 off the card of one individual and onto the card of another, whether or not they are in  
25 custody. Or if a card was not received by the inmate, but left on the counter, Defendants  
26 instructed Kitsap County to void the card and add it to a "destroy log."

1           40.     Kitsap County Jail has over 500 beds and maintains an average daily  
2 inmate population of 400.

3           41.     These prepaid release cards are extremely profitable for Defendants, who  
4 charge their unwitting and unwilling customers exorbitant fees to possess and/or use  
5 the cards.

6           42.     According to the contract between Keefe and Kitsap County, Defendants  
7 charge a fee for their role in setting up the bank account with the bank issuing the cards  
8 and for coordinating third party processing services. These so-called “Coordination  
9 Fees” are embedded in the fee structure selected by Kitsap County and the other  
10 government entities for the cards, and *all fees are assessed to the card holder/inmate.*

11           43.     These user fees taken from cardholders are well in excess of the  
12 Defendants’ costs and are unreasonable and/or unrelated to the administration of each  
13 account.

14           44.     When Defendants market their services to government entities, they  
15 present several potential fee schedules, though the services offered remain the same.

16           45.     Rapid Investments publicizes at least two fee schedules for jails and  
17 correctional facilities to choose from.<sup>4</sup>

18           46.     Of these two offered fee schedules, Kitsap County has chosen the more fee-  
19 laden, with higher “weekly maintenance” fees starting just 72 hours after release, and  
20 more expensive ATM fees.

21           47.     That Defendants offer multiple fee schedules for the same service indicates  
22 that the fees are not cost-based, but instead a bald-faced profit mechanism.

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<sup>4</sup> Cardholder Fees, <http://www.accessfreedomcard.com/releasefees.html> (last visited October 20, 2017).

1           48. Upon information and belief, during negotiations between the contracting  
2 government entity and Keefe and its subcontractors, the public entity selects an  
3 applicable fee schedule.

4           49. Kitsap County negotiated the fee schedule that applies for various uses of  
5 the AccessFreedom Card. These fees were imposed on Plaintiffs and the putative Class.

6           50. Defendants impose a variety of fees for their inmate release card program  
7 in Kitsap County.

8           51. The president of Rapid Investments, Daren Jackson, insists that the  
9 company “provides a nice service, a convenient way for someone to get cash 24/7.”<sup>5</sup> Yet  
10 this “nice service” is far from “convenient.” For inmates in need of immediate cash to  
11 pay for a taxi after release, for example, their money is simply not accessible because  
12 they likely cannot access their cash through ATMs.

13           52. Inmates with \$22.94 or less in their accounts cannot access their money  
14 because, assuming the inmate uses an ATM without its own fees, after Defendants’ \$2.95  
15 ATM fee, the account balance dips below \$20—the minimum withdrawal amount at  
16 nearly every ATM machine. These low-balance cards are not just particularly lucrative  
17 for Defendants; they are also uniquely burdensome on the cardholder.

18           53. Any claims by Defendants that the cards benefit consumers ignores the  
19 reality that the individual’s cash has been exchanged for a prepaid debit card that incurs  
20 fees mere hours after receipt. In short, an individual’s money is taken from them in the  
21 form of exorbitant fees, and the cards plainly lack the utility of the confiscated cash.

22           54. On information and belief, individuals who are deported after their arrest  
23 and released back in their home country may not be able to access their funds at all—  
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26 <sup>5</sup> NBC NEWS, March 24, 2015, <http://www.nbcnews.com/business/consumer/inmates-charged-fee-after-leavingjail-n329151> (last visited October 20, 2017).

1 even before the \$3.95 international ATM fee. Many released individuals report that  
2 prepaid debit cards and/or their PIN numbers do not work abroad, or that limits on  
3 international ATM withdrawals force them to accrue additional withdrawal fees.

4 55. Defendants can charge and collect these exorbitant fees because their  
5 exclusive contracts with government entities shield them from competitive market forces  
6 and because they have absolute control over the funds once the funds are transferred to  
7 them by the government entity.

8 56. Individuals who are released from Kitsap County Jail do not voluntarily  
9 engage the company, enroll in the program, or take any affirmative steps to form any  
10 contractual relationship with Rapid Investments, Keefe, Cache Valley Bank, or  
11 MasterCard. They have no choice but to accept an AccessFreedom Card in lieu of  
12 receiving the return of their own money in the form of cash or check. If a released inmate  
13 refuses to accept an AccessFreedom Card, they simply lose their money as the balance is  
14 depleted by imposition of the fees.

15 **C. Plaintiffs' Experiences**

16 57. Mr. Reichert resides in Kingston, Washington.

17 58. For the last 31 years he has worked as a research test mechanic for the  
18 Boeing Company.

19 59. He was arrested by the Kitsap County, Washington, Sheriff on October 21,  
20 2016.

21 60. Kitsap County confiscated \$177.66 in cash and coins from Mr. Reichert  
22 when he was arrested.

23 61. As his representative, Kitsap County Jail accepted Plaintiff Reichert's cash  
24 and deposited it in a trust account.

25 62. After approximately four hours in Kitsap County's custody, Plaintiff  
26 Reichert was released around 5 a.m. on October 22, 2016.

1           63.     Upon his release, he received his personal effects back, but he did not get  
2 his cash and coins. Instead, a Kitsap County Jail officer gave him an activated prepaid  
3 debit release card loaded with the confiscated amount.

4           64.     The prepaid Mastercard Mr. Reichert received from Kitsap County Jail  
5 bore the insignia "AccessFreedom Member," the brand name of the AccessFreedom  
6 Card, and was issued by Cache Valley Bank.

7           65.     Plaintiff Reichert was not given any paperwork explaining the card; nor  
8 did anyone from Kitsap County explain how to use the card or why he was being given  
9 the piece of plastic in lieu of his cash. When Mr. Reichert asked the releasing officer for  
10 his cash, the officer replied, "oh, you don't get your cash back, you get a debit card."  
11 When Mr. Reichert asked how the card worked the officer informed Mr. Reichert that he  
12 needed to "put these set of numbers in" to get it to work, referring to his PIN number.

13           66.     Plaintiff Reichert was released around 5 a.m. into a parking lot with no  
14 jacket. He called a cab and managed to persuade the cab driver that he would pay them  
15 when they arrived at his home. He could not use the AccessFreedom Card for his cab  
16 fare.

17           67.     Mr. Reichert would rather have received his cash back, but Kitsap County  
18 Jail forced the prepaid card upon him without presenting any alternatives. Mr. Reichert  
19 was never asked whether he wished to receive his monies in cash or in the form of a  
20 prepaid debit card for which he would be assessed various exorbitant, unreasonable fees.

21           68.     Mr. Reichert never applied for the AccessFreedom Card.

22           69.     Mr. Reichert never agreed to receive the AccessFreedom Card instead of  
23 his cash and never assented to the terms to any contract with Defendants.

24           70.     Mr. Reichert had no choice but to accept the AccessFreedom Card instead  
25 of his cash. Mr. Reichert could not meaningfully object to receiving the prepaid debit  
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1 card. Mr. Reichert's receipt of his cash back in the form of the AccessFreedom Card was  
2 completely and utterly involuntary.

3 71. Just three days after his release, on October 25, 2016, \$2.50 was taken from  
4 his AccessFreedom Card balance for a weekly maintenance fee. Another \$2.50 weekly  
5 maintenance fee was assessed a week later, on November 1, 2016.

6 72. On November 2, 2016, Mr. Reichert visited his local branch of the Kitsap  
7 County Credit Union to try to access his funds. At the bank's ATM, Mr. Reichert  
8 requested an accounting of his balance. This ATM inquiry was unsuccessful and did not  
9 tell him the balance. Mr. Reichert was however charged a \$1.50 "inquiry fee." He then  
10 attempted to retrieve \$180.00 in funds, and the ATM screen said that there were  
11 insufficient funds for the transaction. Mr. Reichert then used the same ATM to withdraw  
12 \$160. This transaction resulted in two \$2.95 "issuer fees" and a \$3.00 "acquirer  
13 convenience fee," that was likely charged by the local ATM provider—all within the  
14 span of 58 seconds.

15 73. Knowing that he had more than \$160 in cash at the time of his arrest, Mr.  
16 Reichert then visited the credit union to inquire regarding his missing account balance  
17 and to ask how to avoid fees. A credit union employee informed him that the credit  
18 union likewise could not determine the account balance, and urged him to go online or  
19 call the card issuer.

20 74. On November 8, 2016, a final \$1.37 weekly maintenance fee was taken from  
21 Mr. Reichert's account—the last few dollars and cents in the account.

22 75. Later, after calling Rapid Investments to inquire about his remaining  
23 balance, Mr. Reichert received via email a printout of the various charges, and learned  
24 that Defendants had taken \$17.66 in fees in the two weeks after his release—exactly 10  
25 percent of his cash, and after only approximately four hours in custody.  
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1           84. Plaintiffs bring this action on behalf of themselves, and all others similarly  
2 situated pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) on behalf of the following  
3 nationwide Class: All persons in the United States who, at any time since October 20,  
4 2016, were: (1) taken into custody at a jail, correctional facility, detainment center, or any  
5 other law enforcement facility, (2) entitled to the return of money either confiscated from  
6 them or remaining in their inmate accounts when they were released from the facility,  
7 (3) issued a prepaid debit card from Keefe Commissary Network, LLC, Rapid  
8 Investments, Inc. and/or Cache Valley Bank that was subject to fees, charges, and  
9 restrictions and (4) not offered an alternative method for the return of their money. This  
10 class shall be referred to as the "Nationwide Class."

11           85. Additionally, Plaintiffs seek to represent the following Washington  
12 Subclass: All persons who, at any time since October 20, 2013, were: (1) taken into  
13 custody at a jail, correctional facility, detainment center, or any other law enforcement  
14 facility located in the State of Washington, (2) entitled to the return of money either  
15 confiscated from them or remaining in their inmate accounts when they were released  
16 from the facility, (3) issued a prepaid debit card from Keefe Commissary Network, LLC,  
17 Rapid Investments, Inc. and/or Cache Valley Bank that was subject to fees, charges, and  
18 restrictions and (4) not offered an alternative method for the return of their money. This  
19 class shall be referred to as the "Washington Subclass." The Nationwide Class and the  
20 Washington Subclass are collectively referred to herein as the "Class."

21           86. The Nationwide Class and the Washington Subclass are both so numerous  
22 that joinder of all members is impracticable. Each class has more than 1,000 members.

23           87. Common questions of law and fact exist as to all members of the Class and  
24 predominate over any questions solely affecting individual members of the Class.  
25 Questions of law and fact common to the Class include but are not limited to:  
26



- 1 A. Whether the AccessFreedom Cards that the Class received carried  
2 unlawful fees;
- 3 B. Whether the fees were a fair approximation of Defendants' costs;
- 4 C. Whether the fees were unreasonable or unrelated to the administration of  
5 each user's account;
- 6 D. Whether Defendants deprived Plaintiff and the Class of a right, privilege,  
7 or immunity protected by the Constitution or the laws of the United States;
- 8 E. Whether Defendants violated the Electronic Fund Transfer Act, 15 U.S.C.  
9 1693, *et seq.*;
- 10 F. Whether Defendants engaged in unfair or deceptive acts or practices in the  
11 conduct of any trade or commerce and thus violated the Washington  
12 Consumer Protection Act, RCW 19.86;
- 13 G. Whether Defendants were unjustly enriched through their prepaid card  
14 policies and practices;
- 15 H. Whether Defendants converted money belonging to the Class by taking  
16 unlawful fees;
- 17 I. Whether and what form(s) of relief should be afforded to the Class; and
- 18 J. Whether the Class has suffered damages as a result of Defendants' actions,  
19 and, if so, the measure and amount of such damages, including any  
20 statutory damages.

21 88. Plaintiffs' claims are typical of the claims of the other members of the Class  
22 they seek to represent. Defendants' practices have targeted and affected all members of  
23 the Class in a similar manner, i.e., they have all sustained damages arising out of  
24 Defendants' practices.

25 89. Plaintiffs will fully and adequately protect the interests of all members of  
26 the Class. Plaintiffs have retained counsel experienced in both complex class action and

1 consumer fraud litigation. Plaintiffs have no interests which are adverse to, or in conflict  
2 with the interests of the other members of the Class.

3 90. A class action is superior to other available methods for the fair and  
4 efficient adjudication of this controversy since joinder of all Class members is  
5 impracticable. The prosecution of separate actions by individual members of the Class  
6 would impose heavy burdens upon the courts and would create a risk of inconsistent or  
7 varying adjudications of the questions of law and fact common to the Class. A class  
8 action, on the other hand, would achieve substantial economies of time, effort, and  
9 expense, and would assure uniformity of decision with respect to persons similarly  
10 situated without sacrificing procedural fairness or bringing about other undesirable  
11 results.

12 91. The interests of the members of the Class in individually controlling the  
13 prosecution of separate actions are theoretical rather than practical. The Class has a high  
14 degree of cohesion, and prosecution of the action through representatives would be  
15 unobjectionable. The damages suffered by the individual Class members may be  
16 relatively small. Therefore, the expense and burden of individual litigation make it  
17 virtually impossible for Class members to redress the wrongs done to them. Plaintiffs  
18 anticipate no difficulty in management of this action as a class action.

19 92. The parties opposing the Class have acted or refused to act on grounds  
20 generally applicable to each member of the Class, thereby making appropriate final  
21 injunctive or corresponding declaratory relief with respect to the Class as a whole.

22 **VI. FIRST CAUSE OF ACTION**

23 **(Claim Pursuant to 42 U.S.C. § 1983 for Violation to the Fifth Amendment)**

24 **(Against all Defendants)**

25 93. Plaintiffs re-allege and incorporate by reference all of the allegations of this  
26 Complaint with the same force and effect as if fully restated herein.

1           94. The Takings Clause of the Fifth Amendment to the United States  
2 Constitution states in relevant part that “private property [shall not] be taken for public  
3 use, without just compensation.”

4           95. The Takings Clause is applicable to the states through the Fourteenth  
5 Amendment.

6           96. A governmental user fee that fails to bear a sufficient relationship to the  
7 value received or fails to provide a fair approximation of the costs of the benefits  
8 supplied – if any – constitutes a taking within the meaning of the Takings Clause.

9           97. Defendants engaged in state action under color of law, in that Plaintiffs’  
10 and the Washington Subclass’s unconstitutional deprivation of their property resulted  
11 from a governmental policy. Defendants are persons for whom the State is responsible  
12 in that: (a) Kitsap County, and other governmental entities that issue Defendants’  
13 prepaid debit release cards, bore an affirmative obligation upon release of Plaintiffs and  
14 the Washington Subclass to return monies confiscated from them; (b) the State delegated  
15 that function to Defendants and gave to Defendants Plaintiff’s confiscated money; and  
16 (c) Defendants voluntarily assumed that obligation by contract. Defendants thereby  
17 deprived Plaintiffs and the Washington Subclass of a right, privilege, or immunity  
18 protected by the Constitution or the laws of the United States.

19           98. The State benefited from the actions of its delegee, as Defendants’ business  
20 practices allow the State to administer a “cashless” inmate property release system and  
21 save the costs associated with its own management of the inmate property release system  
22 and issuance of checks. The State negotiated its delegation contract with Defendants, and  
23 knowingly assented to Defendants’ fee structure as a means to transfer its costs onto  
24 Plaintiffs and the Washington Subclass.

25           99. Plaintiffs and the Washington Subclass possessed a constitutionally  
26 protected interest in the monies Defendants took from them.

1 100. Defendants' card user fees are excessive, unreasonable, unrelated to the  
2 administration of the users' accounts, and are imposed without regard to what, if any,  
3 benefit the users received.

4 101. Defendants' excessive and unreasonable card user fees should be declared  
5 to constitute a taking of property in violation of the Fifth Amendment of the United  
6 States Constitution.

7 102. Defendants should be ordered to compensate Plaintiffs and the  
8 Washington Subclass for the taking of property.

9 103. Plaintiffs and the Washington Subclass are entitled to their reasonable  
10 attorneys' fees pursuant to 42 U.S.C. § 1988(b) (2000).

11 **VII. SECOND CAUSE OF ACTION**

12 **(Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq.)**

13 **(Against Defendants Rapid Financial and Cache Valley Bank)**

14 104. Plaintiffs re-allege and incorporate by reference all of the allegations of this  
15 Complaint with the same force and effect as if fully restated herein.

16 105. The primary objective of the Electronic Fund Transfer Act ("EFTA") is to  
17 protect consumer rights by providing a basic framework establishing the rights,  
18 liabilities, and responsibilities of participants in the electronic fund and remittance  
19 transfer systems.

20 106. Defendants Rapid Financial and/or Cache Valley Bank are financial  
21 institutions as defined by 15 U.S.C. § 1693a(9), and 12 C.F.R. § 1005.2(a)(2)(i), because  
22 they directly or indirectly hold accounts belonging to consumers and/or they issue an  
23 access device to consumers. They are also "persons" subject to liability under 15 U.S.C.  
24 § 1693m(a) for failing "to comply with any provision" of the EFTA.

25 107. Plaintiffs and members of the Class are "consumers" under 15 U.S.C.  
26 § 1693a(6).

1 108. Under the EFTA, an unsolicited card is permitted only if all of the  
2 following conditions are met:

- 3 (1) such card, code, or other means of access is not validated;
- 4 (2) such distribution is accompanied by a complete disclosure, in  
5 accordance with section 1693c of this title, of the consumer's rights and  
6 liabilities which will apply if such card, code, or other means of access  
7 is validated;
- 8 (3) such distribution is accompanied by a clear explanation, accordance  
9 with regulation of the Bureau, that such card, code, or other means of  
10 access is not validated and how the consumer may dispose of such code,  
11 card, or other means of access if validation is not desired; and
- 12 (4) such card, code, or other means of access is validated only in response  
13 to a request or application from the consumer, upon verification of the  
14 consumer's identity.

15 U.S.C. § 1693i(b). *See also* 12 C.F.R. § 1005.5(b) (same); 12 C.F.R. § 1005.2(a)(1)  
16 (“‘Access device’ means a card...”).

17 109. This statutory and regulatory scheme protects consumers by mandating  
18 that before a card is validated the consumer must receive a complete disclosure of the  
19 rights and liabilities that “will apply if such card ... is validated.”

20 110. “Validation” occurs when the card “may be used to initiate an electronic  
21 fund transfer.” 15 U.S.C. § 1693i(c). In other words, a validated card is one that is already  
22 activated. All of the cards issued to Plaintiffs and class members were already validated.

23 111. The EFTA regulates the precise form of assent necessary to make the terms  
24 and conditions binding on the consumer. Pursuant to Section 4, assent to the issuance  
25 of the card (and its corresponding terms and conditions) can only occur “in response to  
26 a request or application from the consumer.” 15 U.S.C. § 1693i(b)(4). The consumer must  
also be provided the terms and conditions before the card is validated so that the  
consumer can decide whether to accept those terms. 15 U.S.C. § 1693i(b)(2). No other

1 form of assent is recognized by statute. 15 U.S.C. § 1693i(a), (b). As a result, a consumer  
2 cannot be said to have “assented” to a contract for a card by simply taking it upon  
3 release, or subsequently using the card. Under the EFTA, there is only one way that an  
4 unsolicited card would be valid under federal law: a consumer must make an  
5 affirmative “request or application” for activation. 15 U.S.C. § 1693i(b)(4). With respect  
6 to Plaintiffs and all Class members, the cards were validated before they were even  
7 provided to the them. No “request” or “application” preceded validation of any of the  
8 cards given to Plaintiffs or Class members upon their release.

9 112. No contract or agreement was formed between Defendants and Plaintiffs  
10 and Class members. Defendants had no authority or right to take money from Plaintiffs  
11 and Class members in the form of fees.

12 113. Plaintiffs and members of the class are members of the general public when  
13 they receive release cards upon being released from confinement. *Brown v. Stored Value*  
14 *Cards*, 953 F.3d 567, 573 (9<sup>th</sup> Cir. 2020).

15 114. Defendants Rapid Financial and/or Cache Valley directly or indirectly  
16 offered, advertised, or otherwise promoted release cards to Plaintiffs and the class.  
17 Specifically, Rapid Financial and/or Cache Valley indirectly marketed cards to released  
18 inmates by marketing the card program to municipalities and correctional facilities. *See*  
19 *e.g.* <https://accessfreedomcard.com/howfacility/> (last visited 8/17/20);  
20 <https://rpdfin.com/government/> (last visited 8/17/20); *Brown*, 953 F.3d at 573.  
21 Defendants Rapid Financial and/or Cache Valley also market their release card product  
22 on Facebook. *See e.g.* <https://www.facebook.com/rapidfinancial> (last visited 8/7/20).

23 115. The release cards are “general use prepaid card[s]” under the EFTA.  
24 Under Section 1693l-1 of the EFTA, it is unlawful for “any person” to impose a service  
25 fee with respect to a general use prepaid card. A “service fee” is a “periodic fee, charge,  
26 or penalty for holding or use of a . . . general-use prepaid gift card.” Defendants Rapid

1 Financial and/or Cache Valley violated this section, in addition to the other disclosure  
2 requirements and prohibitions of the EFTA and its implementing regulations.

3 116. Defendants' Rapid Financial's and/or Cache Valley Bank's violations of  
4 the EFTA have caused and continue to cause Plaintiffs and the Class damages.

5 117. Plaintiffs and the Class are entitled to their actual and statutory damages,  
6 as well as reasonable attorneys' fees and costs, pursuant to 15 U.S.C. § 1693m.

7 **VIII. THIRD CAUSE OF ACTION**

8 **(Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86, et seq.)**

9 **(Against all Defendants)**

10 118. Plaintiffs re-allege and incorporate by reference all of the allegations of this  
11 Complaint with the same force and effect as if fully restated herein.

12 119. Plaintiffs bring this action on behalf of himself and the Washington  
13 Subclass against all Defendants.

14 120. Defendants, Plaintiffs, and the Washington Subclass members are  
15 "persons" within the meaning of Wash. Rev. Code § 19.86.010(1).

16 121. Defendants are engaged in "trade" or "commerce" within the meaning of  
17 Wash. Rev. Code § 19.86.010(2), because the unsolicited AccessFreedom cards are  
18 intended to be used in commerce in Washington.

19 122. The Washington Consumer Protection Act ("Washington CPA") makes  
20 unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in  
21 the conduct of any trade or commerce." Wash. Rev. Code § 19.86.020.

22 123. In the course of their business, Defendants, through their agents,  
23 employees, and/or subsidiaries, violated the Washington CPA as detailed above.  
24 Specifically, in distributing unsolicited prepaid debit cards, and then taking and keeping  
25 Plaintiffs' and the Washington Subclass members' money in the form of exorbitant fees,  
26 and in imposing fees for the return of Plaintiffs' and the Washington Subclass members'

1 money without disclosing that fees would be imposed, Defendants engaged in unfair  
2 and/or deceptive acts or practices in violation of Wash. Rev. Code § 19.86.020.

3 124. Plaintiffs and the Washington Subclass members suffered ascertainable  
4 losses and actual damages in the loss of their property as a direct and proximate result  
5 of Defendants' unfair and/or deceptive acts or practices.

6 125. Defendants' violations present a continuing risk of injury to Plaintiffs and  
7 the Washington Subclass members, as well as to the general public. Defendants'  
8 unlawful acts and practices complained of herein affect the public interest.

9 126. Pursuant to Wash. Rev. Code § 19.86.090, Plaintiffs and the Washington  
10 Subclass members seek an order enjoining Defendants' unfair and/or deceptive acts or  
11 practices, and awarding damages, treble damages, attorney fees and costs and any other  
12 just and proper relief available under the Washington CPA.

13 **IX. FOURTH CAUSE OF ACTION**

14 **(Conversion)**

15 **(Against all Defendants)**

16 127. Plaintiffs re-allege and incorporate by reference all of the allegations of this  
17 Complaint with the same force and effect as if fully restated herein.

18 128. Kitsap County Jail, and other correctional facilities that issue Defendants'  
19 AccessFreedom Cards have taken money from Plaintiffs and other members of the  
20 Washington Subclass to hold during their incarceration, acting in the capacity of their  
21 representative. Upon their release, Kitsap County Jail and other correctional facilities  
22 were obligated to return the full amount of their money to them. Any purported  
23 agreement to use the AccessFreedom Card to return that money, less fees charged by the  
24 Defendants, lacks consideration and is unenforceable.

25 129. Conversion occurs when a person intentionally interferes with chattel  
26 belonging to another, either by taking or unlawfully retaining it, thereby depriving the



1 rightful owner of possession. Money may be the subject of conversion if the Defendants  
2 wrongfully received it.

3 130. Defendants, exercising their control over the funds in the AccessFreedom  
4 Card accounts, have wrongfully collected fees from Plaintiffs and members of the  
5 Washington Subclass, and have taken specific and readily identifiable funds from  
6 Plaintiffs and the members of the Washington Subclass in payment of these fees.

7 131. Defendants, without proper authorization, assumed and exercised the  
8 right of ownership over these funds, in hostility to the rights of Plaintiffs and the  
9 Washington Subclass, without legal justification.

10 132. Defendants continue to retain these funds unlawfully and without the  
11 consent of Plaintiffs or the Washington Subclass.

12 133. Defendants intend to permanently deprive Plaintiffs and the Washington  
13 Subclass of these funds.

14 134. These funds are properly owned by Plaintiffs and the Washington  
15 Subclass, not Keefe, Rapid Investments or Cache Valley Bank, which now claim that they  
16 are entitled to their ownership, contrary to the rights of Plaintiffs and the Washington  
17 Subclass.

18 135. Plaintiffs and the Washington Subclass are entitled to the immediate  
19 possession of these funds.

20 136. Defendants have wrongfully converted these specific and readily  
21 identifiable funds.

22 137. Defendants' wrongful conduct is continuing.

23 138. As a direct and proximate result of Defendants' wrongful conversion,  
24 Plaintiffs and the Washington Subclass have suffered and continue to suffer damages.

25 139. Plaintiffs and the Washington Subclass are entitled to damages and  
26 prejudgment interest in an amount to be determined at trial.

**X. FIFTH CAUSE OF ACTION**

**(Unjust Enrichment)**

**(Against all Defendants)**

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140. Plaintiffs re-allege and incorporate by reference all of the allegations of this Complaint with the same force and effect as if fully restated herein.

141. Defendants have been unjustly enriched by taking funds from the AccessFreedom Card accounts under their control in the form of fees assessed upon Plaintiffs and the Washington Subclass.

142. The circumstances are such that it would be unjust and inequitable for Defendants to retain the benefit that they unjustly received from Plaintiffs and the Washington Subclass members.

143. Plaintiffs and the Washington Subclass members have conferred benefits on Defendants, which Defendants have knowingly accepted and retained.

144. Plaintiffs and the Washington Subclass members have suffered and continue to suffer actual damages as a result of Defendants' unjust retention of proceeds from their acts and practices alleged herein.

145. Plaintiffs and the Washington Subclass members seek to disgorge Defendants' unlawfully retained benefits resulting from their unlawful conduct, and seek restitution for the benefit of Plaintiffs and the Washington Subclass.

146. Plaintiffs and the Washington Subclass members are entitled to the imposition of a constructive trust upon Defendants, such that their unjustly retained benefits are distributed equitably by the Court to and for the benefit of Plaintiffs and the Washington Subclass members.

**XI. DEMAND FOR JURY TRIAL**

Plaintiffs respectfully requests jury trial of all claims that can be so tried.

**XII. PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the Class, prays  
2 for the following relief:

3 1. An order certifying this case as a class action and appointing Plaintiffs and  
4 the undersigned counsel to represent the Class;

5 2. Declaration, judgment, and decree that Defendants Keefe, Rapid  
6 Investments and/or Cache Valley Bank's conduct alleged herein:

- 7 a. Violates the Fifth Amendment to the United States Constitution;
- 8 b. Violates the Electronic Fund Transfer Act (as to Defendants Rapid  
9 Investments and Cache Valley Bank only);
- 10 c. Violates the Washington Consumer Protection Act;
- 11 d. Constitutes conversion; and
- 12 e. Constitutes unjust enrichment.

13 3. Damages to Plaintiffs and the Washington Subclass to the maximum extent  
14 allowed under state and federal law; including ordering Defendants to pay actual and  
15 statutory damages;

- 16 4. Costs and disbursements of the action;
- 17 5. Restitution and/or disgorgement of ill-gotten gains;
- 18 6. Pre- and post-judgment interest; and
- 19 7. Reasonable attorneys' fees; and
- 20 8. Such other relief, in law and equity, as this Court may deem just and

21 proper.

1 DATED: December 23, 2020.

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3 SPOONEMORE HAMBURGER PLLC

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17 Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on December 23, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Sylvia Karen Bamberger**  
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DATED: December 23, 2020, at Seattle, Washington.

*s/ Chris R. Youtz*

Chris R. Youtz, WSBA #7786

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