

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
JUDGE FORREST**

<p>JOSEFINA VALLE and WILFREDO VALLE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ATM NATIONAL, LLC d/b/a ALLPOINT NETWORK, CARDTRONCIS, INC. and POPULAR COMMUNITY BANK f/k/a BANCO POPULAR NORTH AMERICA a/k/a BANCO POPULAR NORTH AMERICA,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.</p> <p>Jury Trial Demanded</p> <p style="font-size: 2em; font-weight: bold;">14 CV 7993</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"><p style="text-align: center; font-weight: bold;">RECEIVED</p><p style="text-align: center;">OCT 03 2014</p><p style="text-align: center;">U.S.D.C. S.D. N.Y.</p></div>
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CLASS ACTION COMPLAINT

Plaintiffs Josefina Valle and Wilfredo Valle (“Plaintiffs”), individually and on behalf of all others similarly situated, for their complaint against ATM National LLC d/b/a as Allpoint™ Network (“Allpoint”), Cardtronics, Inc. (“Cardtronics”) and Popular Community Bank f/k/a Banco Popular North America a/k/a Banco Popular North America (“Popular”), allege, based upon personal knowledge as to Plaintiffs and Plaintiffs’ own acts, and upon information and belief as to all other matters based upon the investigations conducted by and through Plaintiffs’ attorneys, as follows:

I. INTRODUCTION

1. Defendant Popular is a New York-chartered trust company or banking corporation that engages in the business of consumer and commercial banking in the State of New York and in other states, directing its North American operations from its headquarters and

principal place of business located in New York, New York.

2. Allpoint is a division of Cardtronics that advertises and represents to operate and administer a nationwide network of “Surcharge Free” Automated Teller Machines (“ATMs”) for members of participating banks. Popular became a participating bank in the Allpoint™ Network of ATMs on August 4, 2010.

3. Popular advertises and represents to its deposit holders that ATM transactions using its ATM and debit card will be “FREE” and not subject to any ATM fees if completed at Allpoint Network ATMs. Those representations are false and deceptive, causing injury to Plaintiffs and Popular’s other deposit account customers. At least 49 times since 2012, Plaintiffs or their authorized users completed ATM transactions at an Allpoint ATM, and each time were charged a “Non-Popular ATM Fee.”

4. Allpoint and Cardtronics also advertise and represent that ATM transactions using its Allpoint ATM Network will be “FREE” and not subject to any ATM fees or surcharges to members of participating banks, including, since August 4, 2010, banking customers of Popular. Those representations are false and deceptive, causing injury to Plaintiffs and Popular’s other deposit account customers. At least 50 times since 2012, Plaintiffs or their authorized users completed ATM cash withdrawals at an Allpoint ATM and each time were charged an ATM fee or surcharge by Allpoint and Cardtronics.

5. Plaintiffs allege that Defendants’ practice of charging ATM fees and surcharges for ATM transactions that each represented and advertised were “free” is a violation the federal Electronic Funds Transfer Act and Federal Reserve Regulation E and also served to unjustly enrich Defendants. For the Popular Class members, Popular’s acts and practices breached the

contracts it maintains with its customers. For the New York Class members, those acts and practices further violate New York General Business Law (“GBL”) §349 and §350.

6. Plaintiffs bring this action on behalf of themselves individually and on behalf of the following class:

All deposit account customers of Popular on whom Popular imposed or collected one or more Non-Popular ATM Fees for ATM transactions completed at Allpoint Network ATMs on or after August 4, 2010 (the “Popular Class”).

Excluded from the Popular Class are Defendants, their parent, subsidiaries, officers, directors, employees, partners and co-venturers. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

7. Plaintiffs further bring this action on behalf of themselves individually and on behalf of the following class:

All deposit account customers of Popular on whom Allpoint or Cardtronics imposed or collected one or more ATM fees or surcharges for ATM transactions completed at Allpoint Network ATMs on or after August 4, 2010 (the “Allpoint Class”).

Excluded from the Allpoint Class are Defendants, their subsidiaries, officers, directors, employees, partners and co-venturers. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

8. Plaintiffs and members of the Classes were charged Non-Popular ATM Fees imposed by Popular and ATM surcharges by Allpoint and Cardtronics for using an Allpoint Network ATM.

9. Plaintiffs and the Classes seek damages, statutory and exemplary damages, as

well as equitable relief, including restitution, disgorgement, and an injunction.

II. PARTIES

A. *PLAINTIFFS*

10. Plaintiff Josefina Valle is a resident of the Bronx, New York. Plaintiff Josefina Valle has been a Popular deposit customer during the Class Periods, beginning in September 1999 and ending in 2014. During this time, she has maintained a deposit account with Popular in New York, including a Popular Relationship Savings account held in trust for her son Wilfredo Valle, which was accessible using a Popular-issued ATM / debit card. During the Class Periods, Plaintiff Josefina Valle made or approved withdrawals and balance inquiries at an Allpoint Network ATM located in New York, resulting in Non-Popular ATM Fees and Allpoint Network ATM fees and surcharges.

11. Plaintiff Wilfredo Valle is a resident of the Bronx, New York, and the son of Plaintiff Josefina Valle. Plaintiff Wilfredo Valle has been a Popular deposit customer during the Class Periods. During this time, he has maintained a deposit account with Popular in New York, including a Popular Relationship Savings account, as a result of being a named account holder and beneficiary on the Popular saving account with Plaintiff Josefina Valle. During the Class Periods, Plaintiff Wilfredo Valle made or approved withdrawals and balance inquiries at an Allpoint Network ATM located in New York, resulting in Non-Popular ATM Fees and Allpoint Network ATM surcharges.

12. On at least 49 occasions, Popular imposed \$2.00 “Non-Popular ATM Fees” on ATM cash withdrawals or balance inquiries completed at an Allpoint Network ATM, even though Popular represented in customer disclosures and agreements that Allpoint ATM

transactions would be free and not subject to any ATM fees or surcharges.

13. On at least 50 occasions, Plaintiffs were charged Allpoint Network ATM fees and surcharges of \$0.99, even though Allpoint and Cardtronics advertised and represented that Plaintiffs' cash withdrawals at Allpoint Network ATMs would be free and not subject to any ATM fees or surcharges.

14. Plaintiffs have been damaged, injured, and have suffered actual losses as a result and proximate cause of Defendants' imposition of Non-Popular ATM Fees and Allpoint Network ATM fees and surcharges in a manner common and typical of other Class members.

B. DEFENDANTS

15. Popular is a New York-chartered trust company or banking corporation organized under and existing by virtue of the laws of the State of New York that maintains its principal offices at 11 West 51st Street, New York, NY 10019 and 120 Broadway, 16th Floor, New York, NY 10271. Popular engages in the business of consumer and commercial banking within New York, with additional branch and/or ATM operations in California, Florida, Illinois, and New Jersey. During the Class Periods, it advertised and represented to its customers that it provided access to approximately 35,000 or more "free" ATMs, nearly all of which were Allpoint Network ATMs. As of June 30, 2014, according to reports available from the Federal Deposit Insurance Corporation ("FDIC"), Popular reported total assets of \$8,299,166,000.00 That same report lists \$5,877,524,000.00 in customer deposits. Popular is a division or subsidiary of Popular, Inc., a bank holding company. Concerning its name change from Banco Popular North America to Popular Community Bank, a May 31, 2012 Popular press release stated: "After 51 years in New York, Banco Popular, a division of Popular, Inc. (NASDAQ:BPOP), becomes

Popular Community Bank on June 4 with signage and related rebranding changes at 32 branches in New York City and seven in New Jersey.”

16. Allpoint is a division of Cardtronics that owns and operates a network of over 55,000 ATMs, including over 43,000 ATMs located throughout the United States. It advertises and represents that ATM transactions at its Allpoint Network ATMs are free and not subject to ATM surcharges for members of participating banks. Allpoint maintains headquarters in Bethesda, Maryland. ATM National, LLC is foreign corporation registered with the New York Secretary of State Division of Corporations to do business in New York.

17. In 2006, Cardtronics acquired Allpoint and the Allpoint Network when it purchased and acquired Allpoint’s then-parent company, ATM National, Inc.

18. Cardtronics is a Delaware corporation with its headquarters located in Houston, Texas, whose stock trades publically on the NASDAQ exchange. Cardtronics USA, Inc., Cardtronics’ principle operating subsidiary, is foreign corporation registered with the New York Secretary of State Division of Corporations to do business in New York. Cardtronics represents in its public filings with the United States Securities and Exchange Commission (“SEC”) that it owns Allpoint and “owns and operates” the Allpoint Network of ATMs. In its 2013 Form 10-K, Cardtronics states:

Additionally, we own and operate the Allpoint network (“Allpoint”), the largest surcharge-free ATM network within the U.S. (based on the number of participating ATMs). The Allpoint network, which has more than 55,000 participating ATMs globally, provides surcharge-free ATM access to customers of participating financial institutions that may lack a significant ATM network in exchange for either a fixed monthly fee per cardholder or a set fee per transaction that is paid by the financial institutions who are members of the network. The Allpoint network includes a majority of our ATMs in the U.S., a portion of our ATMs in the U.K. and Canada, Puerto Rico, and Mexico, and over 5,000 locations in Australia through a partnership with a local ATM owner and operator.

19. Cardtronics not only “owns and operates” Allpoint and the Allpoint Network, but also provides all the services requires to maintain the Allpoint Network ATMs and to clear transactions completed at Allpoint Network ATMs. Describing its “Products and Services,” Cardronics states in its 2013 Form 10-K:

Under our Company-owned arrangement type, we typically provide our merchant customers with all of the services required to operate ATMs and financial services kiosks, which include monitoring, maintenance, cash management, customer service, and transaction processing. We believe our merchant customers value our high level of service, our 24-hour per day monitoring and accessibility. Our devices are on-line and able to serve customers an average of approximately 99.1% of the time in the U.S. In connection with the operation of our devices under our traditional ATM services model, we generate revenue on a per-transaction basis from the surcharge fees charged to cardholders for the convenience of using our devices and from interchange fees charged to these cardholders’ financial institutions for processing the related transactions conducted on those devices. As further described below, we also earn revenues on these devices based on our relationships with certain financial institutions and our Allpoint network.

Under our merchant-owned arrangement type, we typically provide transaction-processing services, certain customer support functions, and settlement services. We generally earn interchange revenue on a per transaction basis in this arrangement. In some cases, the surcharge is earned completely by the merchant, in which case our revenues are derived solely from interchange revenues. In other arrangements, we also share a portion of the surcharge revenues with the merchant.

20. Cardtronics states in its SEC filings that it “owns and operates” the electronic funds transfer processing platform that clears transactions completed at the Allpoint Network ATMs. It states in its 2013 Form 10-K that, “In 2006, we implemented our own EFT transaction processing operation, which is based in Frisco, Texas. This operation enables us to process and monitor transactions on our devices and to control the flow and content of information appearing on the screens of such devices.”

21. Revenues and profits from Allpoint's operations are reported in Cardtronics' SEC filings as Cardtronics revenues and profits, including the ATM fees and surcharges imposed on consumers at Allpoint Network ATMs. In its 2013 Form 10-K, Cardtronics states: "Our revenues are recurring in nature and historically have been derived primarily from convenience transaction fees, which are paid by cardholders, and transaction fees, including interchange fees, which are paid by the cardholder's financial institution for the use of the devices serving their customers and the connectivity to the applicable EFT network that transmits data between the device and the cardholder's financial institution."

22. Allpoint describes Cardtronics on Allpoint's website as follows:

Cardtronics, the world's largest non-bank ATM operator, places ATMs with merchants of all sizes including regional and national Fortune 500 retailers throughout the United States, the United Kingdom, Canada and Mexico. Cardtronics' financial services customer roster includes many of the largest banks and credit unions in the world who leverage Cardtronics' surcharge-free ATM branding and surcharge-free network opportunities to better serve their customers and members. Cardtronics operates well over 61,000 ATMs across its network, including thousands of ATMs throughout the United Kingdom, Canada and Mexico. Cardtronics' stock is publicly traded under the ticker symbol CATM on the NASDAQ stock market. For more information about Cardtronics, visit www.cardtronics.com.

23. Allpoint states on its website that its "web site, including any subsection accessible through the home or entry page but excluding any third-party web sites linked to this web site (collectively, 'Web Site') is owned, published and maintained by Cardtronics, Inc."

III. JURISDICTION AND VENUE

24. Plaintiffs invoke the subject matter jurisdiction of this Court pursuant to 28 U.S.C. §1331, which confers original jurisdiction upon this Court for all civil actions arising under the laws of the United States, and pursuant to 15 U.S.C. §§1693b, 1693c, 1693h, and

1693m. This Court has supplemental jurisdiction over the Plaintiffs' and the Classes' state law and common law claims pursuant to 28 U.S.C. §1367(a).

25. This Court also has subject matter jurisdiction under 28 U.S.C. §1332(d) and the Class Action Fairness Act ("CAFA") because this is a class action in which the subject matter in controversy exceeds the sum or value of \$5,000,000.00, there are in excess of 100 class members and members of the Classes that are citizens of states different from that of Defendants.

26. This Court has personal jurisdiction over Defendants because a substantial portion of the wrongdoing alleged herein took place in this District. Defendants are authorized to do business in New York and have sufficient minimum contacts with New York so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

27. Venue is proper in this District under 28 U.S.C. §1391.

IV. FACTUAL BACKGROUND

A. POPULAR CHARGED ATM FEES FOR ATM TRANSACTIONS IT REPRESENTED WERE "FREE"

28. On July 15, 2010, Popular sent a letter to its deposit account customers advising them that it had joined the Allpoint ATM network and that ATM transactions done at all Allpoint ATMs would be "Free" and not subject to any Non-Banco Popular ATM Fees. That letter is reproduced below:



July 15, 2010

Dear Customer,

At Banco Popular, we appreciate your business, and are always looking for ways to make banking easier and more convenient for you. Effective August 4, 2010, Banco Popular will be expanding its FREE ATMs to include the Allpoint™ ATM network of more than 33,000 ATMs nationwide. Find a free ATM near you at: www.allpointnetwork.com.

Now is the best time to open a new checking account with us! You'll get:

- o **FREE access to Allpoint ATM network of more than 33,000 ATMs nationwide**
- o FREE Online Banking and Bill Pay
- o FREE Banco Popular MasterCard® Debit Card
- o Up to \$125 Cash*
 - \$25 – For your debit card and unused checks from another institution
 - \$50 – When you add direct deposit to your new account.
 - \$50 – Just for using our free online bill pay
- o Plus you'll get a FREE thank you gift, to show our appreciation for having you as our valued customer

But don't delay. **Effective August 15, 2010, non-Banco Popular ATM fees will be increased from \$1.50 to \$2 for withdrawal or balance inquiries.** So avoid the fees and open a Banco Popular Checking account to gain access to the 33,000 FREE Allpoint ATM network. Beginning August 6th, you can also open a Totally Free Checking Account® online at www.mypopularbanking.com.

If you have any questions, please contact your local branch or our Customer Care Center at 1-800-377-0800.

Thank for choosing Banco Popular.

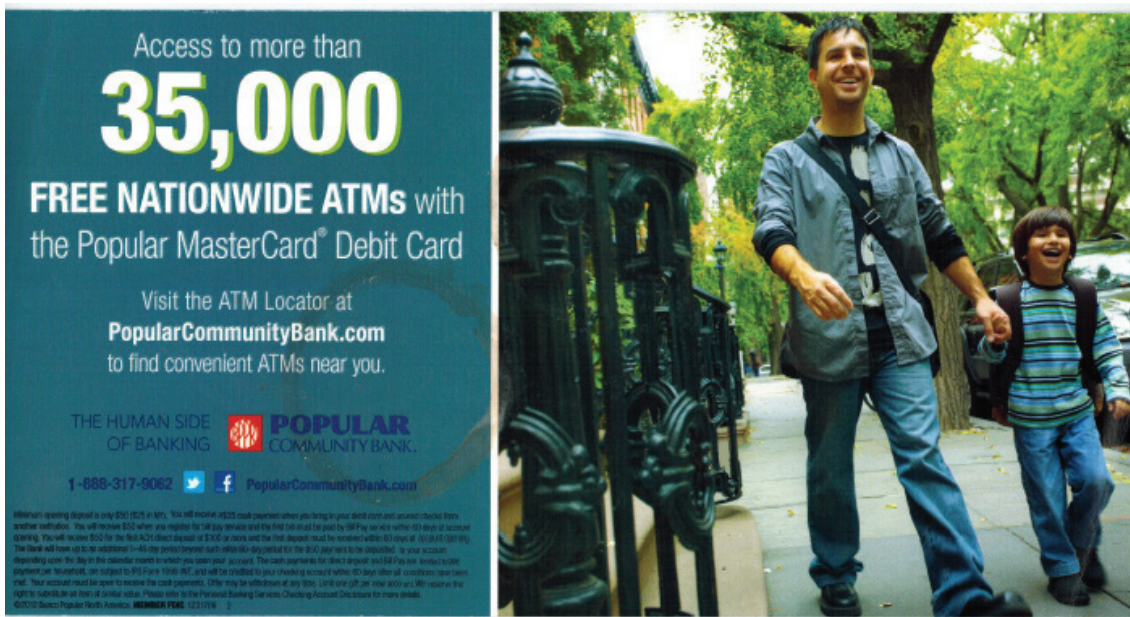
Sincerely,

Larry O'Brien
VP Marketing
Banco Popular North America

Minimum opening deposit is \$50 (\$25 in NY). *Bring in your debit card and unused checks from another institution and we'll give you \$25. The first ACH direct deposit of \$100 or more must be received within 60 days of account opening to receive the \$50 cash payment. However, you may have up to an additional 1-46 day grace period beyond such initial 60 day period for the first ACH deposit of \$100 or more to be deposited to your account. The duration of such grace period, if any, is dependent upon the day in the calendar month in which you open your account. The first bill must be paid by Bill Pay service within 60 days of account opening to receive the \$50 cash payment. The cash payment for direct deposit and Bill Pay are limited to one payment per household, are subject to IRS form 1099-int, and will be credited to your checking account within 60 days after all conditions have been met. Your account must be open to receive the cash payments. Offer may be withdrawn at any time.

29. On its website, Popular also represents that ATM transactions performed at Allpoint Network ATMs will be “FREE” and not subject to any ATM surcharges when using a Popular-issued ATM or debit card. Like other advertisements making this same claim or representation, this statement and advertisement is false, misleading, and deceptive.

30. A Popular marketing brochure also represented the “FREE” use of the Allpoint Network ATMs by Popular customers:



31. Popular’s customer agreements and disclosures also misrepresent that ATM transactions performed at Allpoint Network ATMs will be “FREE” and not subject to any ATM surcharges when using a Popular-issued ATM or debit card. In its agreements and disclosures, Popular falsely and deceptively stated during the Class Periods that: “There is a \$2 fee for each ATM withdrawal or inquiry at ATM locations *other than* Popular Community Bank and designated Allpoint ATMs.” [Emphasis added]. Popular’s customer agreements and disclosures further stated: “There are unlimited free ATM transactions at all Popular Community Bank and designated Allpoint ATMs with your Popular Community Bank Debit Card.” Popular breached

its customer agreements with the Classes by charging the Non-Popular ATM Fees and by allowing and not stopping Allpoint and Cardtronics from imposing ATM fees and surcharges for Allpoint Network ATM transactions.

32. Popular's customer agreements effective since 2010 concede its "Liability for Failure to Complete an Electronic Funds Transfer," stating that: "If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages."

33. Among the "ATM-surcharge-FREE" Allpoint ATM locations listed on Popular's website is an ATM located at 1865 Bruckner Boulevard, Bronx, New York. That ATM has been included in the Allpoint Network during all relevant times during the Class Periods.

34. As of August 27, 2014, Popular's website represented that the ATM located at 1865 Bruckner Boulevard, Bronx, New York, among others, was an Allpoint surcharge-free ATM not subject to any Non-Popular ATM Fees:

Stop paying ATM surcharges
Access to over 38,000
FREE ATMs



[Compare Checking Accounts](#)

[Compare Debit Cards](#)

[Frequently Asked Questions](#)

Expanded ATM Network

Popular is now part of the Allpoint ATM Network.

Take advantage of these benefits today:

- ATM surcharge-FREE transactions!
- More than 38,000 ATM's nationwide
- No sign up fees
- No forms to fill out
- Use your current Popular MasterCard Debit Card



[Start searching for ATMs using your mobile device today.](#)

Locate

1865 Bruckner Boulevard, Br

Search by all that apply:

Popular Branches

Surcharge-Free ATMs

Deposit Taking ATMs

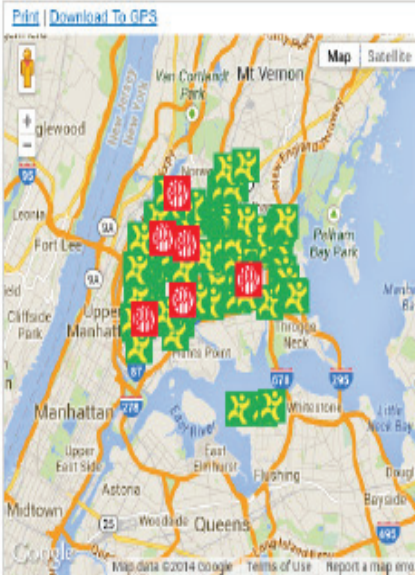
Results

McDonalds
1865 Bruckner Blvd
Bronx, NY 10472
0.01 miles
Send To: [Email](#) | [Mobile](#)
[Get Directions](#)

Pick Quick Keyfoods
1994 Bruckner Blvd
Bronx, NY 10473
0.22 miles
Send To: [Email](#) | [Mobile](#)
[Get Directions](#)

Directions

[Print](#) | [Download To GPS](#)



B. ALLPOINT AND CARDTRONICS CHARGED ATM FEES AND SURCHARGES FOR ATM TRANSACTIONS THEY REPRESENTED WERE “FREE”

35. On its website, www.allpointnetwork.com, Allpoint represents that ATM

withdrawals at its ATMs for its members' cardholders are free and not subject to any ATM surcharges. It represents that it operates. "The largest ATM surcharge-free network," comprising over 43,000 ATMs in the United States and more than 55,000 internationally. It further represents:

55,000 Surcharge-Free ATMs. Worldwide.

United States, Canada, United Kingdom, Puerto Rico, Australia, Mexico

With over 55,000 ATMs, Allpoint is your single source for surcharge-free access coast to coast and around the world. Designed for all financial institutions seeking greater retail distribution and access, Allpoint provides your cardholders with unmatched convenience and savings, and your institution with the tools to level the playing field as you compete for new accounts.

36. Allpoint further represents on its website that if an ATM surcharge is charged to one of its members' cardholders, that "you will not be charged the surcharge or Allpoint will refund your money:"

Notice to Cardholders of Member Institutions

*If the surcharge screen appears during your Allpoint ATM transaction, press "yes" to accept the surcharge and proceed with your withdrawal. You will not be charged the surcharge or Allpoint will refund your money.**

37. Allpoint even "guarantees" that if a surcharge is imposed, that it will refund it to the consumer. It terms this the "Allpoint Money Back Guarantee," and states on its website that:

Allpoint Money Back Guarantee: Surcharge-Free or we will refund the fee you are charged.

38. Among the "Surcharge-Free" ATM locations listed on Allpoint website is the ATM located at 1865 Bruckner Boulevard, Bronx, New York in the McDonalds:

The screenshot displays a web interface for finding Allpoint ATMs. On the left, a search bar contains the address '1865 Bruckner Blvd, Bronx NY'. Below it, a list of results shows several Allpoint ATM locations, including one at a McDonald's at 1865 Bruckner Blvd. A map on the right shows the Bronx area with numerous Allpoint ATM icons. A pop-up window for the selected location at 1865 Bruckner Blvd is visible, showing the Allpoint logo and a 'Go' button.



Notice to Cardholders of Member Institutions

*If the surcharge screen appears during your Allpoint ATM transaction, press "yes" to accept the surcharge and proceed with your withdrawal. You will not be charged the surcharge or Allpoint will refund your money.**

Allpoint Money Back Guarantee: Surcharge-Free or we will refund the fee you are charged.

** Some locations may have more than one ATM, not all of which participate in the Allpoint Network. Please make sure to check the ATM you are using for the Allpoint logo to ensure it is the correct one.*

DID YOU KNOW?

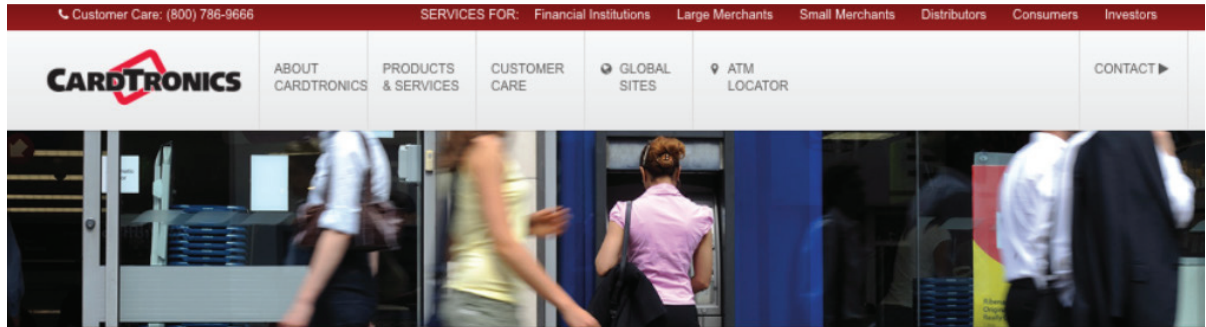
Convenient Locations: Allpoint ATMs are Located in National and Regional Retailers.

39. There is only one ATM located in the McDonalds restaurant at 1865 Bruckner Boulevard, Bronx, New York. It is clearly branded as an Allpoint ATM:





40. Like Allpoint, Cardtronics advertises on its website and discloses in its SEC filings that ATM transactions completed at its Allpoint Network ATMs were free and not subject to ATM surcharges for customers of participating member banks. It represents on its website as follows:



FINANCIAL INSTITUTIONS

- [Bank & Credit Union Services](#)
- [Why Cardtronics?](#)
- [ATM Branding](#)
- [ATM Placement](#)
- [Allpoint Network](#)
- [Shared Image Deposit Program](#)
- [FeeAlert](#)
- [Location Services](#)
- [Top Customers](#)

CONTACT US [+]



55,000 Surcharge-Free ATMs Worldwide

The nation's largest banks deploy thousands of ATMs, creating a significant competitive advantage. Now there is no need to surrender the competitive edge to financial institutions with larger ATM networks.

ALLPOINT

Allpoint is the largest surcharge-free ATM network with over 55,000 ATMs in leading national and regional merchant locations across the United States, Canada, United Kingdom and Australia. Allpoint provides greater access, convenience and savings to customers of financial institutions while providing institutions the tools to compete more effectively for customers. Advantages of Allpoint include:

Enjoy all the benefits of a robust ATM network without the costs. Cardtronics has taken the capital outlays, operational hassles, and exorbitant monthly expenses out of building your own ATM network by providing you with exclusive access to ours.

- ✓ **Level playing field:** Allpoint members enjoy a surcharge-free ATM network with twice as many participating ATMs as deployed by the nation's largest bank.
- ✓ **Neutral retail locations:** Allpoint Network ATMs are located in retail locations, not at rival bank and credit union branches.
- ✓ **Your ATMs do not participate:** Only non-financial institution ATMs are included in Allpoint – you do not need to make your ATMs available surcharge-free and will not send your customers to a competitor.
- ✓ **Simple to join:** There are no card reissues, system updates, or new technologies needed to join Allpoint.
- ✓ **Marketing support:** Allpoint provides a free ATM locator tools for use on your website and ready-to-use marketing materials to promote Allpoint with your customers, current and prospective.

Visit [Allpoint](#) to learn more.

41. Allpoint has advertised its relationship with Popular and its offering of surcharge free ATM to Popular's customers. A September 10, 2010 news release, which Allpoint posted on its website, stated,

Banco Popular Expands Community Banking Reach

With over 33,000 Allpoint Surcharge-Free ATMs and a New - Fully Integrated Online Banking Platform

September 16, 2010

ROSEMONT, IL (September 16, 2010) – Banco Popular is extending its reach as one of the premier community banks in the U.S. by adding access to thousands of surcharge-free ATMs through Allpoint® Network, the largest surcharge-free ATM network. Through the partnership Banco Popular is now connected to communities across America, providing its customers with surcharge-free access to 33,000 ATMs in leading national and local merchant locations.

In addition, Banco Popular has just re-launched its brand new online banking platform through its fully integrated web site www.mypopularbanking.com. The new site is faster, easier to use and allows customers to open an account online. The new platform also allows customers to transfer funds between internal and external accounts, pay their bills more quickly and view both their transaction history and statements online.

"Consumer and business banking customers today insist on access, convenience, and choice," said Manuel Chinea, SVP Retail Banking Operations. "We are focused on providing convenience and ease of banking to our customers. We believe our expanded network of ATMs and newly expanded online banking platform does just that. Now, people have many more reasons to make Banco Popular their community bank."

Customers can currently find the nearest Allpoint ATM online at www.allpointnetwork.com or through Allpoint's mobile applications for iPhone, Blackberry, and Android. An Allpoint ATM locator feature will be available on the Banco Popular website in the coming months. Allpoint locations include:

- 4,200 ATMs in New York and New Jersey, of which more than 825 are within three miles of Banco Popular's New York Metro branch network.
- 4,800 ATMs in California, of which almost 800 are within five miles of the bank's greater Los Angeles branch network.
- Nearly 800 ATMs in Illinois, of which 180 are within three miles of the bank's Chicago-area branch network.
- Over 3,000 ATMs in Florida, of which over 300 are within three miles of Banco Popular's Orlando and Miami branch networks.

C. POPULAR, ALLPOINT, AND CARDTRONICS CHARGED ATM FEES AND SURCHARGES FOR ATM TRANSACTIONS THEY REPRESENTED WERE "FREE"

42. After August 4, 2010, Plaintiffs or their authorized users used their Popular ATM or debit card to make ATM cash withdrawals or balance inquires at the Allpoint ATM located at 1865 Bruckner Boulevard, Bronx, New York.

43. As represented by Popular, Allpoint, and Cardtronics, those ATM withdrawals should have been "FREE" and not subject to any ATM surcharges imposed by Popular or the ATM. However, on at least 49 occasions, Popular imposed on Plaintiffs' account a \$2.00

“Service Charge” for “Non-Popular ATM Fee.” In addition, on at least 50 occasions, the Allpoint ATM imposed an \$0.99 ATM surcharge on Plaintiffs’ deposit account.

44. Plaintiffs’ or their authorized users’ withdrawals from the Allpoint ATM located in the McDonald’s restaurant located at 1865 Bruckner Boulevard, Bronx, New York on August 1, 2012 reflected on Plaintiffs’ Popular monthly statement shows the ATM fees imposed by Popular and the separate fee imposed by the ATM:

08-01	'ATM Withdrawal CASH WITHDRAWAL TERMINAL NY000374 1865 BRUCKNER BLVD BRONX NY 08-01-12 5:37 AM SEQ# 221400009271 000000092710000	-300.99	108.20
08-01	'Service Charge For NONPOPULAR ATM FEE 000000000000000	-2.00	106.20
08-01	'ATM Withdrawal CASH WITHDRAWAL TERMINAL NY000374 1865 BRUCKNER BLVD BRONX NY 08-01-12 5:39 AM SEQ# 221400009272 000000092720000	-100.99	5.21
08-01	'Service Charge For NONPOPULAR ATM FEE 000000000000000	-2.00	3.21

45. The same \$2.00 Non-Popular ATM Fee was imposed by Popular on Plaintiffs’ account for cash withdrawals and balance inquiries at the ATM located at 1865 Bruckner Boulevard, Bronx, New York on the following dates: 8/3/12, 8/31/12 (twice), 10/1/12 (twice), 10/3/12, 11/30/12 (twice), 12/3/12, 2/1/13, 2/2/13 (twice), 2/13/13, 4/1/13 (twice), 4/3/13 (twice), 7/1/13 (twice), 7/3/13 (twice), 9/3/13, 10/1/13 (twice), 10/3/13 (twice), 11/1/13 (three times), 11/2/13 (twice) 11/29/13 (twice), 12/3/13 (twice), 2/3/14, 2/28/14 (twice), 4/1/14, 4/3/14 (twice), 5/1/14 (twice), 5/2/14 (twice) and 5/30/14 (twice). The imposition of every one of those \$2.00 Non-Popular ATM fees was deceptive in violation of GBL §§349 and 350 causing injury and out-of-pocket loss to Plaintiffs. Further, Popular breached the contracts it maintains with its

customers, as its contracts and disclosures specifically represented and promised that such fees and surcharges would not be incurred. Popular was unjustly enriched and retained an inequitable benefit at the expense of Plaintiffs and Popular Class, who should not have incurred any charge at all because the Allpoint Network ATMs used were supposed to be free of ATM fees and surcharges but were not.

46. In addition, for the ATM cash withdrawals at the ATM located at 1865 Bruckner Boulevard, Bronx, New York, Plaintiffs' account was charged an Allpoint Network ATM surcharge in the amount of \$0.99 on the following dates: 8/1/12 (twice), 8/3/12, 8/31/12 (twice), 10/1/12 (twice), 10/3/12, 11/01/12 (twice), 11/3/12, 11/30/12 (twice), 12/03/12, 2/1/13, 2/2/13 (twice), 2/13/13, 4/1/13 (twice), 4/3/13 (twice), 7/1/13 (twice), 7/3/13, 9/3/13, 10/1/13 (twice), 10/3/13 (twice), 11/1/13 (twice), 11/2/13 (twice), 11/29/13 (twice), 12/3/13 (twice), 2/3/14, 2/28/14 (twice), 4/1/14, 4/3/14 (twice), 5/1/14 (twice), 5/2/14 (twice), 5/30/14 (twice). The imposition of these ATM surcharges was a deceptive act and practice caused by Defendants' false representations in violation of GBL §§349 and 350, causing injury and out-of-pocket loss to Plaintiffs. Allpoint and Cardtronics were unjustly enriched and retained an inequitable benefit at the expense of Plaintiffs and the Allpoint Class, who should not have incurred any ATM fees or surcharges at all because the Allpoint Network ATMs used were supposed to be free of charge, but were not.

47. Demonstrating that Plaintiffs should not have been charged any Non-Popular ATM Fees for transactions at the Allpoint ATM located at 1865 Bruckner Boulevard, Bronx, New York, the \$2.00 fee was not charged for three cash withdrawals on November 1, 2012 and November 3, 2012. However, on all three occasions Plaintiffs were still wrongfully charged an

Allpoint Network ATM surcharge of \$0.99.

48. Bank customers, like Plaintiffs and the Class members, commonly understand that if an ATM / debit card is used at an “in-network” or “participating” ATM, they will not incur a fee for those transactions.

49. Defendants’ false and deceptive acts and practices constitute consumer-oriented conduct as each Defendant’s respective representations and advertisements were directed to banking consumers at large. Moreover, given the automated nature of ATM networks generally, upon information and belief, all Class members with ATM / debit cards bearing the Popular Bank Identification Number were charged the wrongful Non-Popular ATM Fee and Allpoint Network ATM fees and surcharges. Therefore, Defendants’ false and deceptive acts and practices impacted Plaintiffs and members of the Classes uniformly. Thus, upon information and belief, the Class members suffered the same type of injury and out-of-pocket loss as Plaintiffs.

V. CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

51. The Classes each satisfy the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements.

52. The members of the Classes are so numerous and geographically disbursed that joinder of all Class members is impracticable.

53. Plaintiffs’ claims are typical of the claims of the members of the Classes. Plaintiffs have no interests that are adverse or antagonistic to those of the Classes. Plaintiffs’ interests are to obtain relief for themselves and the Classes for the harm arising out of the

common methods, acts, practices, and conduct pled herein.

54. Plaintiffs will fairly and adequately protect the interests of the members of the Classes and have retained counsel competent and experienced in complex and consumer class action litigation.

55. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by each member of the Classes is relatively small, the expense and burden of individual litigation make it virtually impossible for Plaintiffs and members of the Classes to individually seek redress for the wrongful conduct alleged.

56. In addition, Defendants have acted and/or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Classes as a whole.

57. Common questions of law and fact exist as to all members of the Classes that predominate over any questions affecting solely individual members of the Classes. Among the questions of law and fact common to the Classes are:

- (a) whether Defendants violated the EFTA by charging ATM fees and surcharges they advertised and represented were free;
- (b) whether Defendants violated New York General Business Law §349;
- (c) whether Defendants violated New York General Business Law §350;
- (d) whether Defendants' methods, acts, practices, and conduct were

misleading and/or deceptive;

(e) whether Popular breached its contracts with Plaintiffs and the Popular Class members;

(f) whether Defendants were unjustly enriched;

(g) the proper measure of damages to be paid to Plaintiffs and/or the Classes; and

(h) whether Plaintiffs and/or the Classes are entitled to injunctive relief to remedy Defendants' past and continuing violations of laws alleged herein.

58. The Classes are readily definable and prosecution of this action as a class action will reduce the possibility of repetitious litigation.

59. Plaintiffs and their counsel know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

COUNT I

**VIOLATIONS OF ELECTRONICS FUNDS TRANSFER ACT
AND FEDERAL RESERVE REGULATION E**

(By Plaintiffs and All Class Members against Popular)

60. Plaintiffs repeat and reallege paragraphs 1 through 59 as though set forth herein.
61. Plaintiffs are consumers as defined and used in the EFTA and Regulation E.
62. Popular is a financial institution as defined in the EFTA and Regulation E.
63. The EFTA, 15 U.S.C. §1693c, requires financial institutions to truthfully and accurately disclose to consumers all fees and fee amounts that will be charged for ATM transactions.

64. Popular has violated the EFTA, 15 U.S.C. §1693c, including 15 U.S.C. §1693c(a)(3), (4) and (10), which state:

(a) Disclosures; time; form; contents. The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Bureau;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(10) a notice to the consumer that a fee may be imposed by—

(A) an automated teller machine operator (as defined in section 904(d)(3)(D)(i) [15 USCS § 1693b(d)(3)(D)(i)]) if the consumer initiates a transfer from an automated teller machine that is not operated by the person issuing the card or other means of access; and

(B) any national, regional, or local network utilized to effect the transaction.

65. The EFTA, 15 U.S.C. §§1693c(a)(3) and 1693c(b), require a financial institution like Popular to provide accurate and truthful notifications of any changes to the disclosures required by 15 U.S.C. §1693c(a).

66. Further notice and disclosure requirements are imposed on financial institutions by Regulation E, 12 C.F.R. §205.7. In particular, pursuant to 12 C.F.R. 205.7(b)(5), financial institutions are obliged to truthfully and accurately disclose, “Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.”

67. Regulation E, 12 C.F.R. §205.7(c) further provides: “If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.” Additional notice is required by Regulation E, 12 C.F.R. §205.8, if a financial institution changes its terms and increases the fees for electronic funds transfers.

68. Popular represented and continues to represent in its customer disclosure documents (*i.e.*, account agreements and disclosures, marketing materials, and advertisements) disseminated to Plaintiffs and the Classes’ members that ATM transactions by its customers using a Popular ATM or Debit Card at Allpoint Network ATMs would be free and not subject to any ATM fees or surcharges. Plaintiffs and the Class members relied, to their detriment, on the truth and accuracy of Popular’s customer disclosures. These disclosures were false, misleading, and inaccurate, and as a result and proximate cause thereof, Plaintiffs and Class members in fact did incur Non-Popular ATM Fees as well as Allpoint Network ATM fees and surcharges when

using Allpoint Network ATMs with Popular-issued ATM / debit cards.

69. By representing and falsely disclosing that ATM transactions by its customers at Allpoint Network ATMs would be “free” and not subject to any ATM fees or surcharges, Popular violated and is continuing to violate the EFTA, 15 U.S.C. §1693c, and Regulation E, and 12 C.F.R. §205.7.

70. Plaintiffs and the Classes are entitled to pursue claims for actual damages, statutory damages, attorneys’ fees, costs, and other available relief against Popular for its violations of the EFTA and Regulation E, pursuant to 15 U.S.C. §§1693c, 1693h, and 1693m occurring one-year prior to the filing of this Complaint. Plaintiffs and the Classes seek to recover all Non-Popular ATM Fees and Allpoint Network ATM fees and surcharges wrongfully charged.

COUNT II

VIOLATIONS OF ELECTRONICS FUNDS TRANSFER ACT AND FEDERAL RESERVE REGULATION E

(By Plaintiffs and the Allpoint Class Members against Allpoint and Cardtronics)

71. Plaintiffs repeat and reallege paragraphs 1 through 70 as though set forth herein.

72. Plaintiffs are consumers as defined and used in the EFTA and Regulation E.

73. Allpoint and Cardtronics are automated teller machine operators as defined in the EFTA and Regulation E.

74. The EFTA, 15 U.S.C. §1693b, requires automated teller machine operators to truthfully and accurately disclose to consumers all fees and fee amounts that will be charged for ATM transactions.

75. Allpoint and Cardtronics have violated the EFTA, 15 U.S.C. §1693b, including 15

U.S.C. §1693b(d)(3), which states:

(3) Fee disclosures at automated teller machines.

(A) In general. The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of --

- (i)** the fact that a fee is imposed by such operator for providing the service; and
- (ii)** the amount of any such fee.

(B) Notice requirement. The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(C) Prohibition on fees not properly disclosed and explicitly assumed by consumer. No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless --

- (i)** the consumer receives such notice in accordance with subparagraph (B); and
- (ii)** the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

(D) Definitions. For purposes of this paragraph, the following definitions shall apply:

- (i) Automated teller machine operator.** The term "automated teller machine operator" means any person who--
 - (I)** operates an automated teller machine at which consumers initiate electronic fund transfers; and
 - (II)** is not the financial institution that holds the account of such consumer from which the transfer is made.

(ii) Electronic fund transfer. The term "electronic fund transfer" includes a transaction that involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

(iii) Host transfer services. The term "host transfer services" means any electronic fund transfer made by an automated teller machine operator in

connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.

76. Further notice and disclosure requirements are imposed on automated teller machine operators by Federal Reserve Regulation E, 12 C.F.R §205.16. In particular, automated teller machine operations are obliged to truthfully and accurately, “[d]isclose the amount of fee” charged for initiating an electronic funds transfer or balance inquiry.

77. Allpoint and Cardtronics represented and continue to represent that ATM users of member banks and institutions, such as Plaintiffs and Allpoint Class members, would not be assessed ATM fees or surcharges, or would be refunded the fees and surcharges, even if the surcharge notice screen appeared during an ATM transaction and the customer clicked “yes” to accept the surcharge.

78. These representations were false, misleading, and inaccurate, and as a result and proximate cause thereof, Plaintiffs and the Allpoint Class members in fact did incur Allpoint Network ATM surcharges when using Allpoint Network ATMs with Popular-issued ATM or debit cards.

79. By falsely representing and disclosing that ATM transactions by Popular customers at Allpoint Network ATMs would be “free” and not subject to any ATM fees or surcharges, Allpoint and Cardtronics violated and are continuing to violate the EFTA, 15 U.S.C. §1693b(d)(3), and Regulation E, 12 C.F.R §205.16.

80. Plaintiffs and the Allpoint Class are entitled to pursue claims for statutory damages, attorneys’ fees, costs, and other available relief against Allpoint and Cardtronics for their violations of the EFTA and Regulation E, pursuant to 15 U.S.C. §§1693b, 1693h, and 1693m occurring one-year prior to the filing of this Complaint.

COUNT III

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW §349 *ET SEQ.*

(By Plaintiffs and New York Class Members against All Defendants)

81. Plaintiffs repeat and reallege paragraphs 1 through 80 as though set forth herein.

82. New York Class members are those Allpoint Class members and Popular Class members whose ATM transactions occurred in New York or whose challenged ATM fees or surcharges were imposed in or from New York during the Class Periods.

83. Plaintiffs and the New York Class members are “persons” within the meaning of GBL §349(h).

84. GBL §349(a) states: “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

85. Defendants’ misleading and deceptive acts, policies, and practices adversely impacted Plaintiffs and other New York consumer deposit account holders, and therefore constitute consumer-oriented conduct under GBL §349 that resulted in actual and direct harm to Plaintiffs and members of the New York Class.

86. Defendants engaged in misleading acts, policies, and practices defined and prohibited by GBL §349. By engaging in the conduct alleged in this Complaint, Defendants engaged in misleading acts and practices in that their conduct had a tendency and likelihood to, and did in fact, deceive Plaintiffs and the New York Class among the persons to whom such conduct was and is targeted.

87. Popular, Allpoint, and Cardtronics engaged in deceptive acts, policies, and practices in the form of misrepresentations and/or material omissions during the conduct of