

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**CALEB EUBANKS**, individually, and on behalf  
of all others similarly situated,

Plaintiff,

v.

**GASBUDDY, LLC**,

Defendant.

Civil Action No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, Caleb Eubanks (“Eubanks”), individually and on behalf of all others similarly situated, hereby brings this Class Action Complaint against Defendant, GasBuddy, LLC (“GasBuddy”), and alleges as follows:

**INTRODUCTION**

1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of similarly situated GasBuddy users who have been deceived into using GasBuddy’s mobile app and payment card by the company’s misrepresentations and omissions, in marketing materials, regarding the true operation and risks of the service. These risks include the real and repeated risk of multiple insufficient funds fees (“NSF Fees”) or overdraft fees (“OD Fees”) imposed by users’ banks as a result of automated (and often delayed) GasBuddy transfers from consumers’ checking accounts.

2. GasBuddy markets itself as a way for consumers to save money on fuel costs. By signing up for and using the GasBuddy payment card at select gas stations, users may save a few cents per gallon. GasBuddy markets itself as an effortless, simple way to guarantee savings on gas purchases. For example, GasBuddy states on its website and in internet marketing:

- Fill-ups are **effortlessly deducted** from your linked debit card.
- No credit check required. **Sign up in minutes.**
- No bills, no hassles, and nothing to fund. **Just savings.**

3. In short, GasBuddy prominently markets itself as a service that allows users to save money on gas, with no hassles and nothing but “savings.” This is false—and in fact there are huge, undisclosed risks of using the service.

4. GasBuddy also markets itself as a service that “effortlessly deducts” funds from linked checking accounts at the time of purchase, “like a debit card.” These representations are false. In fact, the service is nothing “like a debit card,” and transactions may be approved even when there are insufficient funds in an account and/or payments may not occur for several days after they are made.

5. GasBuddy’s services cause unsuspecting consumers like Plaintiff to incur significant overdraft and NSF fees on their linked bank accounts.

6. Unfortunately, GasBuddy’s operation, along with its deceptive and incomplete marketing materials, cause users like the Plaintiff to incur huge amounts of bank fees, which GasBuddy falsely assures users they will not receive and/or fails to warn users about.

7. In its rush to tout itself as convenient, simple, automatic, “like a debit card,” and as providing guaranteed savings, GasBuddy does not disclose that overdraft and NSF fees are a likely and devastating consequence of the use of its service. No reasonable consumer would run this risk.

8. This massive risk is known to GasBuddy but is omitted from its marketing materials.

9. Had Plaintiff and the Class members known of the true operation and risks of the GasBuddy service, they would not have used the GasBuddy service.





1 discount and charge the remainder to your checking account - **kind of like**  
2 **a debit card.**

3 27. Once the card is activated, it can be inserted at the pump or selected stations, where  
4 a small per-gallon discount will be applied.

5 28. The whole sign up process takes a few seconds—and at no time during that process  
6 does GasBuddy warn potential users of the true risks of using its service. To the contrary, during  
7 the checkout and sign up processes, GasBuddy repeatedly touts itself as a vehicle for automatic  
8 and guaranteed “savings” that are applied instantly at the time of payment.

9 29. The website explains: “**GasBuddy has saved drivers \$3.1 billion and is used by**  
10 **more North Americans to save money on gas than any other app.** While GasBuddy represents  
11 to consumers that it provides gas savings, it omits other key facts, viz., that using GasBuddy can  
12 cost far more than the savings it generates. That is because GasBuddy’s services causes  
13 unsuspecting consumers like Plaintiff to incur massive fees on their linked bank accounts.

14 30. GasBuddy misrepresents (and omits facts about) the true nature, benefits, and risks  
15 of its service, the functioning of which means that users are at extreme and undisclosed risk of  
16 expensive bank fees when using GasBuddy. Had Plaintiff been adequately informed of these  
17 risks, he would not have used GasBuddy.

18 31. As alleged herein, Plaintiff had no idea that small, automatic GasBuddy  
19 transactions could cause a \$35 overdraft fee from his bank per transaction.

20 32. GasBuddy also misrepresents the operation of the service. In addition to its promise  
21 that the card is “like a debit card,” GasBuddy states:

22 Pay for gas using the money in your linked bank account. “**The card works at 95% of**  
23 **stations.**”

24 33. GasBuddy also promises that payments and discounts are “automatically”  
25 applied”:

26 **Swipe your card** and your discount is automatically applied. It's that easy!  
27 **(emphasis in original).**

1           34. GasBuddy’s marketing and public communications stress that it is a service that  
2 allows users to instantly “pay” for gas. But that too is not true, as paying with the GasBuddy  
3 payment card comes with significant delays—delays that mean users no longer have funds in  
4 their accounts to pay for their purchases by the time GasBuddy processes their payments.

5           35. In truth, the GasBuddy payment card is nothing “like a debit card” but is in fact an  
6 electronic check—one that GasBuddy does not process promptly and immediately. And unlike  
7 paper checks or other electronic checks, GasBuddy does not instantly verify the presence of  
8 sufficient funds in a checking account—though it has the capacity to do so.

9           36. In fact, a GasBuddy payment card transaction occurs over the Automated  
10 Clearinghouse (“ACH”) network. Because GasBuddy groups debit transactions together,  
11 sometimes over several days, then submits giant batches for processing through the network, the  
12 processing of transactions is delayed for several days.

13           37. If GasBuddy acted more quickly, transactions would often debit while consumers  
14 still had funds in their account. This processing delay means that funds available in consumer  
15 checking accounts at the time they made a GasBuddy transaction are often no longer available.  
16 That results in overdraft or NSF Fees charged by consumer banks, as described herein.

17           38. This need not occur. Indeed, technology widely exists for the same-day, virtually  
18 instantaneous processing of ACH debit transactions. Moreover, in the context of paper checks,  
19 technology also is widely available and widely used by virtually all major retailers to instantly  
20 check consumer checking accounts to make sure that sufficient funds exist to cover a paper check.  
21 GasBuddy could easily use such technology here to ensure sufficient funds exist in a checking  
22 account for a GasBuddy payment card transaction. It chooses not to, in order to save itself  
23 transaction costs.

24           **B. Plaintiff’s Experience**

25           39. When Plaintiff signed up for GasBuddy and was induced to provide GasBuddy  
26 with his highly sensitive banking information, he was not aware that GasBuddy’s service had a  
27

1 significant “catch” and that significant fees and cost could result from use of this supposedly free  
2 service.

3 40. While Plaintiff has saved a few pennies per gallon when using GasBuddy, he has  
4 incurred at least \$200 in overdraft fees or NSF Fees from his bank as a result of using the card—  
5 penalties that far outweigh the benefits of the service.

6 41. For example, prior to December 16, 2019, Eubanks made a purchase of \$34.70  
7 using the GasBuddy payment card at a local gas station. At the time that he inserted his card,  
8 Eubanks had sufficient funds in his Altra checking account to pay for the \$34.70 purchase.  
9 However, by the time GasBuddy processed the transaction on December 16, 2019, Eubanks no  
10 longer had sufficient funds in his account. As a result, Altra assessed a \$35 overdraft fee to  
11 Eubanks. Had he known the true risks of using the service, Eubanks would not have done so. The  
12 same fact pattern occurred on January 7, 2020, among other examples.

13 42. Worse, some users like Eubanks pay GasBuddy a monthly subscription fee of \$4.99  
14 for a “premium” service wherein the per-gallon discounts are higher. Eubanks would not have  
15 signed up for and paid these subscription fees if he had known the true risks and costs of using  
16 the service. But even these monthly subscription fees can be far higher than represented, as they  
17 too can cause OD and NSF Fees from users’ banks.

18 43. Moreover, GasBuddy’s own processing practices maximize the number of  
19 OD/NSF Fees assessed on its users. Specifically, GasBuddy often splits debits it makes on its  
20 users’ accounts into two or more debits, with each one causing an OD/NSF Fee. If GasBuddy  
21 had simply made a single debit on any account, users would be assessed one fee instead of two  
22 or more.

23 44. For example, on June 8, 2021 and December 16, 2019, among other occasions,  
24 GasBuddy charged Eubanks a monthly subscription fee of \$4.99. On the very same days,  
25 GasBuddy also made separate debits for gas purchases that had occurred prior to those days at  
26 local gas stations. As a result, Altra assessed two \$35 overdraft fees to Eubanks.

1           45. Had he known of the true risks of using the service, Eubanks would not have done  
2 so.

3           **C. GasBuddy’s Deceptive Marketing**

4           46. In marketing and promotions, GasBuddy describes its service as simple,  
5 convenient, and easy—a no-fee way for consumers to save on gas purchases.

6           47. GasBuddy’s marketing never warns consumers of the extreme and crushing NSF  
7 and overdraft fee risk of using the service.

8           48. GasBuddy conceals from users the punishing risk of NSF and overdraft fees on  
9 small dollar GasBuddy transactions.

10           49. GasBuddy’s marketing materials—including within the app, in app stores, and on  
11 GasBuddy’s website—never disclose these risks and material facts, instead luring consumers to  
12 sign up for and use the service with promises of ease, convenience, and fee/interest avoidance.

13           50. GasBuddy knows that its service is likely to cause its users to incur large bank fees.

14           51. GasBuddy’s representations—which all users view during the sign-up process—  
15 are false and contain material omissions.

16           52. GasBuddy misrepresents the true nature, benefits and risks of the service, which  
17 targets users with an extreme and undisclosed risk of GasBuddy triggering expensive bank fees.  
18 Plaintiff would not have used GasBuddy if he had been adequately informed of the risks of bank  
19 fees. As alleged herein, Plaintiff had no idea that small, automatic GasBuddy transactions: 1) did  
20 not occur immediately, as with other card-based payments; 2) could cause a \$35 per transaction  
21 fee from his bank; and, 3) that GasBuddy would process transactions when his account had  
22 insufficient funds.

23           53. GasBuddy’s marketing never discloses the most devastating risk of using the  
24 service—any “savings” can be wiped out and outweighed by bank fees associated with using the  
25 service.



1 **CLASS ALLEGATIONS**

2 54. Plaintiff brings this action individually and as representatives of all those similarly  
3 situated, on behalf of the below-defined Class (the “Class”):

4 All persons who used the GasBuddy Service and incurred overdraft or  
5 NSF Fees as a result of a GasBuddy transaction.

6 55. Excluded from the Class are Defendant and its affiliates, parents, subsidiaries,  
7 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over  
8 this matter and the members of their immediate families and judicial staffs.

9 56. This case is appropriate for class treatment because Plaintiff can prove the elements  
10 of their claims on a class wide basis using the same evidence as would be used to prove those  
11 elements in individual actions alleging the same claims.

12 57. **Numerosity:** The members of the Class are so numerous that joinder of all  
13 members would be unfeasible and impracticable. The precise membership of the Class is  
14 unknown to Plaintiff at this time; however, it is estimated that the Class number is greater than  
15 one hundred individuals. The identity of such membership is readily ascertainable via inspection  
16 of Defendant’s books and records or other approved methods. Class members may be notified of  
17 the pendency of this action by mail, email, internet postings, and/or publication.

18 58. **Common Questions of Law or Fact:** There are common questions of law and fact  
19 as to Plaintiff and all other similarly situated persons, which predominate over questions affecting  
20 only individual Class members, including, without limitation:

- 21 a) Whether GasBuddy’s representations and omissions about its service are false,  
22 misleading, deceptive, or likely to deceive;
- 23 b) Whether GasBuddy failed to disclose the NSF and overdraft fee risks of using its  
24 service;
- 25 c) Whether Plaintiff and the Class members were damaged by GasBuddy’s conduct;
- 26 d) Whether GasBuddy’s actions or inactions violated the consumer protection statute  
27 invoked herein; and

1 e) Whether Plaintiff are entitled to a preliminary and permanent injunction enjoining  
2 Defendant's conduct.

3 59. **Predominance of Common Questions:** Common questions of law and fact  
4 predominate over questions that affect only individual members of the Class. The common  
5 questions of law set forth above are numerous and substantial and stem from GasBuddy's  
6 uniform practices applicable to each individual Class member. As such, these common questions  
7 predominate over individual questions concerning each Class member's showing as to his or her  
8 eligibility for recovery or as to the amount of his or her damages.

9 60. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the  
10 Class because, among other things, Plaintiff and all Class members were similarly injured  
11 through GasBuddy's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the  
12 members of the Class, were deprived of monies that rightfully belonged to them. Further, there  
13 are no defenses available to GasBuddy that are unique to Plaintiff.

14 61. **Adequacy of Representation:** Plaintiff is an adequate class representative because  
15 he is fully prepared to take all necessary steps to represent fairly and adequately the interests of  
16 the members of the Class, and because his interests do not conflict with the interests of the other  
17 Class members he seeks to represent. Moreover, Plaintiff's attorneys are ready, willing, and able  
18 to fully and adequately represent Plaintiff and the members of the Class. Plaintiff's attorneys are  
19 experienced in complex class action litigation, and they will prosecute this action vigorously.

20 62. **Superiority:** The nature of this action and the claims available to Plaintiff and  
21 members of the Class make the class action format a particularly efficient and appropriate  
22 procedure to redress the violations alleged herein. If each Class member were required to file an  
23 individual lawsuit, GasBuddy would necessarily gain an unconscionable advantage since it  
24 would be able to exploit and overwhelm the limited resources of each individual Plaintiff with  
25 its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by  
26 individual Class members, even if possible, would create a substantial risk of inconsistent or  
27 varying verdicts or adjudications with respect to the individual Class members against GasBuddy,

1 and which would establish potentially incompatible standards of conduct for GasBuddy and/or  
2 legal determinations with respect to individual Class members which would, as a practical matter,  
3 be dispositive of the interests of the other Class members not parties to adjudications or which  
4 would substantially impair or impede the ability of the Class members to protect their interests.  
5 Further, the claims of the individual members of the Class are not sufficiently large to warrant  
6 vigorous individual prosecution considering all of the concomitant costs and expenses attending  
7 thereto.

8  
9 **FIRST CAUSE OF ACTION**  
**Violation of M.G.L. c. 93A**  
**(On Behalf of Plaintiff and the Classes)**

10  
11 63. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing  
12 paragraphs of this Complaint as if fully set forth herein.

13 64. Plaintiff and each Class member is a person, as that term is used in Section 1 &  
14 9(1) of Chapter 93A.

15 65. Defendant is a person engaged in the conduct of trade or commerce, as those terms  
16 are used in Sections 1, 2(a) and 9(1) of Chapter 93A.

17 66. GasBuddy maintains an office in Massachusetts and provides its services to users  
18 nationwide from Massachusetts.

19 67. Thus, GasBuddy is, and has at all relevant times been, engaged in the conduct of  
20 trade and commerce within the meaning of M.G.L. c. 93A.

21 68. GasBuddy's marketing, which misrepresents and omits the true risks associated  
22 with and operation of GasBuddy's service, is an unfair or deceptive act or practice, pursuant to  
23 Section 2 of Chapter 93A and Section 3.00 *et seq.* of Code of Massachusetts Regulations Title  
24 940, specifically section(s) 3.04, 3.05 and/or 3.13.

25 69. GasBuddy knew or had reason to know that its disclosures misrepresented and  
26 omitted the true risks of using the service.

1           70. Defendant’s deceptive marketing and operation of its service harmed Plaintiff and  
2 each member of the Class by causing them to incur NSF and OD Fees from their financial  
3 institutions.

4           71. Accordingly, GasBuddy’s violations of M.G.L. c. 93A were knowing, intentional  
5 and willful.

6           72. Equitable relief requiring remediation of deceptive marketing representations  
7 simply requires Defendant to comply with the terms of its disclosures and/or improve the  
8 operation of its service, and will substantially benefit Plaintiff and each member of the Class.

9           73. On or about November 1, 2021, undersigned counsel sent, via certified mail, return  
10 receipt requested, a demand letter to GasBuddy detailing both Eubanks’ and putative class  
11 members’ claims and injuries in accordance with M.G.L. c. 93A § 9(3).

12           74. A true and accurate copy of Plaintiffs’ November 1, 2021 demand letter is attached  
13 hereto as **Exhibit C**.

14           75. Plaintiffs repeat, re-allege, and incorporate by reference each of the allegations  
15 contained within Plaintiffs’ demand letter dated November 1, 2021 (**Exhibit C**) as if fully set  
16 forth herein.

17           76. Plaintiffs’ November 1, 2021 demand letter was delivered to GasBuddy and/or its  
18 registered agent for service of process on November 4, 2021, November 10, 2021 and November  
19 13, 2021. (**Exhibit D**).

20           77. By agreement with Counsel for GasBuddy, GasBuddy served its response to  
21 Plaintiffs’ demand letter via electronic mail on December 17, 2021.

22           78. A true and accurate copy of GasBuddy’s Response to Plaintiffs’ November 1, 2021  
23 demand letter is attached hereto as **Exhibit E**.





1 E. Compelling disgorgement of the ill-gotten gains derived by Defendant from its  
2 misconduct;

3 F. Awarding actual and/or compensatory damages in an amount according to proof;

4 G. Punitive and exemplary damages;

5 H. Double or treble damages, costs and attorney's fees as provided for by M.G.L. c.  
6 93A.

7 I. Awarding pre-judgment and post-judgment interest at the maximum rate permitted  
8 by applicable law;

9 J. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in  
10 connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant  
11 to applicable law and any other basis; and

12 K. Awarding such other relief as this Court deems just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this  
15 Class Action Complaint that are so triable.

16  
17 Respectfully submitted,

18 **CALEB EUBANKS, on behalf of himself**  
19 **and all others similarly situated,**

20 **By his counsel:**

21 /s/ Brian C. Davis

22 Brian C. Davis, BBO: #685786

23 John N. Yokow, BBO: #694372

24 Melick & Porter, LLP

25 One Liberty Square, 7th Floor

26 Boston, Massachusetts 02109

27 Telephone: (617) 523-6200

28 Facsimile: (617) 523-8130

[bdavis@melicklaw.com](mailto:bdavis@melicklaw.com)

[jyokow@melicklaw.com](mailto:jyokow@melicklaw.com)

March 2, 2022

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Jeffrey D. Kaliel (*pro hac vice pending*)  
Sophia Gold (*pro hac vice pending*)  
KALIELGOLD PLLC  
1100 15th Street, NW, 4th Floor  
Washington, D.C. 20005  
(202) 350-4783  
[jkaliel@kalielllc.com](mailto:jkaliel@kalielllc.com)  
[sgold@kalielgold.com](mailto:sgold@kalielgold.com)