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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIE HICKS, KUANG TING
CHONG, and STEPHANIE MOORE,
individuals;

Plaintiffs,

v.

BANK OF AMERICA, N.A., a
Delaware corporation; and DOES 1-10,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION

COMPLAINT

1. NEGLIGENCE;
2. VIOLATION OF THE ELECTRONIC FUNDS TRANSFER ACT;
3. BREACH OF CONTRACT;
4. VIOLATION OF THE CALIFORNIA CONSUMER PRIVACY ACT;
5. BREACH OF IMPLIED DUTY OF COMPETENCE; and
6. VIOLATION OF UNFAIR COMPETITION LAW

(Jury Trial Demanded)

1 Julie Hicks (“Hicks”), Kuang Ting Chong (“Chong”), and Stephanie Moore
2 (“Moore”) (“Hicks”) (collectively, “Plaintiffs”), through undersigned counsel, on behalf
3 of themselves and all others similarly situated, bring this Class Action Complaint against
4 Bank of America, N.A. (“BOA”) and DOE Defendants 1-10 (the “DOE Defendants”)
5 (collectively, “Defendants”), and allege upon personal knowledge as to their own
6 actions, and upon information and belief as to counsel’s investigations and all other
7 matters, as follows:

8 **NATURE OF ACTION**

9 1. This class action seeks recovery for California residents who experienced
10 interruptions in access to their unemployment benefits because of intentional and
11 negligent misconduct by BOA.

12 2. Starting in 2020, numerous individuals began exploiting BOA’s lax security
13 measures to gain unauthorized access to Employment Development Department
14 (“EDD”) debit cards (“EDD Cards”).

15 3. These debit cards were all issued by BOA. California residents receiving
16 EDD benefits are issued a debit card from BOA along with a corresponding BOA
17 account. EDD benefits are directly deposited into these BOA accounts. Beneficiaries
18 own their accounts. The BOA account and debit card are the only means of accessing
19 unemployment benefits for hundreds of thousands of Californians.

20 4. BOA chose to respond to the systemic failures in its security measures by
21 either transferring funds out of recipients’ accounts, revoking credits to the accounts to
22 create negative balances, or simply locking debit cards and preventing access to benefits.
23 As a result, tens of thousands of Californians were deprived of access to their only source
24 of income during a global pandemic.

25 **PARTIES**

26 5. Plaintiff Julie Hicks is, and at all times mentioned herein was, an individual
27 residing in the State of California, County of Santa Clara.

28 6. Plaintiff Kuang Ting Chong is, and at all times mentioned herein was, an

1 individual residing in the State of California, County of Los Angeles. He receives
2 unemployment benefits from the State of California.

3 7. Plaintiff Stephanie Moore is, and at all times mentioned herein was, an
4 individual residing in the State of California, County of Los Angeles. She receives
5 unemployment benefits from the State of California.

6 8. Defendant Bank of America, N.A. (“BOA”) is a Delaware corporation. Its
7 principal place of business is located at 100 North Tryon Street, Charlotte, North
8 Carolina 28255.

9 9. Plaintiffs do not know the true names and capacities of the defendants sued
10 herein as DOES 1 through 10 (“DOE Defendants”), inclusive, and therefore sue said
11 DOE Defendants by fictitious names. Plaintiffs are informed and believe and based on
12 such information and belief allege that each of the DOE Defendants are contractually,
13 strictly, negligently, intentionally, vicariously liable and or otherwise legally responsible
14 in some manner for the acts and omissions described herein. Plaintiffs will amend this
15 Complaint to set forth the true names and capacities of each DOE Defendant when the
16 same are ascertained.

17 10. Plaintiffs are informed and believe and based on such information and belief
18 allege that BOA and the DOE Defendants, inclusive, and each of them, are and at all
19 material times have been, the agents, servants or employees of each other, purporting to
20 act within the scope of said agency, service or employment in performing the acts and
21 omitting to act as averred herein. Each of the Defendants named herein are believed to,
22 and are alleged to have been acting in concert with, as employee, agent, co-conspirator or
23 member of a joint venture of, each of the other Defendants, and are therefore alleged to
24 be jointly and severally liable for the claims set forth herein, except as otherwise alleged.

25 **JURISDICTION AND VENUE**

26 11. This Court has original jurisdiction over this matter under 28 U.S. Code §
27 1332(a) because Plaintiffs are residents of California, BOA is a Delaware corporation
28 with its principal place of business in North Carolina, and the amount in controversy

1 exceeds \$75,000 exclusive of interest and costs. This Court also has jurisdiction under
2 the Class Action Fairness Act, 28 U.S. Code § 1332(d), because the parties are minimally
3 diverse and the amount in controversy exceeds \$5,000,000.

4 12. Venue is proper as this action is part of a multidistrict litigation assigned to
5 the Southern District of California.

6 **FACTUAL ALLEGATIONS**

7 13. Plaintiffs are unemployed California residents. At all relevant times they
8 received unemployment benefits from EDD. These unemployment benefits were
9 provided to them through EDD Cards.

10 14. All EDD Cards are linked to BOA accounts. EDD distributes benefits to
11 holders of EDD Cards by depositing money in the BOA accounts associated with the
12 beneficiary.

13 15. Beneficiaries who receive their benefits using an EDD Card must agree to
14 the “California Employment Development Department Debit Card Account Agreement”
15 (the “Account Agreement”). The Account Agreement states that the beneficiary’s
16 relationship to BOA is governed by Regulation E, and that, at a minimum, holders of
17 EDD Cards have the same protections from risk of loss as those provided by Regulation
18 E.

19 16. No EDD Cards issued by BOA prior to 2021 have an “EMV” chip. EMV
20 stands for “Europay, Mastercard, and Visa.” EMV chips are small, metallic squares that
21 create unique transaction data each time the chip is used to make a purchase. This differs
22 from obsolete magnetic-stripe cards, which use the same transaction data each time a
23 purchase is made.

24 17. Debit cards without chips are extremely easy for thieves to duplicate. All a
25 thief needs to create a duplicate card is data from a single debit card purchase.

26 18. As identical data from magnetic-stripe purchases is provided every time the
27 cardholder makes a purchase, the information commonly finds its way to online “dark
28 web” brokers. In contrast, data from past EMV chip purchases is essentially useless to

1 would-be thieves.

2 19. As debit cards with EMV chips are far more secure, in recent years they
3 have become ubiquitous for credit card and debit card issuers. They are also inexpensive
4 to produce. Indeed, on information and belief, EDD Cards are the only cards BOA issues
5 that do not have an EMV chip.

6 20. In 2020, large numbers of individuals targeted the security weaknesses in
7 BOA's EDD Cards. These individuals used clone cards, likely created from information
8 obtained on the dark web, to initiate fraudulent ATM withdrawals throughout California.
9 *See, e.g.,* <<https://losangeles.cbslocal.com/2020/10/29/bank-of-america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/>>.

10
11 21. In October 2020, BOA decided to respond to this uptick in fraudulent
12 withdrawals by preventing nearly 350,000 unemployed Californians from accessing their
13 unemployment benefits. *Id.*

14 22. BOA denied EDD benefits recipients access to funds by freezing accounts
15 and by reversing credits for fraudulent withdrawals that BOA had previously granted.
16 BOA reversed credits to create negative balances in the accounts, thereby preventing
17 anyone—including the accounts' lawful beneficiaries—from accessing funds already in
18 the account or new funds deposited into the accounts by EDD.

19 23. On or about July 20, 2020, an unknown person used a cloned EDD Card to
20 steal \$1,000 in unemployment benefits from Chong's account. Chong learned of the
21 fraud on July 20, 2020 and contacted BOA to report the theft the same day.

22 24. On July 21, 2020, Chong filed a police report with the Alhambra police
23 department. The officer Chong spoke to initially confused him with another holder of an
24 EDD Card who had also just had funds stolen.

25 25. On July 31, 2020, BOA credited \$1,000 to the account associated with
26 Chong's EDD Card.

27 26. On September 2, 2020, Chong received a notice from BOA that it had
28 completed its investigation, and that the \$1,000 credit to his account was now permanent.

1 27. On October 4, 2020, BOA nonetheless debited \$1,000 from Chong's
2 account, creating a negative balance. The account history on BOA's website claimed that
3 the debit was made by "State of CA EDD Unemployment."

4 28. In reality, however, the October 4, 2020 debit was made by BOA.

5 29. Chong repeatedly contacted BOA and EDD in an effort to obtain access to
6 his \$1,000 in withheld unemployment benefits. In an October 15, 2020 phone call with
7 BOA's claim department, Chong was told his issue would be resolved "in the order it
8 was received."

9 30. Months went by before Chong was granted access to his withheld
10 unemployment benefits.

11 31. On July 18, 2020, Moore was the victim of a fraudulent \$1,000 withdrawal
12 from an ATM machine and a separate fraudulent withdrawal of \$482 at a Target retail
13 store. These transactions depleted all the funds from her account. Moore discovered the
14 fraud on July 18, 2020 when she tried to purchase ice cream for her daughter and the
15 transaction was declined.

16 32. Moore reported the fraudulent withdrawal on July 18, 2020, within minutes
17 of discovering that unknown persons had depleted the funds in her account.

18 33. On or about July 30, 2020 Moore was granted a \$1,482 credit to her
19 account by BOA.

20 34. On or about the 7th or 8th of August 2020, BOA informed Moore in writing
21 that the provisional \$1,482 credit had been made permanent.

22 35. On September 30, 2020 Moore attempted to purchase a tire for her vehicle.
23 The transaction was declined. Moore attempted to check the balance in her BOA EDD
24 account and was unable to log into the account. On information and belief BOA froze
25 Moore's account on or about September 30, 2020 without providing prior notice to
26 Moore.

27 36. On or about October 4, 2020, BOA debited \$1,482 from Moore's account.
28 Moore's account history on BOA's website claimed that the debit was made by "State of

1 CA EDD Unemployment.” This created a negative balance.

2 37. On October 12, 2020, Moore spoke with a BOA employee who admitted
3 that BOA had debited the money from Moore’s account.

4 38. As with Chong’s account, Moore’s account was not debited by EDD, but
5 rather BOA.

6 39. BOA sent identical letters to Chong and Moore dated October 2, 2020.
7 Upon information and belief BOA issued identical letters retracting provisionally granted
8 credits or permanently granted credits on October 2, 2020 to numerous EDD
9 beneficiaries.

10 40. While Chong and Moore continued receiving EDD direct deposits they were
11 denied access to these funds as the direct deposit was applied against the negative
12 account balance created by BOA.

13 41. On September 3, 2020, an unauthorized third party made a \$1,000
14 withdrawal from Hicks’ EDD accounts.

15 42. The third party subsequently made seven more \$1,000 fraudulent
16 withdrawals from Hicks’ accounts, on each day, until September 11, 2020, when Hicks’
17 account was frozen by BOA.

18 43. Hicks timely reported the unauthorized withdrawals, and verified her
19 identity with EDD and BOA. Nonetheless, BOA has refused to reimburse the fraudulent
20 withdrawals or unfreeze Hicks’ account. As a result, Hicks has been denied use of a
21 further \$21,000 EDD has deposited in her account over the last nine months.

22 44. The electronic fund transfers from Plaintiffs’ accounts, and numerous other
23 EDD beneficiary accounts, were initiated by a person other than the consumer without
24 actual authority to initiate the transfer. No one besides BOA received a benefit from the
25 transfers.

26 **CLASS ACTION ALLEGATIONS**

27 45. Plaintiffs bring this action on behalf of themselves and all others similarly
28 situated as a class action pursuant to Fed. R. Civ. P. 23. Plaintiffs seek to represent the

1 following putative classes:

2 **The Access Denial Class**: All holders of EDD Cards who were denied access to
3 unemployment benefits as a result of BOA’s decision to freeze accounts or reverse
4 prior credits from January 1, 2020 to the present.

5 **The Cloned Card Class**: All holders of EDD Cards who, from the earliest
6 applicable statute of limitations to the present, had an EDD Card that did not have
7 an EMV chip and who experienced an unauthorized withdrawal by a third party
8 using a cloned EDD Card.

9 46. Specifically excluded from the Classes are: (a) any officers, directors or
10 employees of Defendants; (b) any judge assigned to hear this case (or spouse or
11 immediate family member of any assigned judge); (c) any employee of the Court; (d) any
12 juror selected to hear this case; and (e) any attorneys of record and their employees.

13 47. Plaintiffs reserve the right to amend or modify the class definition with
14 greater specificity, by further division into subclasses, or by limitation to particular
15 issues.

16 48. **Numerosity**. The class members are so numerous that joinder of each
17 individual class member would be impracticable and unfeasible, and the disposition of
18 their claims as a class will benefit the parties, the Court, and the interests of justice. The
19 precise number of class members is readily available from a review of Defendants’
20 business records.

21 49. **Ascertainability**. The proposed Classes are ascertainable from objective
22 criteria. Specifically, Defendant maintains business records which include the names,
23 contact information and other identifying information of members of the proposed
24 Classes.

25 50. **Commonality and Predominance**. There is a well-defined community of
26 interest among the Classes’ members and common questions of *both* law and fact
27 predominate over questions affecting individual members. These common legal and
28 factual questions include, but are not limited to, the following:

- 1 A. Whether BOA's decision not to use EMV chips in its EDD Cards was
2 reasonable;
- 3 B. Whether BOA's actions violated the Electronic Funds Transfer Act;
- 4 C. Whether BOA's actions constitute a breach of contract;
- 5 D. Whether BOA's actions violate California's consumer protection laws;
- 6 E. Whether BOA's actions breached the implied duty of competence owed by
7 BOA;
- 8 F. Whether BOA's decision not to use EMV chips in its EDD Cards
9 proximately resulted in Class members losing access to their unemployment
10 benefits; and
- 11 G. Whether BOA's actions constitute an unfair business practice under
12 California's Business & Professions Code §17200 *et seq.*

13 51. **Typicality.** Plaintiffs' claims are typical of those of all Class members in
14 that they arise out of the same course of conduct of Defendants, and enable them to seek
15 the same relief under the same theories of recovery. The effort Plaintiffs undertake to
16 pursue their own claims will significantly benefit the Classes' members because of the
17 identical nature of the issues across the Classes.

18 52. **Adequacy of Representation.** Plaintiffs will fairly and adequately represent
19 and protect the interests of the members of the Classes. Plaintiffs share a common
20 interest with the Classes' members. Plaintiffs have suffered an injury-in-fact as a result
21 of Defendants' conduct, as alleged herein. Plaintiffs have retained counsel who are
22 competent and experienced in the prosecution of complex class action litigation.
23 Plaintiffs and their counsel intend to prosecute this action vigorously and faithfully for
24 the benefit of the Classes' members. Plaintiff has no interests contrary to the Classes'
25 members, and will fairly and adequately protect the interests of the Classes.

26 53. **Community of Interest.** The proposed Classes have a well-defined
27 community of interest in the questions of fact and law to be litigated. These common
28 questions of law and fact predominate. The named Plaintiffs' claims are typical of the

1 Classes' members.

2 54. **Superiority.** The certification of the Classes in this action is superior to the
3 litigation of a multitude of cases by members of the putative Classes. Class adjudication
4 will conserve judicial resources and will avoid the possibility of inconsistent rulings.
5 Moreover, there are members of the Classes who are unlikely to join or bring an action
6 due to, among other reasons, their reluctance to spend large sums of time and money to
7 recover a relatively modest individual recovery. Equity dictates that all persons who
8 stand to benefit from the relief sought herein should be subject to the lawsuit and hence
9 subject to an order spreading the costs of the litigation among Class members in
10 relationship to the benefits received. The damages and other potential recovery for each
11 individual member of the Classes are modest relative to the substantial burden and
12 expense of individual prosecution of these claims. Given the dollar amount of the
13 individual members of the Classes' claims, few, if any, could or would afford to seek
14 legal redress individually for the wrongs complained of herein. Even if the members of
15 the Classes themselves could afford individual litigation, the court system could not.
16 Individualized litigation presents a potential for inconsistent or contradictory judgments.
17 Individualized litigation increases the delay and expense to all parties and the court
18 system presented by the complex legal and factual issues of the case. By contrast, the
19 class action device presents far fewer management difficulties, and provides the benefits
20 of single adjudication, economy of scale, and comprehensive supervision by a single
21 court.

22 55. In the alternative, the above-referenced Classes may be certified because:

- 23 (a) The prosecution of separate actions by the individual members of the Classes
24 would create a risk of inconsistent or varying adjudication with respect to
25 individual Class members' claims which would establish incompatible
26 standards of conduct for Defendants;
- 27 (b) The prosecution of separate actions by individual members of the Classes
28 would create a risk of adjudications which would as a practical matter be

1 dispositive of the interests of other members of the Classes who are not parties
2 to the adjudications, or which would substantially impair or impede the ability
3 of other members to protect their interests; and,

4 (c) Defendants have acted or refused to act on grounds generally applicable to the
5 Classes, thereby making appropriate final and injunctive relief with respect to
6 the Classes.

7 **FIRST CLAIM FOR RELIEF**

8 **Negligence**

9 **(By all Plaintiffs, on behalf of both Classes)**

10 56. Plaintiffs incorporate all preceding and succeeding allegations as if fully set
11 forth herein.

12 57. By holding unemployment benefits for members of the Cloned Card Class
13 and issuing EDD Cards, BOA had a duty of care to take reasonable security precautions
14 to prevent EDD Cards from being copied by thieves. Defendants breached that duty by
15 failing to use EMV chips in their EDD Cards, and that failure proximately led to tens of
16 thousands of unauthorized withdrawals from class member accounts, and loss of access
17 of benefits during a global pandemic.

18 58. Plaintiffs and all members of the Cloned Card Class suffered damages
19 because of Defendants' conduct.

20 59. Plaintiff and all members of the Cloned Card Class are entitled to actual
21 damages, interest, and injunctive relief requiring BOA to institute basic security
22 precautions sufficient to avoid future widespread cloning of EDD Cards.

23 60. As to the Access Denial Class, BOA had a duty to take reasonable steps to
24 timely and adequately investigate and respond to claims of fraud, and to restore access to
25 EDD benefits to victims of fraudulent withdrawals.

26 61. BOA breached that duty by instituting wholesale account freezes, reversing
27 credits issued to cardholder accounts, and failing to put in place sufficient claims
28 investigation procedures and infrastructure.

1 62. As a proximate result of BOA's conduct, members of the Access Denial
2 Class lost access to their unemployment benefits during a global pandemic.

3 63. Members of the Access Denial Class are entitled to actual damages, interest,
4 and injunctive relief requiring BOA to institute reasonable claims resolution processes.

5 **SECOND CLAIM FOR RELIEF**

6 **Violation of The Electronic Funds Transfer Act 15 USC § 1963 *et seq.* and 12 C.F.R.**

7 **§ 205.1 *et seq.***

8 **(By all Plaintiffs, on behalf of the Access Denial Class)**

9 64. Plaintiffs incorporate all preceding and succeeding allegations as if fully set
10 forth herein.

11 65. Plaintiffs bring this cause of action pursuant to the United States Electronic
12 Funds Transfer Act (EFTA) and 12 C.F.R. § 205.1 to 205.20 (Regulation E of the
13 EFTA).

14 66. Defendants engaged in unlawful conduct under Regulation E by seizing
15 unemployment benefits in accounts for which Plaintiffs and members of the Access
16 Denial Class were beneficiaries and by denying access to accounts.

17 67. Chong and Moore provided notice to BOA less than two days after the
18 fraudulent transactions occurred in each of their respective accounts. Per 12 C.F.R. §
19 205.6(b)(1) Plaintiffs' liability was capped at \$50. Despite this clear cap on liability
20 BOA subjected Chong to \$1,000 in liability and Moore to \$1,482 in liability. Upon
21 information and belief numerous other class members gave timely notice of the
22 fraudulent activity and are also limited to \$50 of liability per 12 C.F.R. § 205.6(b)(1).

23 68. 12 C.F.R. § 205.6(b)(2) establishes a maximum amount of liability of \$500
24 when notice of the unauthorized electronic funds transfer is not provided to the financial
25 institution within two business days. Plaintiffs Chong and Moore have discussed their
26 situations with other similarly situated individuals who are members of the class. In all of
27 those cases BOA debited the entire amount of the provisional credit in excess of the
28 limits set by 12 C.F.R. § 205.6(b).

1 69. With regard to any class members who did not directly provide BOA with
2 actual notice, BOA was on constructive notice of the unauthorized electronic funds
3 transfers pursuant to 12 C.F.R. § 205.6(b)(5)(iii). Numerous unauthorized electronic fund
4 transfers occurred from EDD accounts, upon information and belief, many were timely
5 reported to BOA. BOA was receiving so many calls about these unauthorized transfers in
6 the relevant time frames that the named Plaintiffs and class members would routinely be
7 on hold for several hours at a time when they called in to make reports or ask BOA for
8 information. The widespread fraud specifically targeting EDD beneficiaries was also
9 widely reported in the media.

10 70. In no event should any class member be liable for over \$500 of damages
11 under 12 C.F.R. § 205.6. BOA has failed to comply with 12 C.F.R. § 205.6 by putting
12 unemployed Californians on the hook for thousands of dollars of liability in direct
13 violation of federal law.

14 71. As a direct and proximate result of Defendants’ violation of the Regulation
15 E, Plaintiffs and members of the Access Denial Class have lost money.

16 72. Plaintiffs, on behalf of themselves and the Access Denial Class, seek: (a) an
17 injunction barring Defendants from illegally debiting unemployment benefits; (b)
18 restitution of all unemployment benefits funds improperly debited by Defendants; (c)
19 statutory damages; (d) actual damages; (e) attorneys’ fees and costs of suit; and (f)
20 interest.

21 **THIRD CLAIM FOR RELIEF**

22 **Breach of Contract**

23 **(By all Plaintiffs, on behalf of the Access Denial Class)**

24 73. Plaintiffs incorporate all preceding and succeeding allegations as if fully set
25 forth herein.

26 74. BOA utilizes a contract of adhesion for all Californians receiving EDD
27 benefits that is purportedly agreed whenever an individual “us[es] or allow[s]” another to
28 use” the beneficiaries EDD Card.

1 75. The contract of adhesion includes a section titled, “Bank of America’s ‘Zero
2 Liability’ Policy for Unauthorized Transactions.” That sections sates in pertinent part:

3 Federal law (described in the section below entitled ‘Regulation E Liability
4 Disclosure: Your Liability in Case of Loss Theft or Unauthorized
5 Transactions’) may limit your liability for unauthorized transactions on your
6 Account but you may still be liable in some circumstances. Under the Bank
7 of America “zero liability” policy you may incur no liability for
8 unauthorized use of your Card up to the amount of the unauthorized
9 transaction provided you notify us within a reasonable time of the loss or
10 theft of your Card Card number or PIN or its unauthorized use, subject to
11 the following terms and conditions...

12 76. The contract of adhesion states that a reasonable period of time is decided
13 solely at BOA’s discretion but cannot be shorter than the time limit provided in
14 Regulation E.

15 77. Plaintiffs and all members of the Access Denial Class have not been
16 provided with the benefit of BOA’s “Zero Liability” policy. In cases where notice was
17 provided in a reasonable time, Plaintiffs and all members of the class: (i) did not receive
18 reimbursement in a timely manner or; (2) did receive any reimbursement whatsoever by
19 BOA for the unauthorized withdrawals.

20 78. Moreover, BOA’s decision to revoke prior credits for fraudulent
21 withdrawals is manifestly incapable with its “Zero Liability” policy.

22 79. Plaintiffs and all members of the Access Denial Class suffered damages as a
23 result of Defendants’ conduct.

24 80. Plaintiffs and all members of the Access Denial Class are entitled to
25 damages, interest, and injunctive relief requiring BOA to institute basic security
26 precautions sufficient to avoid future widespread denials of account access.

27 **FOURTH CLAIM FOR RELIEF**

28 **Violation of Cal. Consumer Privacy Act, Cal. Civ. Code § 1798.100, *et seq.***

(By Chong and Moore, on behalf of the Cloned Card Class)

81. Plaintiffs incorporate all preceding and succeeding allegations as if fully set
forth herein.

82. The California Consumer Privacy Act, Cal. Civ. Code § 1798.100, *et seq.*,

1 (the “CCPA”) required BOA to provide reasonable security for Plaintiffs’ personal
2 information.

3 83. The information extracted from an EDD Card during the cloning process is
4 “personal information” as that term is used in Cal. Civ. Code § 1798.100(d)(1).

5 84. When an EDD Card without an EMV chip is cloned, an “unauthorized
6 access and exfiltration, theft, or disclosure” of personal information occurs. Cal. Civ.
7 Code § 1798.150(a).

8 85. By failing to use EMV chips in its EDD Cards, BOA breached its duty to
9 implement reasonable security measures. As a proximate result of BOA’S failure,
10 Plaintiffs’ EDD Cards were cloned and they suffered unauthorized account withdrawals.

11 86. Plaintiffs sent written notice of BOA’s violation of the CCPA at least 30
12 days prior to bringing suit under the CCPA and BOA failed to cure its violation.

13 87. Plaintiffs and all people similarly situated are entitled to damages including
14 statutory interest, statutory damages, reasonable attorneys’ fees, costs of suit, and
15 injunctive relief requiring BOA to implement reasonable security measures.

16 **FIFTH CAUSE OF ACTION**

17 **Breach of Implied Duty of Competent Performance**

18 **(By all Plaintiffs, on behalf of both Classes)**

19 88. Plaintiffs incorporate all preceding and succeeding allegations as if fully set
20 forth herein.

21 89. California law required BOA to perform its obligations under the Account
22 Agreement competently and with reasonable care.

23 90. As to the Cloned Card Class, BOA breached its implied duty of competent
24 performance by failing to use EMV chips in its EDD Cards.

25 91. As to the Access Denial Class, BOA breached its implied duty of competent
26 performance by failing to implement an effective claims resolution process and by
27 engaging in wholesale account freezes and credit reversals.

28 92. As a proximate result of BOA’s breach of its implied duty of competence,

1 Plaintiffs and all similarly situated persons suffered unauthorized withdrawals from their
2 accounts.

3 93. Plaintiffs and all similarly situated persons are entitled to direct damages,
4 interest, and injunctive relief requiring BOA to competently perform its contractual
5 obligations going forwards.

6 **SIXTH CLAIM FOR RELIEF**

7 **Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.***

8 **(By all Plaintiffs, on behalf of the Access Denial Class)**

9 94. Plaintiffs incorporate all preceding and succeeding allegations as if fully set
10 forth herein.

11 95. Plaintiffs bring this cause of action pursuant to California’s Unfair
12 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (“the UCL”).

13 96. Defendants engaged in unlawful conduct under the UCL by seizing
14 unemployment benefits in accounts for which Plaintiffs and members of the Class were
15 beneficiaries.

16 97. Defendants’ conduct was “unlawful” as that term is used in the UCL in that
17 it violated the various statutes previously noted, including Cal. Civ. Code § 1798.100, *et*
18 *seq.*, 15 USC § 1963 *et seq.* and 12 C.F.R. § 205.1 *et seq.*

19 98. Defendants’ conduct was also “fraudulent” as that term is used in the UCL
20 in that BOA falsely represented that the funds were debited by EDD, when in fact they
21 were debited by BOA.

22 99. As a direct and proximate result of Defendants’ violation of the UCL,
23 Plaintiffs and members of the Class have lost money.

24 100. Plaintiffs, on behalf of themselves and the Class, seek: (a) an injunction
25 barring Defendants from illegally debiting unemployment benefits; and (b) restitution of
26 all unemployment benefits funds improperly debited by Defendants.
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly aggrieved persons, pray for judgment against Defendants as follows:

1. For an order certifying that the action may be maintained as a class action and appointing Plaintiffs and their undersigned counsel to represent the Classes in this litigation;
2. For an order declaring that the acts and practices of Defendants were negligent;
3. For an order declaring that the acts and practices of Defendants violated the Electronic Funds Transfer Act 15 USC § 1963 *et seq.* and 12 C.F.R. § 205.1 *et seq.*;
4. For an order declaring that the acts and practices of Defendants violated the CCPA;
5. For an order declaring that the acts and practices of Defendants violated the Account Agreement;
6. For a permanent injunction enjoining Defendants from continuing to harm Plaintiffs and members of the Classes and the public;
7. Compensatory damages;
8. Restitution as allowed by the UCL;
9. An award of reasonable attorneys' fees and costs;
10. Such other and further relief as the Court may deem just and proper.

///

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of the claims to the extent authorized by law.

Respectfully submitted,

GUBERNICK LAW, P.L.L.C.



Date: July 12, 2021

By:

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--And--

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