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19 *Counsel for Plaintiff and the Putative Class*

20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF ARIZONA**

22 **Lesly Lezcano**, individually and on behalf  
23 of all others similarly situated,

24 Plaintiff,

25 v.

26 **Early Warning Services, LLC, Bank of**  
27 **America, N.A., and Bank of America**  
28 **Corporation,**

Defendants.

**CASE NO.**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Lesly Lezcano, individually and on behalf of all others similarly situated, by and  
2 through her counsel, brings this action against Defendants Early Warning Services, LLC (“Early  
3 Warning”), Bank of America, N.A., and Bank of America Corporation (collectively, “Bank of  
4 America”) and alleges as follows:

5  
6 **NATURE OF THE ACTION**

7 1. This action is brought by Plaintiff, individually and on behalf of a class of similarly  
8 situated customers of Defendants arising from a service malfunction that occurred on January 18,  
9 2023, on Early Warning’s peer-to-peer payment network, Zelle Network® (the “Service  
10 Malfunction”) and at Bank of America.

11 2. As a result of Defendants’ negligence and other violations of law, Plaintiff and  
12 Class members were (1) prevented from accessing funds that were rightfully transferred into their  
13 accounts but then reversed (days later from the original deposit date, for some) and (2) deceived  
14 as to the true status of their account balances, both resulting in financial hardship, bounced checks  
15 and charges assessed as a result, and emotional and mental distress.

16 3. Plaintiff and Class Members seek damages and injunctive relief based upon  
17 Defendants’ unlawful conduct described herein.

18  
19 **JURISDICTION AND VENUE**

20 4. This Court has subject matter over this action pursuant to the Class Action Fairness  
21 Act, 28 U.S.C. § 1332(d). The aggregate claims of the individual Class Members exceed the sum  
22 or value of \$5,000,000, exclusive of interest and costs; there are more than 100 putative class  
23 members defined below; and there are numerous members of the proposed class who are citizens  
24 of a state different from Defendants.

25 5. This Court has personal jurisdiction over Defendants. Early Warning is  
26 headquartered in Scottsdale, Arizona, and Bank of America operates widely throughout the State  
27 and District. This Court has personal jurisdiction over all Defendants because all Defendants  
28

1 conduct substantial business in this State and District and because a substantial part of the acts  
2 and omissions complained of occurred in this State and District.

3 6. Venue as to Defendants is proper in this District under 28 U.S.C § 1391 because a  
4 substantial part of the events or omissions giving rise to the claim occurred in this District and  
5 Early Warning maintains its principal place of business in this District. All Defendants are  
6 authorized to conduct business in this District and have intentionally availed themselves of the  
7 laws and markets within this District.

8  
9 **PARTIES**

10 7. Plaintiff Lesly Lezcano is a resident and citizen of Florida and an Early Warning  
11 and Bank of America customer.

12 8. Defendant Earl Warning is a Delaware corporation with its principal place of  
13 business and headquarters at 5801 N. Pima Road, Scottsdale, Arizona, 85250.

14 9. Bank of America, N.A. is a Delaware corporation with its principal place of  
15 business and headquarters at 100 N. Tryon Street, Charlotte, North Carolina 28255.

16 10. Bank of America Corporation is a Delaware corporation with its principal place of  
17 business and headquarters at 100 N. Tryon Street, Charlotte, North Carolina 28255.

18 11. Bank of America is a national bank providing, *inter alia*, retail banking products  
19 and services to consumers, including personal deposit accounts. Bank of America operates  
20 banking centers in all 50 states throughout the United States, including many in this District.

21  
22 **ZELLE NETWORK®**

23 12. Early Warning Services, LLC, is a fintech company owned by seven of the  
24 country's largest banks: Bank of America, Truist, Capital One, JPMorgan Chase, PNC Bank,  
25 U.S. Bank, and Wells Fargo.<sup>1</sup>

26  
27 <sup>1</sup> [https://web.archive.org/web/20180112160505/http://www.earlywarning.com/pdf/early-  
warning-corporate-overview.pdf](https://web.archive.org/web/20180112160505/http://www.earlywarning.com/pdf/early-warning-corporate-overview.pdf) (last accessed Jan. 18, 2023).

1 13. Early Warning is best known as the owner and operator of the Zelle Network<sup>®</sup>  
2 (“Zelle”), a financial services network which purportedly enables individuals to electronically  
3 transfer money from their bank account to another registered user’s bank account (within the  
4 United States) using a mobile device or the website of a participating banking institution.<sup>2</sup>

5 14. Created in 2017, Zelle is a peer-to-peer payment network similar to PayPal or  
6 Venmo in that it allows users to digitally send money from their account to users at different  
7 banks.<sup>3</sup> Zelle has a standalone app that users can download to their smartphone.<sup>4</sup>

8 15. Zelle is now the country’s most widely used money transfer service, with more  
9 than double Venmo’s payment volumes.<sup>5</sup>

10 16. Users transferred \$187 billion in 2019 using Zelle, an increase of 57% since 2018.<sup>6</sup>

11 17. Zelle advertises and represents that money transferred with Zelle “will move  
12 directly into your bank account associated with your profile, *typically within minutes.*”<sup>7</sup>

13 18. The near instant availability of funds for transfers made with Zelle is one of Early  
14 Warning’s major selling points and is broadly advertised on its website and elsewhere, stating  
15 that, “Money sent with Zelle<sup>®</sup> is typically available to an enrolled recipient within minutes. *If it*  
16 *has been more than three days, we recommend confirming that you have fully enrolled your*  
17 *Zelle<sup>®</sup> profile, and that you entered the correct email address or U.S. mobile number and*  
18 *provided this to the sender.*”

19  
20  
21 <sup>2</sup> <https://www.experian.com/blogs/ask-experian/heres-what-you-need-to-know-about-zelle-the-mobile-payment-app-that-rivals-venmo/> (last accessed Jan. 18, 2023).

22 <sup>3</sup> <https://www.charlotteobserver.com/news/business/banking/article271322642.html> (last  
23 accessed Jan. 18, 2023).

24 <sup>4</sup> <https://www.experian.com/blogs/ask-experian/heres-what-you-need-to-know-about-zelle-the-mobile-payment-app-that-rivals-venmo/>.

25 <sup>5</sup> <https://www.charlotteobserver.com/news/business/banking/article271322642.html>.

26 <sup>6</sup> <https://www.experian.com/blogs/ask-experian/heres-what-you-need-to-know-about-zelle-the-mobile-payment-app-that-rivals-venmo/>.

27 <sup>7</sup> <https://www.zellepay.com/faq/someone-sent-me-money-zelle-how-do-i-receive-it> (last  
28 accessed Jan. 18, 2023).

1 19. For people living paycheck to paycheck (like most of Americans)<sup>8</sup>, the availability  
 2 of funds—let alone the immediacy of that availability—is essential to meeting their financial  
 3 needs.

#### 4 **THE SERVICE MALFUNCTION**

5 20. Without warning, on the morning of January 18, 2023, Zelle customers who banked  
 6 with Bank of America began noticing that funds that had been previously deposited in their Bank  
 7 of America accounts (days prior for some) had been unexpectedly reversed.

8 21. Upon information and belief, the Service Malfunction only affected Zelle  
 9 customers who banked with Bank of America.

10 22. Numerous customers began complaining of missing funds and unexpected negative  
 11 balances due to the problems with the digital payment network.<sup>9</sup>

12 23. Many took to Twitter to air their grievances stating. One user posted, “So cool how  
 13 @BankofAmerica magically disappeared a large Zelle transaction that HAD ALREADY  
 14 POSTED and I had used to pay bills. Now I’m extremely in debt in my checking and I can’t get  
 15 ahold of them. Unbelievable.”<sup>10</sup>

16 24. Another Zelle and Bank of America customer posted, “I woke up this morning to  
 17 a negative balance. There is no way to speak to a customer service agent.... This problem needs  
 18 to be fixed immediately so (I) can have access to my funds!”<sup>11</sup>

19 25. Other users complained that funds that they had sent to other users via Zelle had  
 20 been incorrectly returned to them causing them to mistakenly believe they had money available  
 21 in their account before later seeing that same amount reversed and their accounts taking on a  
 22

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23 <sup>8</sup> <https://www.cnbc.com/2022/12/15/amid-high-inflation-63percent-of-americans-are-living-paycheck-to-paycheck.html#:~:text=As%20of%20November%2C%2063%25%20of,are%20under%20pressure%2C%20LendingClub%20found> (last accessed Jan. 18, 2023).

24 <sup>9</sup> <https://www.charlotteobserver.com/news/business/banking/article271322642.html>.

25 <sup>10</sup> <https://twitter.com/briannaleopard/status/1615727266520272896> (last accessed Jan. 18, 2023).

26 <sup>11</sup> <https://www.charlotteobserver.com/news/business/banking/article271322642.html>.

1 negative balance after spending said amounts. One user stated who experienced this issue spoke  
2 of the negative effects stating, “(But) unfortunately 3 payments that went out yesterday after  
3 Zelle was in there (Car Payment, Car Insurance and Cell phone/Internet) all have been  
4 returned.... This is not good. Now I have to call all these places and explain.”<sup>12</sup>

5 26. During Defendants’ Service Malfunction, consumers did not have access to their  
6 funds, causing immense hardship, including the inability to pay for basic necessities such as food,  
7 rent, electricity, gas and medicine. Consumers were unable to pay their household bills, resulting  
8 in the assessment of late fees.

9 27. Unfortunately, even after funds were returned, the negative effects of Defendants’  
10 Service Malfunction remained: consumers (the large majority of whom live paycheck-to-  
11 paycheck) were left with damages including overdraft fees, late fees, and extreme anxiety and  
12 stress as to whether they would be able to meet their financial obligations.

13 28. Rather than contacting its customers directly, Bank of America made a public  
14 posting misrepresenting the Service Malfunction as a mere delay, “Zelle transactions made  
15 between January 14th and January 17th may be delayed in occurring and posting to accounts as  
16 requested.... Transfers will be completed and will appear in your account activity and balances  
17 as soon as possible.”

18 29. Zelle has yet to comment on the Service Malfunction. Its silence speaks volumes.

19 30. As evidenced by the Service Malfunction and Defendants’ refusal to provide an  
20 explanation for (or even an accurate description of) it, Defendants have failed to meet their duties  
21 to their customers who relied upon Defendants to ensure the availability of their funds and the  
22 accuracy of their account statements.

23 31. As a direct and proximate result of the actions described above, Plaintiff and  
24 Members of the Class have been damaged.

25  
26 **PLAINTIFF LEZCANO**

27 <sup>12</sup> *Id.*

1           32. Plaintiff Lezcano is a customer of Early Warnings and Bank of America.

2           33. On the morning of January 18, 2023, Plaintiff Lezcano reviewed her checking  
3 account balance with Bank of America, which displayed a positive balance. Plaintiff Lezcano,  
4 moments later, used part of that positive balance to make a phone bill payment. When Plaintiff  
5 Lezcano reviewed her balance less than thirty minutes later, she noticed that her balance had  
6 unexpectedly become negative. This was unexpected as the amount the Plaintiff Lezcano had  
7 spent on her phone bill payment was less than the positive balance that her account had just  
8 displayed; accordingly, Plaintiff Lezcano was shocked and disturbed to find that her checking  
9 account's balance had become negative.

10           34. Plaintiff Lezcano later learned that two payments she had received days earlier via  
11 Zelle and a payment she had made days earlier via Zelle were all reversed causing confusion as  
12 to the actual status and balance of her checking account and ultimately causing her checking  
13 account's balance to become negative.

14           35. As a result of this negative balance, specifically, and the Service Malfunction, in  
15 general, Plaintiff Lezcano had to cancel her car's service appointment and was caused great  
16 anxiety and stress as to her ability to meet her immediate financial obligations.

17           36. As a result of this negative balance, specifically, and the Service Malfunction, in  
18 general, Plaintiff Lezcano had to spend several hours attempting to mitigate the effects of the  
19 Service Malfunction, including reviewing her accounts, unsuccessfully attempting to contact  
20 Bank of America, and reviewing publications for news as to the cause of the Service Malfunction  
21 as she was unable to get any information regarding it from Bank of America or Zelle.

22           37. The Service Malfunction also prevented or delayed Plaintiff Lezcano from: (1)  
23 purchasing groceries, (2) paying a friend to whom she owed money, and (3) servicing her car.

24           38. In addition to causing hardship and financial damage, the Service Disruption  
25 required Plaintiff Lezcano to spend valuable time dealing with the myriad of issues caused by  
26 not having access to her funds – time which she would not have otherwise had to spend but for  
27 the Service Malfunction.  
28

1  
2 **INAPPLICABLE OR UNENFORCEABLE ARBITRATION & CLASS ACTION**  
3 **WAIVER CLAUSE**

4 39. Section 26 of Zelle’s User Service Agreement purports to require that certain  
5 disputes be individually arbitrated. Section 26 is unenforceable because it is substantively and  
6 procedurally unconscionable and/or is against public policy.<sup>13</sup>

7 40. To the extent that Defendant Early Warning asserts that the claims of Plaintiff and  
8 Class members are subject to an arbitration agreement or a class action waiver, Plaintiff and the  
9 Class seek declaratory relief in the form of a finding that such a purported arbitration agreement  
10 is void and unenforceable.

11  
12 41. Plaintiff and Class Members were fraudulently induced into banking with Early  
13 Warning because they were led to believe their funds would be properly transferred and they  
14 would have unhindered access to these monies.

15  
16 42. The terms of Zelle’s User Service Agreement’s arbitration provision, waiver of  
17 class action rights and right to trial by jury are unconscionable and Plaintiff and Class Members  
18 would not have agreed to those terms or have established accounts with Early Warning or Zelle  
19 had they known about the fraudulent, unlawful and unfair activity, misrepresentations, and  
20 negligence as described in this Complaint.<sup>14</sup>

21  
22  
23  
24  
25  
26 <sup>13</sup> <https://www.zellepay.com/legal/user-service-agreement> (last accessed Ja. 18, 2023).

27 <sup>14</sup> Plaintiff reserves the right to assert this claim as to any of Defendants’ terms of service which  
28 contain an arbitration clause and/or class action waiver provision.

**CLASS ACTION ALLEGATIONS**

1  
2 43. Plaintiff bring this suit as a class action individually and on behalf of all others  
3 similarly situated pursuant to Rule 23(b)(2), (b)(3) and (c)(4) of the Federal Rules of Civil  
4 Procedure. Plaintiff seek certification of a Nationwide and state Sub classes defined as follows:  
5

6 All Zelle customers residing in the United States whose funds were  
7 affected by the Service Malfunction occurring January 18, 2023.

8 44. Excluded from the Classes are the officers, directors, and legal representatives of  
9 Defendants, and the judges and court personnel in this case and any Members of their immediate  
10 families.  
11

12 45. Numerosity. Fed. R. Civ. P. 23(a)(1). The Class Members are so numerous that  
13 joinder of all Members is impractical. While the exact number of Class Members is unknown to  
14 Plaintiff at this time, upon information and belief, Plaintiff expects the Class size to consist of  
15 millions of members.  
16

17 46. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and  
18 fact common to the Class, which predominate over any questions affecting only individual Class  
19 Members. These common questions of law and fact include, without limitation:  
20

- 21 a. whether Defendants owed duties to Plaintiff and the proposed class, the scope of  
22 those duties and if they breached those duties;
- 23 b. whether Defendants' conduct was unfair or unlawful;
- 24 c. whether Defendants breached their contracts with Plaintiff and the proposed class;
- 25 d. whether the arbitration and class action waiver provisions of Zelle's User Service  
26 Agreement are unconscionable, illusory, fraudulent or otherwise invalid;  
27  
28

- e. whether Plaintiff and the Class have sustained damages as a result of Defendants' conduct alleged herein and, if so, what is the proper measure of such damages; and
- f. whether Plaintiff and the Class are entitled to declaratory and injunctive relief.

47. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of those of other Class Members because Plaintiff's account was affected by the Service Malfunction like every other Class Member. Plaintiff's claims are typical of those of the other Class Members because, *inter alia*, all Members of the Class were injured through the common misconduct of Defendants. Plaintiff is advancing the same claims and legal theories on behalf of herself and all other Class Members, and there are no defenses that are unique to Plaintiff. Plaintiff's claims and those of Class Members arise from the same operative facts and are based on the same legal theories.

48. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately represent and protect the interests of the Class in that they have no disabling conflicts of interest that would be antagonistic to those of the other Members of the Class. Plaintiff seeks no relief that is antagonistic or adverse to the Members of the Class and the infringement of the rights and the damages he has suffered are typical of other Class Members. Plaintiff has retained counsel experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously.

49. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). The class litigation is an appropriate method for the fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of Class Members to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary

1 duplication of evidence, effort, and expense that hundreds of individual actions would require.  
2 Class action treatment will permit the adjudication of relatively modest claims by certain Class  
3 Members, who could not individually afford to litigate a complex claim against large  
4 corporations, like Defendants. Further, even for those Class Members who could afford to litigate  
5 such a claim, it would still be economically impractical and impose a burden on the courts.  
6

7 50. The nature of this action and the nature of laws available to Plaintiff and the Class  
8 make the use of the class action device a particularly efficient and appropriate procedure to afford  
9 relief to Plaintiff and the Class for the wrongs alleged because Defendants would necessarily gain  
10 an unconscionable advantage since they would be able to exploit and overwhelm the limited  
11 resources of each individual Class Member with superior financial and legal resources; the costs  
12 of individual suits could unreasonably consume the amounts that would be recovered; proof of a  
13 common course of conduct to which Plaintiff was exposed is representative of that experienced  
14 by the Class and will establish the right of each Class Member to recover on the cause of action  
15 alleged; and individual actions would create a risk of inconsistent results and would be  
16 unnecessary and duplicative of this litigation.  
17  
18

19 51. The litigation of the claims brought herein is manageable. Defendants' uniform  
20 conduct, the consistent provisions of the relevant laws, and the ascertainable identities of Class  
21 Members demonstrates that there would be no significant manageability problems with  
22 prosecuting this lawsuit as a class action.  
23

24 52. Adequate notice can be given to Class Members directly using information  
25 maintained in Defendant' records.  
26  
27  
28



1 prevent the Service Malfunction.

2 62. Defendants breached their duties to Plaintiff and Class Members by failing to  
3 maintain the integrity of customer accounts during the Service Malfunction resulting in various  
4 charges, inaccurate balance statements, and stress and anxiety for Plaintiff and Class Members.

5 63. Defendants failed to use reasonable care in communicating information about the  
6 Service Malfunction and the security and integrity of account funds.

7 64. Plaintiff and the proposed Class justifiably relied upon the information supplied  
8 and representations made by Defendants, and, as a result, engaged in business with Defendants  
9 and suffered damages and lost money.  
10

11 65. But for Defendants' negligence and the Service Malfunction, Plaintiff and the  
12 proposed Class would not have suffered the damages alleged herein.  
13

14 66. As a direct and proximate result of Defendants' negligence, Plaintiff and the  
15 proposed Class were damaged in an amount to be proven at trial.  
16

17  
18 **COUNT II – UNJUST ENRICHMENT**

19 67. Plaintiff repeats, realleges, and incorporates by reference the allegations contained  
20 in paragraphs 1 through 55 as though fully set forth herein.  
21

22 68. Plaintiff and the proposed Class have conferred a benefit upon Defendants by  
23 depositing monies into and transferring funds through Defendants' services; as a result of the  
24 Service Malfunction, Defendants did not perform as promised and/or their services did not have  
25 the attributes and benefits promised by Defendants.  
26

27 69. By their unfair, misleading, and unlawful conduct alleged herein, Defendants have  
28



1 between Plaintiff and the members of the proposed Class on the one hand, and Defendants on the  
2 other.

3 75. In exchange for Defendants' assurance to Plaintiff and Class Members that they  
4 would have access to their financial accounts which would be maintained securely and accurately  
5 Plaintiff and Class Members funded their accounts and utilized banking services which generated  
6 revenue for Defendants.  
7

8 76. Plaintiff and Class members gave consideration that was fair and reasonable, and  
9 have performed all conditions, covenants, and promises required to be performed.  
10

11 77. Defendants breached the terms of this contract, including the express warranties,  
12 with Plaintiff and the proposed Class by not providing a product and service which provided the  
13 promised benefits as described above.

14 78. As a result of Defendants' breach of its contract and warranties, Plaintiff and the  
15 proposed Class have been damaged in an amount to be proven at trial.  
16

17  
18 **COUNT IV – CONVERSION**

19 79. Plaintiff repeats, realleges, and incorporates by reference the allegations contained  
20 in paragraphs 1 through 55 as though fully set forth herein.  
21

22 80. Plaintiff, and each member of the Class, deposited monies into and transferred  
23 funds through Defendants' services.

24 81. Defendants knowingly and intentionally exercised control over the monies  
25 belonging to Plaintiff and Class members, restraining funds and denying Plaintiff and Class  
26 members access to their funds.  
27  
28

1 82. Because of the unlawful restraint imposed by Defendants, the rights of Plaintiff and  
2 the Class members in their funds were interfered with and their funds could not be used in the  
3 matter in which they desired.

4 83. As a result of the foregoing actions of Defendants, Plaintiff and the proposed Class  
5 have been damaged in an amount to be proven at trial.  
6

7  
8 **COUNT V – BREACH OF FIDUCIARY DUTY**

9 84. Plaintiff repeats, realleges, and incorporates by reference the allegations contained  
10 in paragraphs 1 through 55 as though fully set forth herein.

11 85. Defendants owed a fiduciary duty to Plaintiff and Class members to properly  
12 protect, secure, transfer, and retain all monies that lawfully belonged to them.  
13

14 86. As alleged herein, Defendants breached those fiduciary duties by failing to prevent  
15 the Service Malfunction.

16 87. Defendants breached those fiduciary duties by denying Plaintiff and Class  
17 members access to the funds that lawfully belonged to them.  
18

19 88. Defendants breached those fiduciary duties by failing to properly protect, secure,  
20 transfer, and retain all monies that lawfully belonged to Plaintiff and Class members.

21 89. As a result of the foregoing actions of Defendants, Plaintiff and the proposed Class  
22 have been damaged in an amount to be proven at trial.  
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE Plaintiff, individually and on behalf of all others similarly situated,  
26 prays for relief as follows:  
27  
28

- 1 a. For an Order certifying the Class as defined herein, and appointing Plaintiff and their  
2 Counsel to represent the Class;
- 3 b. For equitable relief enjoining Defendants from engaging in the wrongful conduct  
4 complained of herein;
- 5 c. For an award of damages, including actual, nominal, and consequential damages, as  
6 allowed by law in an amount to be determined;
- 7 d. For an award of punitive damages;
- 8 e. For an award of attorneys' fees, costs, and litigation expenses, as allowed by law;
- 9 f. For prejudgment interest on all amounts awarded; and
- 10 g. Such other and further relief as this Court may deem just and proper.
- 11
- 12
- 13

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial by jury on all issues so triable.

16  
17  
18 January 18, 2023.

19  
20 Respectfully submitted,

21 /s/ John A. Yanchunis

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*Counsel for Plaintiff and the Putative Classes*

*\* Pro Hac Vice application to be submitted*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Zelle, Bank of America Hit with Class Action Over Jan. 2023 'Service Malfunction'](#)

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