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13 Attorneys for Plaintiff  
Christy Ngo

14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16  
17 Christy Ngo, individually and on  
behalf of all other similarly situated,

18 Plaintiffs,

19 v.

20 Bank of America Corporation,

21 Defendant.  
22  
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Case No.:

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF  
CALIFORNIA'S UNFAIR  
COMPETITION LAW (CAL. BUS.  
PROF. C. §§ 17200, *ET SEQ.*);**

**JURY TRIAL DEMANDED**

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**INTRODUCTION**

1. The plaintiff CHRISTY NGO (“Plaintiff”), individually and on behalf of all other similarly situated, bring this class action against BANK OF AMERICA CORPORATION (hereinafter referred to as “Defendant”) for public injunctive relief to protect the consuming public in California, including potential customers of Defendant, from the threat of future injury for unfair business practices.
2. Defendant’s business model involves withholding properly earned cash rewards from customers, without a valid reason. Plaintiff seeks disgorgement of ill-gotten profits, statutory damages, punitive damages, public injunctive relief, and attorney’s fees and costs.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to Plaintiff, or to Plaintiffs’ Counsel, which Plaintiff alleges on personal knowledge.
4. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendant.

**JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action under 28 U.S.C. §1332(d), because this is a proposed class action in which: (i) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; (ii) members of the proposed Class are citizens of a State different from Defendants; and (iii) the number of Class Members is greater than 100.
6. Defendant has sufficient minimum contacts with California and have otherwise intentionally availed itself of the markets in California through the promotion, marketing, and sale of its products and services, sufficient to render the exercise

1 of jurisdiction by this Court permissible under traditional notions of fair play  
2 and substantial justice.

- 3 7. Venue is proper in this District under 28 U.S.C. §1391(b)(2) and (3) because:  
4 (i) a substantial part of the events or omissions giving rise to these claims  
5 occurred in this District; (ii) Defendant is subject to the Court's personal  
6 jurisdiction with respect to this action because Defendant conducts business in  
7 this judicial district; and (iii) Plaintiff resides in this judicial district.  
8

9 **PARTIES**

- 10 8. Plaintiff and those similarly situated, are and at all times mentioned herein  
11 were, individual citizens and residents of the United States of America, State of  
12 California.  
13 9. Plaintiff, CHRISTY NGO is, and all times mentioned herein was, an individual  
14 citizen and resident of the City of Janesville, County of Lassen, State of  
15 California. Additionally, at all times mentioned herein was, a “person” as  
16 defined by 47 U.S.C. § 153(39) and Cal. Civ. Code § 1788.2(g). Additionally,  
17 Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).  
18 10. Defendant BANK OF AMERICA CORPORATION is a North Carolina  
19 Corporation with its Corporate headquarters located at: 100 North Tryon Street,  
20 Charlotte, NC 28255.  
21 11. Defendant’s primary business is operating as a multinational investment bank  
22 and financial services holding company.

23 **GENERAL ALLEGATIONS**

- 24 12. Defendant is a financial holding company wherein consumers hold their money  
25 in accounts tied to the bank. The result of this practice is that the consumer’s  
26 money and benefits are left to the whims of Defendant.  
27 13. Defendant’s business model is to reward the customer with cash rewards  
28 dependent on the amount spent on the credit card. The cash rewards are in the  
form of cash to be credited back to the account. The points do not expire and

- 1 continuously accrue as long as the card is being used.
- 2 14. On or around September 2, 2022, Plaintiff discovered her Bank of America  
3 debit card was no longer active and promptly called Defendant.
- 5 15. Defendant informed Plaintiff that it had frozen her account on or around  
6 September 1, 2022, and that it would close her checking and savings account  
7 permanently by the end of September 2022.
- 8 16. Furthermore, Defendant informed Plaintiff that it would be freezing her account  
9 on or around September 17, 2022.
- 10 17. Immediately after hearing this, Plaintiff withdrew all of the money in her  
11 checking and savings account, worried that she would lose access to all her  
12 money.
- 13 18. Due to Defendant closing the account, Plaintiff lost all of the cash rewards she  
14 had been earning and accumulating. While when voluntarily closing an account,  
15 one can redeem the cash rewards, when the account is involuntarily closed,  
16 Defendant's policy is that the cash rewards are lost.
- 17 19. A reasonable consumer in a similar situation would not understand that cash  
18 rewards earned, would be lost if Defendant unilaterally closed the account.
- 19 20. A reasonable consumer would similarly not understand the terms, as the  
20 business practice of Defendant is to present the information in a deceptive and  
21 rapid manner that is intended to disguise the terms of the cash rewards.
- 22 21. Since Plaintiff has had the credit card, she has been accruing cash rewards and  
23 therefore Plaintiff incurred actual financial losses due Defendant's failure to  
24 provide the cash rewards to Plaintiff.

25 **CLASS ACTION ALLEGATIONS**

- 26 22. Plaintiff realleges and incorporates by reference all of the above paragraphs of  
27 this Complaint as though fully stated herein.
- 28 23. Plaintiff and the members of the Class have all suffered an injury in fact as a  
result of the Defendant's unlawful conduct.

1 24. The “Class Period” means 48 months prior to the filing of the Complaint in this  
2 action.

3 25. Plaintiff bring this lawsuit on behalf of themselves and other similarly situated  
4 individuals under Rule 23(b)(1), 23(b)(2) and (b)(3) of the Federal Rules of  
5 Civil Procedures. Subject to additional information obtained through further  
6 investigation and/or discovery, the proposed class (“Class”) consists of:  
7

8 All persons in the State of California whose accounts were  
9 involuntarily closed by Defendant within the Class Period,  
10 resulting in the loss of their earned cash rewards on their  
11 Bank of America credit cards.

12 **A. *Ascertainability.*** The members of the Class are readily ascertainable from  
13 Defendant’s records of accounts involuntarily closed in the 48 months  
14 preceding this filing, and the specific terms and parties identified therein.

15 **B. *Numerosity.*** The members of the Class are so numerous that their individual  
16 joinder is impracticable. Plaintiff is informed and believes, and on that basis  
17 alleges, that the proposed class consists of tens of thousands of members, or  
18 more.

19 **C. *Existence and Predominance of Common Questions of Law and Fact.***

20 Common questions of law and fact exist as to all members of the Class and  
21 predominate over any questions affecting only individual Class Members.  
22 All members of the Class have been subject to the same conduct and their  
23 claims are based on the widespread dissemination of the unlawful, deceptive,  
24 and pernicious conduct by Defendant. The common legal and factual  
25 questions include, but are not limited to, the following:

- 26 i. the nature, scope, and operations of the wrongful practices of Defendant;  
27 ii. whether Defendant engaged in a course of unfair, unlawful, fraudulent,  
28 and/or pernicious conduct in its lending and loan practices.  
iii. whether Defendant knew or should have known that its business

1 practices were unfair, and/or unlawful;

2 iv. whether Defendant owed a duty of care to Plaintiff and the Class;

3 v. whether Defendant harmed Plaintiff and the Class; and

5 vi. whether Defendant was unjustly enriched by its unlawful and unfair  
6 business practices.

7 **D. *Typicality*.** Plaintiff's claims are typical of the claims of the members of the  
8 Class in that Plaintiff is a member of the Class that Plaintiff seeks to  
9 represent. Plaintiff, like members of the proposed Class, was stuck in a  
10 contract with Defendant that contained unfair, unlawful, and objectively  
11 oppressive terms.

12 **E. *Adequacy of Representation*.** Plaintiff will fairly and adequately protect the  
13 interests of the members of the Class. Plaintiff has retained counsel  
14 experienced in consumer protection law, including class actions. Plaintiff  
15 has no adverse or antagonistic interests to those of the Class, and will fairly  
16 and adequately protect the interests of the Class. Plaintiff's attorneys are  
17 aware of no interests adverse or antagonistic to those of Plaintiff and the  
18 proposed Class.

19 **F. *Superiority*.** A class action is superior to all other available means for the  
20 fair and efficient adjudication of this controversy. Individualized litigation  
21 would create the danger of inconsistent and/or contradictory judgments  
22 arising from the same set of facts. Individualized litigation would also  
23 increase the delay and expense to all parties and the courts and the issues  
24 raised by this action. The damages or other financial detriment suffered by  
25 individual Class Members may be relatively small compared to the burden  
26 and expense that would be entailed by individual litigation of the claims  
27 against the Defendant. The injury suffered by each individual member of the  
28 proposed class is relatively small in comparison to the burden and expense of  
individual prosecution of the complex and extensive litigation necessitated by

1 Defendant's conduct. It would be virtually impossible for members of the  
2 proposed Class to individually redress effectively the wrongs to them. Even  
3 if the members of the proposed Class could afford such litigation, the Court  
4 system could not. Individualized litigation increases the delay and expense  
5 to all parties, and to the court system, presented by the complex legal and  
6 factual issues of the case. By contrast, the class action device presents far  
7 fewer management difficulties, and provides the benefits of a single  
8 adjudication, economy of scale, and comprehensive supervision by a single  
9 court. Therefore, a class action is maintainable pursuant to Fed. R. Civ. P.  
10 23(b)(3).  
11

12 26. Unless the Class is certified, Defendant will continue its unlawful, unfair, and  
13 predatory practices as described herein. If the Class is certified, the harms to  
14 the public and the Class can be easily prevented or rectified.

15 27. Furthermore, Defendant has acted or refused to act on grounds that are  
16 generally applicable to the Class so that declaratory and injunctive relief is  
17 appropriate to the Class as a whole, making class certification appropriate  
18 pursuant to Fed R. Civ. P. 23(b)(2).  
19

## 20 **COUNT I**

### 21 **FOR VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW**

#### 22 **CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

23 28. Plaintiff realleges and incorporates by reference all of the above paragraphs of  
24 this Complaint as though fully stated herein.

25 29. Plaintiff and Defendant are each "person(s)" as that term is defined by Cal. Bus.  
26 & Prof. C. § 17201. Cal. Bus & Prof. C. § 17204 authorizes a private right of  
27 action on both an individual and representative basis.

28 30. Cal. Bus. & Prof. C. § 17204, a provision of the Unfair Competition Law (B &  
P C §§ 17200–17209), confers standing to prosecute actions for relief not only

1 on the public officials named therein, but on private individuals, i.e., “any  
2 person acting for the interests of itself, its members or the general public.”

3 Thus, a private Plaintiff who has suffered a financial injury may sue to obtain  
4 relief for others.

5  
6 31. “Unfair competition” is defined by Bus. & Prof. Code § 17200 as encompassing  
7 several types of business “wrongs,” including: (1) an “unlawful” business act or  
8 practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act  
9 or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The  
10 definitions in § 17200 are drafted in the disjunctive, meaning that each of these  
11 “wrongs” operates independently from the others.

12 32. An “injunction” is “the primary form of relief available under the UCL to  
13 protect consumers from unfair business practices.” *In re Tobacco II Cases*, 46  
14 Cal.4th 298, 319 (2009); *see also, Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758, 789  
15 (2010) (“[i]f a party has standing under” the UCL, “it may seek injunctive  
16 relief”).

17 **A. “Unlawful” Prong**

18 33. By knowingly and intentionally closing accounts without leaving them with the  
19 benefit of their cash rewards, Defendant has routinely engaged in unlawful  
20 business practices.

21 34. The practices described herein by Defendant violate Cal. Fin. C. § 22303, as  
22 they violate Cal. Civ. Code § 1670.5. *See De La Torre v. Cashcall Inc.*, No.  
23 S241434, 2018 Cal. LEXIS 5749, at \*43 (Aug. 13, 2018).

24 35. Because Defendant’s business entailed violations of both Cal. Fin. C. § 22303  
25 and/or Cal. C. § 1670.5, Defendant violated California’s Unfair Competition  
26 Law, Bus. & Prof. Code §§ 17200, *et seq.*, which provides a cause of action for  
27 an “unlawful” business act or practice perpetrated on consumers.

28 36. Defendant violated Cal. Bus. & Prof. Code §§17200, *et. seq.* through unfair,  
unlawful, and deceptive business practices, Defendant violated California’s



1 Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*, which provides a  
2 cause of action for an “unlawful” business acts or practices perpetrated on  
3 consumers.

5 37. Defendant had other reasonably available alternatives to further its legitimate  
6 business interests, other than the conduct described herein, such as continuing  
7 to close accounts, but allowing its customers to redeem the cash rewards.

8 38. Plaintiff suffered actual monetary financial injury in that Plaintiff was not given  
9 the cash rewards that Plaintiff earned.

10 39. Plaintiff reserves the right to allege further conduct that constitutes other unfair  
11 business acts or practices. Such conduct is ongoing and continues to this date.

12 40. Plaintiff seeks public injunctive relief to benefit the general public directly by  
13 bringing an end to Defendant’s unlawful business practices which threaten  
14 future injury to the general public.

15 **B. “Unfair” Prong**

16 41. Defendant’s actions and representations constitute an “unfair” business act or  
17 practice under § 17200 in that Defendant’s conduct is substantially injurious to  
18 consumers, offends public policy, and is immoral, unethical, oppressive, and  
19 unscrupulous as the gravity of the conduct outweighs any alleged benefits  
20 attributable to such conduct.

21 42. Without limitation, the business practices describe herein are “unfair” and  
22 shock the conscience because they offend established public policy, violate  
23 California statutory protections, and are objectively immoral, unethical,  
24 oppressive, unscrupulous and/or substantially injurious to consumers in that  
25 Defendant’s conduct caused Plaintiff and the Class Members to lose out  
26 financially due to the prevention of allowing Class Members to recoup their  
27 cash rewards.

28 43. At a date presently unknown to Plaintiff, but at least four years prior to the  
filing of this action, and as set forth above, Defendant committed acts of unfair

1 competition as defined by Cal. Bus. & Prof. Code §§ 17200, *et seq.*, as  
2 described herein.

- 3 44. Defendant involuntarily closes accounts and denies the redemption of  
4 legitimately earned cash rewards to customers in violation of California law.
- 5 45. Defendant could and should have furthered its legitimate business interests by  
6 not perpetrating fraud on the entire representative class of California borrowers  
7 by allowing them to cash out their rewards as properly earned.
- 8 46. Plaintiff, members of the Class and the general public could not have  
9 reasonably avoided the injury suffered by each of them.
- 10 47. Defendant has a strong financial incentive to involuntarily close accounts and  
11 keep the cash rewards earned by customers, thereby receiving more money than  
12 its compliant competitors with similar cash reward incentives for credit cards.
- 13 48. Plaintiff reserves the right to allege further conduct that constitutes other unfair  
14 business acts or practices. Such conduct is ongoing and continues to this date,  
15 and is a source of considerable revenue to Defendant.
- 16 49. Plaintiff seeks public injunctive relief to benefit the general public directly by  
17 bringing an end to Defendant's unfair business practices which threaten future  
18 injury to the general public. Specifically, an injunction requiring Defendant to  
19 immediately cash out those cash rewards earned by customers whose accounts  
20 are being involuntarily closed by Defendant.
- 21

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23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- 25 • That this action be certified as a Class Action, Plaintiff be appointed as the  
26 representatives of the Class, and Plaintiff's attorneys be appointed Class  
27 counsel;
- 28 • That Defendant's wrongful conduct alleged herein be adjudged and decreed  
to violate the consumer protection statutory claims asserted herein;

- 1 • Public injunctive relief through the role as a Private Attorney General,  
2 pursuant to Cal. Bus. & Prof. Code §§ 17204, permanently and immediately  
3 prohibiting Defendant from engaging in the unlawful conduct alleged  
4 herein, including but not limited to illegally keeping the cash rewards  
5 properly earned by Plaintiff and the putative class;
- 6 • A temporary, preliminary and/or permanent order for injunctive relief  
7 requiring Defendant to cash out rewards earned by customers if Defendant  
8 involuntarily closes their account;
- 9 • An order requiring imposition of a constructive trust and/or disgorgement  
10 of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all  
11 members of the Class and, also, to restore to Plaintiff and members of the  
12 Class all funds acquired by means of any act or practice declared by this  
13 court to be an unlawful, fraudulent, or unfair business act or practice, in  
14 violation of laws, statutes or regulations, or constituting unfair competition;
- 15 • Distribution of any monies recovered on behalf of members of the Class via  
16 fluid recovery or *cy pres* recovery where necessary and as applicable, to  
17 prevent Defendant from retaining the benefits of their wrongful conduct;
- 18 • Actual damages, injunctive relief, restitution, and punitive damages  
19 pursuant to California Code of Civil Procedure § 1780;
- 20 • Prejudgment and post judgment interest;
- 21 • Exemplary and/or punitive damages for intentional misrepresentations  
22 pursuant to, *inter alia*, Cal. Civ. Code § 3294;
- 23 • Costs of this suit;
- 24 • Reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil  
25 Procedure § 1021.5, Cal. Civ. Code § 1780, the UCL, and the common fund  
26 doctrine; and,  
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- Awarding any and all other relief that this Court deems necessary or appropriate.

Dated: February 27, 2023

Respectfully submitted,

By: /s/Ryan L. McBride  
Ryan L. McBride, Esq.  
Attorneys for Plaintiff and the  
Putative Clas

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Says Bank of America Unlawfully Withholds Cash Rewards After Closing Customers' Accounts](#)

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