

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

PATRICK SWIFT, individually and on behalf of all others similarly situated,      CIVIL DIVISION

*Plaintiff,*

No.: \_\_\_\_\_

CLASS ACTION

v.

BANK OF AMERICA, N.A.,

*Defendant.*

**CLASS ACTION COMPLAINT**

Plaintiff Patrick Swift, individually and on behalf of all others similarly situated, brings this action against Defendant Bank of America, N.A., and alleges upon personal knowledge as to himself and upon information and belief as to all other matters, as follows:

**NATURE THE ACTION**

1. Defendant violated Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) by enrolling consumers into its automatic payment program (“Bill Pay”) without disclosing that Defendant would cancel their enrollment unless the consumers also opened and maintained active Bank of America credit card, checking, or savings accounts.

2. As illustrated here, and in a related case in which Bank of America’s motion for judgement on the pleadings was denied,<sup>1</sup> Defendant’s bait-and-switch causes immediate harm in the form of late fees, damaged credit scores, and charge-offs, and long-term harm in the form of reduced access to credit facilities, like a new mortgage or refinancing.

3. Plaintiff seeks damages on his own behalf, and to resolve “particular issues” under Pa. R. Civ. P. 1702, 1708, 1709, and 1710 for the class defined below.

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<sup>1</sup> *Chen v. Bank of Am. Corp.*, 2024 U.S. Dist. LEXIS 120450 (S.D. Cal. July 9, 2024).

## **JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction under 42 Pa. C.S. § 931.
5. The Court has personal jurisdiction over Defendant under 42 Pa. C.S. § 5301.
6. Defendant has consented to general personal jurisdiction in Pennsylvania by registering to do business in the Commonwealth. *Mallory v. Norfolk Southern Ry.*, 600 U.S. 122 (2023).
7. Venue is proper under Pa. R. Civ. P. 2179 because Defendant regularly conducts business in Allegheny County.

## **PARTIES**

8. Plaintiff is a natural person over the age of eighteen.
9. Defendant is a Delaware corporation with its principal place of business outside Pennsylvania.

## **COMMON FACTUAL ALLEGATIONS**

10. Defendant advertises and offers Bill Pay as a means for consumers to arrange to pay their bills automatically.
11. However, Defendant fails to disclose that after agreeing to automatically debit consumers' financial accounts to satisfy their recurring loan repayment obligations, Defendant will cancel consumers' enrollment in Bill Pay unless they open and maintain active Bank of America credit card, checking, or savings accounts that generate additional fees for Defendant.
12. By luring consumers into Bill Pay with promises that Defendant will "take a few things off your hands," then canceling their enrollment for failing to meet undisclosed eligibility requirements, Defendant injures consumers in the form of late fees, damaged credit scores, charge-offs, reduced access to credit facilities, like mortgages or refinancing, and more.

**ALLEGATIONS SPECIFIC TO PLAINTIFF**

13. Plaintiff obtained a car loan from Defendant in January 2022.

14. After obtaining the loan, Plaintiff visited Defendant’s website, enrolled in Defendant’s Bill Pay, and authorized Defendant to automatically debit Plaintiff’s external bank account, managed by Fidelity Investments, every month until Plaintiff’s car loan was paid off.

15. At no time during the enrollment process did Defendant disclose, in hidden hyperlinked terms or otherwise, that Plaintiff’s enrollment was subject to eligibility requirements, including maintaining a Bank of America credit card, checking, or savings account.

16. From February 2022 through June 2022, Defendant used Bill Pay to automatically debit Plaintiff’s Fidelity account to satisfy Plaintiff’s monthly loan obligation to Defendant.

17. Each time Defendant debited Plaintiff’s Fidelity account, Defendant provided Plaintiff with an account statement identifying the prior month’s transaction activity. For example, below is a screenshot of Plaintiff’s June 8, 2022 statement, confirming Defendant debited \$647.00 from Plaintiff’s Fidelity account on May 27, 2022.

<b>Loan account status</b>		<b>Transaction activity</b>			
Maturity date:	01/28/2028	Effective date	Description	Amount	Detail
Payoff balance*:	\$41,104.42				
Payoff good through:	06/28/2022	Beginning principal balance			\$41,583.07
<i>*Payoff does not include any fees, credits, or reversals that have not posted.</i>		05/27/2022	PAYMENT - THANK YOU PRINCIPAL FINANCE CHARGE	-\$647.00	\$566.39 \$80.61
Previous year’s interest paid:	\$0.00	Ending principal balance			\$41,016.68
Statement date:	06/08/2022				
Current payment due:	\$645.56				
Amount past due:	\$0.00				
Total fees and charges:	\$0.00				
Total payment due by 06/28/2022 is:	\$645.56				

Fig. 1

18. Unnoticed by Plaintiff at the time, but discovered while investigating his claims, Defendant emailed Plaintiff on June 9, 2022 and June 11, 2022, both times after 10:00 PM,

notifying Plaintiff that Defendant had cancelled Plaintiff’s enrollment in Bill Pay because of “changes in the status of [Plaintiff’s] account.”

19. Defendant did not explain what “changes” caused Plaintiff’s cancellation.

20. Plaintiff has since learned in a letter from Defendant’s counsel, dated December 17, 2024, that Defendant cancelled his enrollment in Bill Pay because Plaintiff closed his Bank of America checking account in June 2022.

21. Plaintiff did not make alternative arrangements to pay his car loan because Plaintiff did not notice Defendant’s nighttime emails, and because Defendant again used Bill Pay to debit \$647.00 from Plaintiff’s Fidelity account on July 7, 2022. Below is a screenshot of Plaintiff’s July 8, 2022 statement confirming this transaction activity.

<b>Loan account status</b>		<b>Transaction activity</b>			
Maturity date:	01/28/2028	Effective date	Description	Amount	Detail
Payoff balance*:	\$40,538.93				
Payoff good through:	07/28/2022	Beginning principal balance			\$41,016.68
<i>*Payoff does not include any fees, credits, or reversals that have not posted.</i>		07/07/2022	PAYMENT - THANK YOU PRINCIPAL FINANCE CHARGE	-\$647.00	\$534.57 \$112.43
Previous year’s interest paid:	\$0.00	Ending principal balance			\$40,482.11
Statement date:	07/08/2022				
Current payment due:	\$645.20				
Amount past due:	\$0.00				
Total fees and charges:	\$0.00				
Total payment due by 07/28/2022 is:	\$645.20				

Fig. 2.

22. Plaintiff’s Fidelity records confirm that Defendant debited his monthly car payments from February 2022 through June 2022.

23. Defendant thereafter cancelled Plaintiff’s enrollment in Bill Pay, such that Defendant failed to debit Plaintiff’s Fidelity account from July 2022 through March 2024.

24. Defendant concealed Plaintiff’s cancellation by providing Plaintiff with monthly statements which misrepresented that Defendant debited \$646.64 from Plaintiff’s Fidelity account,

that Plaintiff had an amount past due of \$0.00, and that Plaintiff was making progress paying off his loan. Below is a screenshot of Plaintiff’s August 8, 2022 statement. It is materially identical to the statements Defendant provided from August 2022 through November 2022.

Loan account status		Transaction activity			
Maturity date:	01/28/2028	Effective date	Description	Amount	Detail
Payoff balance*:	\$39,974.96				
Payoff good through:	08/28/2022	Beginning principal balance \$40,482.11			
<i>*Payoff does not include any fees, credits, or reversals that have not posted.</i>		07/28/2022	PAYMENT - THANK YOU	-\$646.64	
Previous year's interest paid:	\$0.00		PRINCIPAL		\$589.82
Statement date:	08/08/2022		FINANCE CHARGE		\$56.82
Current payment due:	\$645.20	Ending principal balance \$39,892.29			
Amount past due:	\$0.00				
Total fees and charges:	\$0.00				
Total payment due by 08/28/2022 is:	\$645.20				

Fig. 3.

25. Starting in December 2022, Defendant also misrepresented Plaintiff was “currently enrolled in recurring payment for this account. ...Automatic payments from account 0164 in the amount of \$646.64 will be drafted on [DATE].” Below is a screenshot of Plaintiff’s December 8, 2022 statement. It is identical to Plaintiff’s statements from December 2022 through August 2023.

Loan account status		Transaction activity			
Maturity date:	01/28/2028	Effective date	Description	Amount	Detail
Loan Interest rate:	2.44%				
Payoff balance*:	\$37,702.16	Beginning principal balance \$38,194.19			
Payoff good through:	12/28/2022	11/28/2022	PAYMENT - THANK YOU	-\$646.64	
<i>*Payoff does not include any fees, credits, or reversals that have not posted.</i>			PRINCIPAL		\$567.49
Previous year's interest paid:	\$0.00		FINANCE CHARGE		\$79.15
Statement date:	12/08/2022	Ending principal balance \$37,626.70			
Current payment due:	\$645.20				
Amount past due:	\$0.00				
Total fees and charges:	\$0.00				
Total payment due by 12/28/2022 is:	\$645.20				
<b>Important messages</b>					
You are currently enrolled in recurring payments for this account. Bank of America appreciates the opportunity to service your account.					
<b>This is an attempt to collect a debt. Any information will be used for that purpose.</b>					
Automatic payment from account 0164 in the amount of \$646.64 will be drafted on December 28, 2022.					

Fig. 4.

26. Below is another screenshot; this one from September 18, 2023. Its formatting emphasizes Plaintiff’s enrollment in Bill Pay even more clearly. It is materially identical to the statements Defendant provided Plaintiff from September 2023 through March 2024.

<b>Important messages</b>	
<b>Recurring Payments</b> - You are currently enrolled in recurring payments for this account. The draft information is available on the payment coupon.	
<b>Loan account status</b>	<b>Transaction activity</b>
Maturity date: 01/28/2028	Effective date
Loan Interest rate: 2.44%	Description
Payoff balance*: \$32,518.78	Amount
Payoff good through: 09/28/2023	Detail
<i>*Payoff does not include any fees, credits, or reversals that have not posted.</i>	Beginning principal balance \$33,029.72
Previous year's interest paid: \$943.72	08/28/2023 PAYMENT - THANK YOU PRINCIPAL FINANCE CHARGE -\$646.64 \$578.20 \$68.44
Statement date: 09/08/2023	Ending principal balance \$32,451.52
Current payment due: \$645.20	
Amount past due: \$0.00	
Total fees and charges: \$0.00	
Total payment due by 09/28/2023 is: \$645.20	
This is an attempt to collect a debt. Any information will be used for that purpose.	
Automatic payment from account 0164 in the amount of \$646.64 will be drafted on September 28, 2023.	

Fig. 5.

27. Because Plaintiff had no reason to know Defendant could or would cancel his enrollment in Bill Pay, and because of the misrepresentations Defendant made in its account statements from August 2022 through March 2024, Plaintiff did not discover Defendant’s failure to debit his monthly car payments from his Fidelity account from July 2022 through March 2024.

28. Plaintiff’s Fidelity records confirm that Defendant never initiated any debits to satisfy his monthly car payments from July 2022 through March 2024.

29. In March 2024, Defendant notified Plaintiff that Defendant had not received Plaintiff’s car payments in January 2024, February 2024, and March 2024.

30. Defendant failed to disclose that it failed to also debit Plaintiff’s Fidelity account from July 2022 through December 2023.

31. Plaintiff immediately paid Defendant the outstanding balance for January 2024, February 2024, and March 2024, and an extra \$40.20 in late fees. These payments are shown in Plaintiff's April 8, 2024 account statement.

<b>Transaction activity - continued</b>			
Effective date	Description	Amount	Detail
	FINANCE CHARGE		\$64.98
02/28/2024	PAYMENT - THANK YOU	-\$646.64	
	PRINCIPAL		\$520.68
	FINANCE CHARGE		\$124.52
	LATE CHARGE		\$1.44
03/11/2024	LATE FEE	\$12.93	
03/22/2024	PAYMENT - THANK YOU	-\$1,964.31	
	PRINCIPAL		\$1,767.76
	FINANCE CHARGE		\$170.72
	LATE CHARGE		\$25.83
Ending principal balance			\$28,354.76

Fig. 6.

32. Still unaware of Defendant's undisclosed eligibility requirements, Plaintiff re-enrolled in Bill Pay in April 2024, such that Defendant successfully debited Plaintiff's monthly payments from his Fidelity account, without issue, from April 2024 through September 2024. Below is a screenshot of Plaintiff's May 8, 2024 statement. It is materially identical to the statements Defendant provided Plaintiff from May 2024 through September 2024.

<b>Loan account status</b>		<b>Transaction activity</b>			
		Effective date	Description	Amount	Detail
Maturity date:	01/28/2028				
Loan Interest rate:	2.44%				
Payoff balance*:	\$27,833.17				
Payoff good through:	05/28/2024				
<i>*Payoff does not include any fees, credits, or reversals that have not posted.</i>					
Previous year's interest paid:	\$826.68				
Statement date:	05/08/2024				
Current payment due:	\$646.28				
Amount past due:	\$0.00				
Total fees and charges:	\$0.00				
Total payment due by 05/28/2024 is:	\$646.28				
		Beginning principal balance			\$28,354.76
		04/26/2024	PAYMENT - THANK YOU	-\$647.00	
			PRINCIPAL		\$580.84
			FINANCE CHARGE		\$66.16
		Ending principal balance			\$27,773.92

Fig. 7.

33. Plaintiff's Fidelity records confirm that Defendant debited Plaintiff's monthly car payments from May 2024 through September 2024.

34. On October 2, 2024, Plaintiff received a vague voicemail from Defendant.

35. On October 3, 2024, Plaintiff learned from a third-party credit reporting app that Plaintiff's credit score dropped almost 100 points after Defendant charged off Plaintiff's car loan because several payments were severely past-due.

36. At the time of Plaintiff's charge-off, the only past-due payments were those from July 2022 through December 2023—the same payments Defendant failed to debit from Plaintiff's Fidelity account because Defendant canceled Plaintiff's enrollment in Bill Pay.

37. While investigating these events, Defendant offered multiple different explanations.

38. On December 4, 2024, Defendant's Resolution Specialist for Regulatory Complaints, Valerie Hernandez, called Plaintiff and explained that Fidelity contacted Defendant in September 2024 and requested that Defendant reverse 12 payments of \$646.64 because Plaintiff had reported those payments to Fidelity as fraudulent.

39. Plaintiff never reported the payments as fraudulent.

40. Plaintiff explained to Hernandez that he never reported the payments as fraudulent.

41. Plaintiff requested a copy of the chargeback request that Fidelity sent to Defendant, and although Hernandez confirmed it exists, Hernandez declined to provide Plaintiff with a copy.

42. Hernandez explained to Plaintiff that Defendant honored Fidelity's chargeback request and sent an amount equal to 12 payments of \$646.64 back to Plaintiff's Fidelity account.

43. Hernandez explained that sending the money back to Fidelity caused Plaintiff's car loan to become past-due, thereby causing Defendant to automatically charge off Plaintiff's car loan.



44. Hernandez confirmed this charge-off occurred automatically and without prior notice to Plaintiff.

45. Hernandez explained this was not the first time Defendant had honored a chargeback request from a third-party bank.

46. Hernandez's story is false.

47. Plaintiff's Fidelity records confirm that Defendant never transferred an amount equal to 12 payments back to Plaintiff's Fidelity account in September 2024.

48. Plaintiff's Fidelity records confirm Defendant never debited the 12 payments in the first place.

49. Defendant's counsel told a different story in a letter dated December 17, 2024.

50. Defendant's counsel explained that, as of September 2024, Fidelity "no longer honored" 15 payments (not 12) that Plaintiff had made to Defendant on his car loan.

51. Defendant's counsel explained these 15 payments were therefore reversed.

52. Defendant's counsel explained that Fidelity's actions caused Plaintiff's loan to become past due, resulting in a delinquency and charge-off.

53. Defendant's counsel's story is also false.

54. Plaintiff's Fidelity records confirm that Defendant never transferred an amount equal to 15 payments back to Plaintiff's Fidelity account in September 2024.

55. Plaintiff's Fidelity records confirm Defendant never debited the 15 payments in the first place.

56. Plaintiff has suffered significant short- and long-term injuries because of Defendant having cancelled his enrollment in Bill Pay. For example, Plaintiff has:

- (a) paid unwarranted late fees to Defendant;

- (b) had his loan charged-off;
- (c) been harassed by debt-collectors;
- (d) suffered a significantly lower credit score;
- (e) been notified that Defendant reduced his credit limit from \$20,000 to \$1,500;
- (f) been notified that another bank closed his credit card because of his deteriorated credit score;
- (g) blocked from transferring the vehicle's registration because Defendant holds the vehicle's title as a lienholder;
- (h) a diminished ability to refinance his home or access other new credit facilities;
- (i) spent hours preparing and submitting complaints to Defendant, various credit agencies, and the Consumer Finance Protection Bureau; and
- (j) suffered considerable stress and emotional turmoil dealing with the fallout of Defendant's misconduct.

### **CLASS ACTION ALLEGATIONS**

57. Plaintiff seeks to certify an Issue Class that includes “all Pennsylvania residents whose enrollment in Bill Pay was cancelled by Defendant because they did not maintain an active Bank of America consumer checking, savings, or credit card account.”

58. Plaintiff seeks to certify the Issue Class solely for the purpose of determining whether Defendant committed an unfair or deceptive act by marketing and enrolling class members into Defendant's Bill Pay program without disclosing that enrollees must maintain a sufficiently

active Bank of America checking, savings, or credit card account, in violation of the UTPCPL (“UTPCPL Issue”).

59. The Issue Class is maintainable pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, 1709, and 1710.

60. The Issue Class is so numerous that joinder is impracticable. Upon information and belief, Defendant’s records will demonstrate there are more than 40 members of the Issue Class. Pa. R. Civ. P. 1702(a)(1).

61. There are questions of law and fact common to Plaintiff and the Issue Class because Plaintiff and the Issue Class were subjected to the same false advertisements, and the questions of whether those advertisements were false or deceptive has a single common answer with respect to Plaintiff and the Issue Class. Pa. R. Civ. P. 1702(2).

62. The claims of Plaintiff and the Issue Class are typical of one another because they are based on the same legal theories and arise from the same conduct. Pa. R. Civ. P. 1702(3).

63. Plaintiff will fairly and adequately assert and protect the interest of the Issue Class. Pa. R. Civ. P. 1702(4).

64. The interests of Plaintiff and the Issue Class align, and Plaintiff has retained counsel who are competent and experienced in class action and consumer rights litigation. Pa. R. Civ. P. 1709.

65. Certifying the Issue Class solely for purposes of determining whether Defendant’s uniform representations were false, deceptive, or misleading provides a fair and efficient method of adjudication of the controversy. Pa. R. Civ. P. 1702(5).

66. The common issue that the Issue Class seeks to litigate predominates over any individual issue of law or fact. Pa. R. Civ. P. 1708(b)(1).

67. There are likely no difficulties in maintaining this case as a class action because Defendant made the same false representations to Plaintiff and each member of the Issue Class, which means the same evidence will be needed by Plaintiff and the Issue Class to determine the single issue before the Court and there will be no individual legal or factual issues for the Court to resolve. Pa. R. Civ. P. 1708(b)(1).

68. The Court should certify the Issue Class because the prosecution of separate actions on the issue of whether the uniform misrepresentation made to Plaintiff and the members of the Issue Class is false or deceptive would lead to inconsistent or varying adjudications, which would confront Defendant with incompatible standards of conduct. Pa. R. Civ. P. 1708(b)(1).

69. Based on the knowledge of Plaintiff and undersigned counsel, there is no similar case currently pending against Defendant, as the parties in *Chen v. Bank of America Corp.*, No. 3:23-cv-1762-DMS-DEB (S.D. Cal.) filed a Joint Motion to Dismiss on February 14, 2025, following a series of settlement conferences held on November 15, 2024, December 6, 2024, December 18, 2024, January 24, 2025, and January 31, 2025.

70. This forum is appropriate for litigation, as Defendant regularly conducts business in Allegheny County. Pa. R. Civ. P. 1708(b)(1).

71. Defendant has acted or refused to act on grounds that apply generally to the Issue Class, such that the relief sought on behalf of the Issue Class is appropriate respecting the Issue Class as a whole. The relief requested on behalf of the Issue Class applies equally to Plaintiff and the Issue Class members. Pa. R. Civ. P. 1708(b)(2).

## CAUSE OF ACTION

### COUNT I

#### **Violation of the Unfair Trade Practices and Consumer Protection Law**

**73 P.S. § 201-1, et seq.**

*On behalf of Plaintiff and the Issues Class*

72. Plaintiff realleges and incorporates by reference all previous paragraphs of this Complaint as if set forth fully herein.

73. This claim is brought in Plaintiff's individual capacity, except for Plaintiff's request for the certification and resolution of the UTPCPL Issue, which Plaintiff seeks on behalf of the Issue Class.

74. Plaintiff, the Issue Class members, and Defendant are persons, the services that Defendant offers at its website are services purchased for personal, family, and/or household use, and Defendant's conduct described herein is trade or commerce under the UTPCPL. 73 P.S. §§ 201-2(2)-(3), 201-9.2.

75. Defendant's conduct described herein constitutes unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because, among other things, Defendant advertised services with intent not to provide them as advertised, and engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. §§ 201-2(4).

76. Defendant's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

77. Plaintiff suffered losses because of Defendant's violation of the UTPCPL.

78. Pursuant to 73 P.S. § 201-9.2(a), Plaintiff is entitled to actual damages or \$100 for each violation, whichever is greater, treble damages, reasonable costs and attorneys' fees, and such additional relief the Court deems necessary and proper.

79. Pursuant to Pa. R. Civ. P. 1702, 1708, 1709, and 1710, the Issue Class is entitled to certification and a determination of the UTPCPL Issue.

**JURY TRIAL DEMANDED**

Plaintiff requests a jury trial on all claims so triable.

**PLAINTIFF'S FIRST DISCOVERY REQUESTS**

Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission directed to Defendant are attached to this Complaint as Exhibit A.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- a. An order awarding Plaintiff actual, statutory, treble, and all other damages available by law, along with pre- and post-judgment interest;
- b. An order awarding Plaintiff restitution for any amounts paid to Defendant because of Defendant's misconduct described herein;
- c. An order certifying the Issue Class, appointing Plaintiff as representative of the Issue Class, and appointing undersigned counsel as counsel for the Issue Class;
- d. An order certifying the Issue Class to decide whether Defendant committed an unfair or deceptive act, in violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law; and
- e. An order awarding attorneys' fees and costs.

Respectfully Submitted,

Dated: March 5, 2025

*/s/ Kevin W. Tucker*

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Kevin W. Tucker (he/him) (PA 312144)  
Kevin J. Abramowicz (He/Him) (PA 320659)  
Chandler Steiger (She/Her) (PA 328891)  
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Counsel for Plaintiff

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America Facing Class Action Lawsuit Over Alleged Failure to Disclose Bill Pay Eligibility Requirement](#)

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