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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NATALIE TRISTAN, Individually and
On Behalf of All Others Similarly
Situated

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 8:22-cv-1183

NOTICE OF REMOVAL

State Court Docket: Superior Court of
California, County of Orange

Case No. 30-2022-01255728-CU-FR-
CJC

Complaint Filed: April 20, 2022

NOTICE OF REMOVAL

Tristan v. Bank of America, N.A., Case No. 8:22-cv-1183

TO THE CLERK OF THE ABOVE-TITLED COURT:

PLEASE TAKE NOTICE THAT, for the reasons stated below, Defendant Bank of America, N.A. (“Bank of America”) hereby removes the above-captioned action from the Superior Court of California for the County of Orange to the United States District Court for the Central District of California.

As grounds for removal, Bank of America states as follows:

SUMMARY

1. A defendant may remove an action from state court pursuant to 28 U.S.C. § 1441(a) if the federal district court has original jurisdiction over the action.

2. This Court has original jurisdiction over this action as a case with a claim “arising under” federal law, 28 U.S.C. § 1331, and with the remaining claims being “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy,” 28 U.S.C. § 1367(a). Such actions may be removed from state court pursuant to 28 U.S.C. § 1441(a).

3. This Court also has original jurisdiction over this action as an alleged class action in which “any member of a class of plaintiffs is a citizen of a State different from any defendant” and in which “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). Such actions may be removed from state court pursuant to 28 U.S.C. § 1453(b).

PROCEDURAL HISTORY AND BACKGROUND

4. On April 20, 2022, Plaintiff Natalie Tristan filed a putative class action complaint captioned *Tristan v. Bank of America, N.A.*, Case No. 30-2022-01255728-CU-FR-CJC, in the Superior Court of California in the County of Orange. On June 8, 2022, Plaintiff filed an amended version of the complaint (“First Amended Complaint” or “FAC”) in the same court. Copies of both complaints, together with

1 all process, pleadings, and orders served on Bank of America in the state court
2 action, are attached hereto.

3 5. In the FAC, Plaintiff alleges that (1) she used Zelle to pay an application
4 fee, security deposit and first month's rent to another person in anticipation of
5 moving into a rental apartment, (2) the other person turned out to be a fraudster who
6 never delivered the keys or possession of the apartment, and (3) Bank of America
7 declined to refund the amount she paid to the fraudster. *See* FAC ¶¶ 54-63. The
8 FAC asserts, on behalf of a putative class, claims for breach of contract and
9 violations of the California Unfair Competition Law (Cal. Bus. & Prof. Code
10 § 17200 *et seq.*), the California False Advertising Law (Cal. Civ. Code § 17500 *et*
11 *seq.*), and the Electronic Fund Transfer Act (15 U.S.C. § 1693 *et seq.*). *Id.* ¶¶ 64-
12 114. Plaintiff seeks actual, compensatory, punitive, and exemplary damages, pre-
13 judgment interest, attorneys' fees and costs, and equitable relief including
14 restitution, disgorgement, and a permanent injunction. *Id.* at 23. Bank of America
15 disputes the allegations in the complaint and disputes that Plaintiff is entitled to any
16 relief.

17 6. Plaintiff served Bank of America with the original complaint and
18 summons on May 18, 2022. Bank of America's time to respond to the complaint
19 and summons has not expired, and Bank of America has not served or filed an
20 answer.

21 7. This notice of removal is timely filed under 28 U.S.C. § 1446(b)
22 because it is filed less than 30 days from May 18, 2022, the date on which Bank of
23 America was served with a copy of the complaint and summons. No previous notice
24 of removal has been filed or made to this Court for the relief sought herein.

25 8. This action is removable to this Court because Orange County is located
26 in the Central District of California. *See* 28 U.S.C. § 1441(a).

GROUND S FOR REMOVAL

9. A defendant may remove an action from state court if the federal district court has original jurisdiction over the action. 28 U.S.C. § 1441(a).

10. This Court has original jurisdiction over this action under both its statutory grant of federal question jurisdiction, 28 U.S.C. § 1331, and the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

11. 28 U.S.C. § 1331 vests federal district courts with “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Plaintiff’s EFTA claim satisfies the requirement that the action “arise under” federal law. Accordingly, the additional (and related) claims brought under California statutory and common law are removable by virtue of this court’s supplemental jurisdiction. *See* 28 U.S.C. § 1367(a).

12. CAFA vests federal district courts with “original jurisdiction of any civil action” (A) that “is a class action,” (B) in which “the number of members of all proposed plaintiff classes in the aggregate is [not] less than 100,” (C) in which “any member of a class of plaintiffs is a citizen of a State different from any defendant”; and (D) in which “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d). This action also satisfies these requirements.

A. Plaintiff's EFTA Claim Arises Under Federal Law, And Plaintiff's Other Claims Are Fit For Supplemental Jurisdiction

13. “The well-pleaded-complaint rule has long governed whether a case ‘arises under’ federal law for purposes of § 1331.” *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830 (2002). This rule “provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Retail Prop. Tr. v. United Bhd. of*

NOTICE OF REMOVAL

1 *Carpenters & Joiners of Am.*, 768 F.3d 938, 947 (9th Cir. 2014) (quoting *Caterpillar*
2 *Inc. v. Williams*, 482 U.S. 386, 392 (1987)).

3 14. Here, a federal question—namely, the interpretation and application of
4 the EFTA—is “presented on the face of” the FAC. *Id.*; see FAC ¶¶ 94-114.
5 Therefore, Plaintiff’s EFTA claim “‘arises under’ federal law for purposes of
6 § 1331.” *Holmes Grp.*, 535 U.S. at 830.

7 15. In turn, Plaintiff’s state law claims may be removed because of this
8 Court’s supplemental jurisdiction. 28 U.S.C. § 1367(a) vests this Court with
9 jurisdiction “over all other claims that are so related to claims in the action within
10 such original jurisdiction that they form part of the same case or controversy under
11 Article III of the United States Constitution.”

12 16. Here, Plaintiff’s federal and state claims “derive from a common
13 nucleus of operative fact,” such that the exercise of supplemental jurisdiction is
14 proper. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Specifically, the
15 EFTA claim and the California statutory and common law claims derive from the
16 same constellation of alleged events concerning Plaintiff’s attempt to rent an
17 apartment and her transfer of funds to a fraudster who said he had an apartment to
18 rent. The claims “form part of the same case or controversy under Article III of the
19 United States Constitution,” and therefore warrant this Court’s exercise of
20 supplemental jurisdiction. 28 U.S.C. § 1367(a).

21 **B. This Action Is A Putative Class Action**

22 17. Original jurisdiction under CAFA applies to any civil action that “is a
23 class action.” 28 U.S.C. § 1332(d)(2). A “class action” means “any civil action filed
24 under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule
25 of judicial procedure authorizing an action to be brought by 1 or more representative
26 persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

1 18. California Code of Civil Procedure § 382 provides in part that “when
2 the question is one of a common or general interest, of many persons, or when the
3 parties are numerous, and it is impracticable to bring them all before the court, one
4 or more may sue or defend for the benefit of all.” Section 382 is the California state
5 analog to Federal Rule of Civil Procedure 23. *See Huckleby v. Manpower, Inc.*, 2010
6 WL 11552970, at *3 n.1 (C.D. Cal. Sept. 7, 2010).

7 19. Plaintiff brings her “action individually and as representatives [sic] of
8 all those similarly situated, on behalf of ... [a]ll persons with a [Bank of America]
9 account who signed up for the Zelle Service and incurred unreimbursed losses due
10 to fraud,” as well as a subclass of all such people in California. FAC ¶ 64. She
11 raises “class allegations,” *see id.*, and seeks an order “[c]ertifying the proposed
12 Classes, appointing Plaintiff as representative of the Classes, and appointing counsel
13 for Plaintiff as lead counsel for the respective Classes,” *id.* at 23. This action is
14 therefore a putative class action removable under CAFA under 28 U.S.C.
15 § 1332(d)(2).

16 **C. The Putative Class Is Sufficiently Numerous**

17 20. Under 28 U.S.C. § 1332(d)(5)(B), the number of members of all
18 proposed plaintiff classes must equal or exceed 100 in the aggregate for the action
19 to be removable under CAFA.

20 21. Plaintiff proposes to represent a class consisting of “[a]ll persons with
21 a [Bank of America] account who signed up for the Zelle Service and incurred
22 unreimbursed losses due to fraud,” as well as a subclass of all such people in
23 California. FAC ¶ 64. She estimates that there are “thousands of similarly situated
24 customers of [Bank of America].” *Id.* ¶ 1. The proposed class is thus sufficiently
25 numerous under 28 U.S.C. § 1332(d)(5)(B).

1 **D. There Is Diversity Of Citizenship Between The Parties**

2 22. A putative class action is removable if “any member of a class of
3 plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C.
4 § 1332(d)(2)(A).

5 23. Plaintiff is “a citizen and resident of Orange County, California.” FAC
6 ¶ 13.

7 24. Bank of America is “a federally chartered bank with its principal place
8 of business in Charlotte, North Carolina.” *Id.* ¶ 14.

9 25. Because Plaintiff is a citizen of California and Bank of America is a
10 citizen of North Carolina, this is a putative class action in which “any member of a
11 class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C.
12 § 1332(d). Diversity of citizenship accordingly exists between the parties.

13 **E. The Amount In Controversy Exceeds \$5,000,000**

14 26. “In any class action, the claims of the individual class members shall
15 be aggregated to determine whether the matter in controversy exceeds the sum or
16 value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). “The
17 amount in controversy is simply an estimate of the total amount in dispute, not a
18 prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*,
19 627 F.3d 395, 400 (9th Cir. 2010).

20 27. Plaintiff seeks to recover actual, compensatory, punitive, and
21 exemplary damages, attorneys’ fees and expenses, and equitable relief, on behalf of
22 a proposed class which, as noted, allegedly numbers in the thousands. *See* FAC at
23 23.

24 28. The amount in controversy in this matter appears to be the value of
25 Plaintiff’s denied claim in the amount of \$2,150, and all other claims similarly
26 denied to the thousands of alleged class members since Zelle launched in June 2017.

1 29. Bank of America denies that it is liable to Plaintiff or the putative class
2 in any way whatsoever. But if a court were to order the specific relief that Plaintiff
3 demands, the amount would exceed \$5,000,000. Plaintiff's requested equitable
4 relief would also impose substantial additional burdens on Bank of America. Thus,
5 the amount in controversy requirement for removal under CAFA is satisfied.

6 **OTHER PROCEDURAL MATTERS**

7 30. Promptly upon its filing, a true copy of this Notice of Removal will be
8 provided to all adverse parties pursuant to 28 U.S.C. § 1446(d). Pursuant to Federal
9 Rule of Civil Procedure 5(d), Bank of America will file with this Court a Certificate
10 of Service of notice to the adverse party of removal to federal court.

11 31. Upon the filing of this Notice of Removal, Bank of America will
12 promptly file a Notification of Filing of Notice of Removal with the Clerk of the
13 Superior Court of California, County of Orange, in accordance with 28 U.S.C.
14 § 1446(d).

15 32. By filing this Notice of Removal, Bank of America does not waive any
16 defenses that may be available to it, including without limitation any defenses
17 relating to service, process, and jurisdiction, and does not concede that the
18 allegations in the complaint state a valid claim under any applicable law.

19 33. Bank of America reserves the right to submit additional factual support,
20 evidence, and affidavits to support the basis for federal jurisdiction as necessary at
21 the appropriate time.

22 **NOTICE TO STATE COURT AND PLAINTIFF**

23 Counsel for Bank of America certifies that pursuant to 28 U.S.C. § 1446(d),
24 copies of this Notice of Removal will be filed with the Clerk of the Superior Court
25 of California, County of Orange, and given to Plaintiff's counsel promptly.

1 WHEREFORE, the case now pending in the Superior Court of California,
2 County of Orange, Case No. 30-2022-01255728-CU-FR-CJC, is hereby removed to
3 the United States District Court for the Central District of California pursuant to 28
4 U.S.C. §§ 1331, 1332, 1367, 1441, and 1453.

5
6
7 Dated: June 16, 2022

Respectfully submitted,

/s/ Matthew D. Benedetto
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Bank of America, N.A.

NOTICE OF REMOVAL

Tristan v. Bank of America, N.A., Case No. 8:22-cv-1183

EXHIBIT A

2022-01255728, NATALIE TRISTAN VS. BANK OF AMERICA N.A

CA Superior - Orange

Orange County

This case was retrieved on 06/15/2022

Header

Case Number: 2022-01255728

Date Filed: 04/20/2022

Date Full Case Retrieved: 06/15/2022

Status: Unknown

Misc: (29) FRAUD; CIVIL - UNLIMITED

Summary

Uniform Case Number: 30-2022-01255728-CU-FR-CJC

Participants

Litigants

NATALIE TRISTAN

PLAINTIFF

BANK OF AMERICA N.A

DEFENDANT

Attorneys

Edelsberg Law, P.A.

ATTORNEY

Calendar

Date	Time	Description	Room	Judge
2022-09-16	09:00	CASE MANAGEMENT CONFERENCE	CX105	SHERMAN

Proceedings

Date	#	Proceeding Text	Details
06/08/2022	26	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	
06/08/2022	25	MINUTES FINALIZED FOR CHAMBERS WORK 06/08/2022 03:31:00 PM.	
06/08/2022	24	THE CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR 09/16/2022 AT 09:00 AM IN DEPARTMENT CX105.	
06/08/2022	23	CASE MANAGEMENT CONFERENCE SCHEDULED FOR 09/16/2022 AT 09:00:00 AM IN CX105 AT CIVIL COMPLEX CENTER.	
06/08/2022	22	AMENDED COMPLAINT (1ST) FILED BY TRISTAN, NATALIE ON 06/08/2022	
06/08/2022	21	E-FILING TRANSACTION 1998238	

2022-01255728, NATALIE TRISTAN VS. BANK OF AMERICA N.A

Date	#	Proceeding Text	Details
		RECEIVED ON 06/08/2022 12:37:13 PM.	
06/03/2022	20	PROOF OF SERVICE OF SUMMONS FILED BY TRISTAN, NATALIE ON 06/03/2022	
06/03/2022	19	E-FILING TRANSACTION 21166838 RECEIVED ON 06/03/2022 08:07:20 AM.	
05/23/2022	18	ORDER - OTHER (CLERK???) APPLICATION AND ORDER RE: CORRECTION OF CLERICAL ERROR) FILED BY THE SUPERIOR COURT OF ORANGE ON 05/23/2022	
05/23/2022	17	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	
05/23/2022	16	MINUTES FINALIZED FOR CHAMBERS WORK 05/23/2022 02:21:00 PM.	
05/23/2022	15	THIS CASE IS REASSIGNED TO THE HONORABLE RANDALL J. SHERMAN FOR ALL PURPOSES.	
05/23/2022	14	THE COURT DESIGNATES THE CASE COMPLEX.	
05/23/2022	13	CASE REASSIGNED TO RANDALL SHERMAN EFFECTIVE 05/23/2022.	
04/26/2022	12	SUMMONS ISSUED AND FILED FILED BY TRISTAN, NATALIE ON 04/26/2022	
04/28/2022	11	E-FILING TRANSACTION 1981030 RECEIVED ON 04/26/2022 03:26:15 PM.	
04/26/2022	10	E-FILING TRANSACTION NUMBER 31149157 REJECTED.	
04/25/2022	9	E-FILING TRANSACTION NUMBER 31148152 REJECTED.	
04/21/2022	8	E-FILING TRANSACTION NUMBER 31147062 REJECTED.	
04/20/2022	7	DESIGNATED CLASS ACTION ON 04/20/2022.	
04/20/2022	6	CASE MANAGEMENT CONFERENCE SCHEDULED FOR 09/27/2022 AT 08:45:00 AM IN C11 AT CENTRAL JUSTICE CENTER.	
04/20/2022	5	CASE ASSIGNED TO JUDICIAL OFFICER GASTELUM, JOHN ON 04/20/2022.	
04/20/2022	4	PAYMENT RECEIVED BY ONELEGAL FOR 194 - COMPLAINT OR OTHER 1ST PAPER IN THE AMOUNT OF 435.00, TRANSACTION NUMBER 13037687 AND RECEIPT NUMBER 12865708.	
04/20/2022	3	CIVIL CASE COVER SHEET FILED BY TRISTAN, NATALIE ON 04/20/2022	

2022-01255728, NATALIE TRISTAN VS. BANK OF AMERICA N.A

Date	#	Proceeding Text	Details
04/20/2022	2	COMPLAINT FILED BY TRISTAN, NATALIE ON 04/20/2022	
04/20/2022	1	E-FILING TRANSACTION 1978508 RECEIVED ON 04/20/2022 02:02:27 PM.	

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EXHIBIT B

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Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NATALIE TRISTAN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Natalie Tristan, individually and on behalf of all others similarly situated, hereby
2 brings this Class Action Complaint against Defendant Bank of America, N.A. (“BOA,” “Bank,”
3 or “Defendant”) and alleges as follows:

4 **INTRODUCTION**

5 1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of
6 similarly situated customers of BOA who have signed up for the Zelle money transfer service
7 and who: have been the victim of fraud on the Zelle service; who have incurred losses due to that
8 fraud that have not been reimbursed by BOA; and who were entitled by the marketing
9 representations of BOA regarding the Zelle service and by the BOA’s contract promises to a full
10 reimbursement of losses caused by fraud on the Zelle service.

11 2. Zelle is a payment transfer service wholly owned and operated by seven of the
12 largest banks in the U.S.

13 3. There are approximately 1,500 member banks and credit unions who participate in
14 the Zelle service. Those members engage in their own significant marketing efforts to encourage
15 their accountholders to sign up for the Zelle service by marketing Zelle as a fast, safe and secure
16 way for consumers to send money. This is false. In fact, there are huge, undisclosed security risks
17 of using the service that BOA omitted from its marketing push to get its accountholders to sign
18 up for Zelle.

19 4. BOA prominently touts Zelle to its accountholders as a secure, free and convenient
20 was to make money transfers. However, it misrepresents and omits a key fact about the service
21 that is unknown to accountholders: that there is virtually no recourse for consumers to recoup
22 losses due to fraud. Indeed, unlike virtually every other payment method commonly used by
23 American consumers—debit cards, credit cards, and checks—there is a no protection for
24 accountholders who are victims of fraud, and virtually no recourse for accountholders attempting
25 to recoup losses due to fraud.

26 5. The unique, misrepresented, and undisclosed architecture of the Zelle payment
27 system means—again, unlike other payment options commonly used by American consumers—
28

1 that virtually any money transferred for any reason via Zelle is gone forever, without recourse,
2 reimbursement or protection.

3 6. Worse, BOA misrepresents and omits the truth about a secret policy it has adopted:
4 it does not and will not reimburse its accountholders for losses via Zelle due to fraud, even where
5 those losses are timely reported by accountholders.

6 7. BOA was required not to misrepresent the unique and dangerous features of the
7 Zelle service in its marketing about it and in contractual representations. But it failed to do so.

8 8. As a result, users like Plaintiff sign up for and use the Zelle service without the
9 benefit of accurate information regarding that service, and later end up with huge, unreimbursed
10 losses due to fraud. Such users never would have signed up for Zelle in the first place if they had
11 known the extreme risks of signing up for and using the service.

12 9. As a member of the Zelle network, the risks are well known to BOA but are omitted
13 from all of its marketing regarding Zelle.

14 10. As a recent New York Times investigation showed, fraud on the Zelle network is a
15 widespread scourge of which bank is well aware. Quoting an industry expert, the *Times* reported:

16 “Organized crime is rampant,” said John Buzzard, Javelin’s lead fraud analyst. “A
17 couple years ago, we were just starting to talk about it” on apps like Zelle and Venmo,
18 Mr. Buzzard said. “Now, it’s common and everywhere.”

19 The banks are aware of the widespread fraud on Zelle. When Mr. Faunce called [his
20 bank] to report the crime, the customer service representative told him, “A lot of people
21 are getting scammed on Zelle this way.” Getting ripped off for \$500 was “actually
22 really good,” Mr. Faunce said the rep told him, because “many people were getting hit
23 for thousands of dollars.”

24 <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last accessed
25 March 28, 2022).

26 11. Had Plaintiff and the Class members known of the true operation and risks of the
27 Zelle service—risks BOA alone was aware of and actively misrepresented—they would not have
28 signed up for and used the Zelle service.

1 website or mobile app. During that sign-up process, a user provides basic information to Zelle
2 to link into the Zelle network.

3 19. While Zelle provides a link to what it calls a “User Agreement” on its website, at
4 no time during the sign-up process on the bank’s website or app did Plaintiff agree to be bound
5 by that document.

6 20. Sign up for the Zelle service allows the fast transfer of account funds to other Zelle
7 users.

8 21. Created in 2017 by the largest banks in the U.S. to enable instant digital money
9 transfers, Zelle is by far the country’s most widely used money transfer service. Last year, people
10 sent \$490 billion in immediate payment transfers through Zelle.

11 22. The Zelle network is operated by Early Warning Services, a company created and
12 owned by seven banks, including Defendant: Bank of America, Capital One, JPMorgan Chase,
13 PNC, Truist, U.S. Bank and Wells Fargo.

14 23. The Zelle service is very popular, but it also has a massive fraud problem—in no
15 small part because of the immediacy with which money transfers are made on the service. If a
16 fraudster removes money from a Zelle user’s bank account, either directly or by fooling the Zelle
17 user to transfer money, those funds are unrecoverable to the consumer.

18 24. Nearly 18 million Americans were defrauded through scams involving person-to-
19 person payment apps like Zelle in 2020 alone, according to Javelin Strategy & Research, an
20 industry consultant.

21 25. Organized crime is rampant on Zelle and other similar person-to-person transfer
22 services.

23 26. The 1500 banks and credit unions who are members of the Zelle network, including
24 BOA, know full well that they have a widespread fraud problem on their hands, but have
25 misrepresented and failed to take steps to warn their accountholders of these risks—or protect
26 their accountholders who fall prey to fraud.

1 27. For example, a common scam involves a scammer impersonating a bank employee
2 and requesting that the accountholder transfer money to a different bank account for testing
3 purposes. Unsuspecting Zelle users, tricked into making a fraudulent transfer, in many cases send
4 hundreds or thousands of dollars to fraudsters.

5 28. In another very common scheme, a Zelle user's phone is stolen and Zelle transfers
6 are made from the stolen phone to the fraudster.

7 29. In short, and unbeknownst to average Zelle users, the Zelle network has become a
8 preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who
9 use social media sites to advertise fake concert tickets and purebred puppies.

10 30. Scams like these are rampant on the Zelle network precisely because of the design
11 and architecture of the network, specifically that money transfer is instantaneous and
12 unrecoverable. Indeed, there is virtually no recourse for consumers to recoup losses due to fraud,
13 unlike other payment methods commonly used by American consumers—debit cards, credit
14 cards, and checks. Zelle provides no protection for accountholders who are victims of fraud, and
15 BOA provides virtually no recourse for accountholders attempting to recoup losses due to fraud.

16 31. The unique, misrepresented, and undisclosed architecture of the Zelle payment
17 system and BOA's own fraud policies means—again, unlike other payment options commonly
18 used by American consumers—that virtually any money transferred for any reason via Zelle is
19 gone forever, without recourse, reimbursement or protection for victimized accountholders.

20
21 **B. BOA Falsely Markets Zelle as a Safe and Secure Way to Transfer Money,**
22 **Omits Information Regarding the Extreme Risks of Signing Up for and**
23 **Using the Service, and Misrepresents Fraud Protections Regarding Zelle**
24 **in its Account Contract**

25 32. In its marketing about Zelle and during the Zelle signup process within the Bank's
26 mobile app or website, the Bank makes repeated promises that Zelle is a "fast, **safe** and easy way
27 to send and receive money" (emphasis added).
28

1 33. It also promises: “Move money in the moment. It’s simple and **secure** – with lots
2 of people you know” (emphasis added),

3 34. At no time in its marketing or during the sign-up process does BOA warn potential
4 users of the true security risks of using the Zelle service—including the risk of fraud and the risk
5 that fraudulent losses will never be reimbursed by BOA.

6 35. Zelle’s services can cause unsuspecting consumers like Plaintiff to incur massive
7 losses on their linked bank accounts.

8 36. BOA misrepresents (and omits facts about) the true nature, benefits, and risks of
9 the Zelle service, functioning of which means that users are at extreme and undisclosed risk of
10 fraud when using Zelle. Had Plaintiff been adequately informed of these risks, she would not
11 have signed up for or used Zelle.

12 37. The Bank’s marketing representations about Zelle—including within its app and
13 website—misrepresent and never disclose these risks and material facts, instead luring
14 accountholders to sign up for and use the service with promises of ease, safety and security.

15 38. These representations—which all users view during the sign-up process—are false
16 and contain material omissions.

17 39. BOA misrepresents the true nature, benefits and risks of the service, which burden
18 users with an extreme and undisclosed risk of Zelle causing losses due to fraud. Plaintiff would
19 not have used Zelle if she had been adequately informed of the risks.

20 40. The Bank’s misrepresentations and omissions are especially pernicious because
21 BOA alone knows a crucial fact regarding Zelle transfers that occur on its accountholders’
22 accounts: as a matter of secret bank policy, fraud-induced Zelle transfers will almost never be
23 reimbursed to accountholders.

24 41. Indeed, upon information and belief, BOA maintains secret policy whereby it
25 refuses to reimburse fraud losses incurred via Zelle, even where its accountholders timely inform
26 BOA of the fraud.

27 42. It misrepresents and fails to disclose this secret policy.
28

43. Further, BOA's Deposit Agreement & Disclosures applicable to consumer accounts repeatedly promises users that, if they timely report fraud, such fraud will be fairly investigated and accountholders will not be liable for fraudulent transfers:

Consumer's Liability for Unauthorized Transfers

Tell us AT ONCE if you believe your card or your personal identification number (PIN) or other code has been lost or stolen. Also, tell us AT ONCE if you believe that an electronic fund transfer has been made without your permission using information from your check. The best way to keep your possible losses down is to call us immediately. Your losses could include all of the money in your account plus, if you have an overdraft protection plan linked to your account, any transfers from another account or any advances on a credit line.

If you tell us within two business days after you learn of the loss or theft of your card or code, you can lose no more than \$50 if someone uses your card without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code, and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods.

***Note:** These liability rules are established by Regulation E, which does not apply to business deposit accounts. For personal deposit accounts, our liability policy regarding unauthorized debit card or ATM card transactions, and unauthorized Online Banking transactions may give you more protection, provided you report the transactions promptly. Please see the agreement you receive with your ATM or debit card and the Online Banking agreement.*

[...]

Contact in Event of Unauthorized Transfer; and Lost or Stolen Card, PIN or Other Code

If you believe your card, PIN or other code is lost or stolen, or learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, notify us immediately by calling the number listed below.

Telephone: 1.800.432.1000

1 You can also write to us at: Bank of America, P.O. Box 53137, #7405, Phoenix, AZ
2 85072-3137

3 You should also call the number or write to the address listed above if you believe a
4 transfer has been made using the information from your check without your permission.

5 If unauthorized activity occurs, you agree to cooperate during the investigation and to
6 complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

7 [...]

8 **In Case of Errors or Questions about your Electronic Transfers You May Sign into**
9 **Online Banking to Report the Error Promptly, or** Call or write us at the telephone
10 number or address below, as soon as you can, if you think your statement or receipt is
11 wrong, or if you need more information about a transfer listed on the statement or
12 receipt.

13 Call us at 1.800.432.100 during normal Claims Department business hours or write us
14 at Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137.

15 We MUST hear from you NO LATER than 60 days after we sent you the FIRST
16 statement on which the error or problem appeared... We will determine whether an
17 error occurred within 10 business days after we hear from you and will correct any
18 error promptly. If we need more time, however, we may take up to 45 days to
19 investigate your complaint or question... For errors involving new accounts, point of
20 sale, or foreign-initiated transfers transactions, we may take up to 90 days (instead of
21 45) to investigate your complaint or question... We will tell you the results within 3
22 business days after completing our investigation. If we decided that there was no error,
23 we will send you a written explanation. You may ask for copies of the documents that
24 we used in our investigation.

25 44. These provisions are and were reasonably understood by Plaintiff to mean that
26 Plaintiff would not be liable for electronic funds transfers effectuated by fraud.

27 **C. Plaintiff's Experience**

28 45. When Plaintiff signed up for Zelle she was not informed that Zelle's service had a
significant "catch" and that significant monetary losses could result from signing up for the
service—or that those losses almost never are reimbursed by users' banks or credit unions.

46. For example, on November 11, 2022, a fraudster transferred \$2,150 from Plaintiff's
personal bank accounts using the Zelle service.

47. Plaintiff is a young, college student who was searching for rental apartments online.

49. Plaintiff was interested in the purported rental unit and began communicating with the fraudster who informed Plaintiff to submit a rental application and fees to be screened for approval as a tenant.

51. Afterwards, Plaintiff and the fraudster coordinated a day and time for her to move-in and collect the keys. However, on the purported move-in day, Plaintiff arrived at the apartment but Orlin Aguilera, the fraudster, was nowhere to be found. The fraudster repeatedly called Plaintiff with excuses for his tardiness and reassured Plaintiff that he would be arriving promptly with the keys, but he never showed.

53. Plaintiff timely informed BOA of the fraud, but BOA refused to reimburse her for the losses.

CLASS ALLEGATIONS

CLASS ACTION COMPLAINT

1 All persons with a BOA account who signed up for the Zelle Service
2 and incurred unreimbursed losses due to fraud (the “Class”).

3 All California persons with a BOA account who signed up for the Zelle
4 Service and incurred unreimbursed losses due to fraud (the “California
5 Subclass”).

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

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

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

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

- 21 a) Whether Defendant’s representations and omissions about the Zelle service are
22 false, misleading, deceptive, or likely to deceive;
- 23 b) Whether Defendant failed to disclose the risks of using the Zelle service;
- 24 c) Whether Plaintiff and the Class members were damaged by Defendant’s conduct;
- 25 d) Whether Defendant’s actions or inactions violated the consumer protection statute
26 invoked herein; and
- 27 e) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining
28 Defendant’s conduct.

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

7
8 61. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the
9 Classes because, among other things, Plaintiff and all Class members were similarly injured
10 through Defendant's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the
11 members of the Classes, were deprived of monies that rightfully belonged to them. Further, there
12 are no defenses available to Defendant that are unique to Plaintiff.

13 62. **Adequacy of Representation:** Plaintiff is an adequate class representative because
14 they are fully prepared to take all necessary steps to represent fairly and adequately the interests
15 of the members of the Classes, and because their interests do not conflict with the interests of the
16 other Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing,
17 and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's
18 attorneys are experienced in complex class action litigation, and they will prosecute this action
19 vigorously.
20

21 63. **Superiority:** The nature of this action and the claims available to Plaintiff and
22 members of the Classes make the class action format a particularly efficient and appropriate
23 procedure to redress the violations alleged herein. If each Class member were required to file an
24 individual lawsuit, Defendant would necessarily gain an unconscionable advantage since it would
25 be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly
26 superior financial and legal resources. Moreover, the prosecution of separate actions by
27
28

individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendant, and which would establish potentially incompatible standards of conduct for Defendant and/or legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interests of the other Class members not parties to adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

FIRST CAUSE OF ACTION
Violation of California’s Unfair Competition Law (“UCL”)
Cal. Bus. & Prof. Code § 17200, *et seq.*
(Asserted on Behalf of the Classes)

59. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

60. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice.”

61. Defendant’s deceptive conduct related to material omissions and/or material misrepresentations that it provides safe and secure Zelle money transfer service through its website and mobile app violates each of the statute’s “unfair,” “unlawful,” and “fraudulent” prongs.

62. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

63. A business act or practice is “unfair” under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to

1 consumers, and that unfairness is determined by weighing the reasons, justifications, and motives
 2 of the practice against the gravity of the harm to the alleged victims.

3 64. Defendant's practices as described herein are (a) immoral, unethical, oppressive,
 4 and/or unscrupulous and violate established public policy as recognized by, *inter alia*, causing
 5 injury to consumers which outweigh any purported benefits or utility.

6 65. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
 7 members of the public.

8 66. Defendant's practices, as described herein, constitute "fraudulent" business
 9 practices in violation of the UCL because, among other things, they are likely to deceive
 10 reasonable consumers, who expect their bank to fully investigate and protect fraudulent losses
 11 incurred using the Zelle service. Moreover, Defendant concealed the security risks of using the
 12 Zelle service, including the risk of fraud and the risk that fraudulent losses will never be
 13 reimbursed by BOA as a matter of secret policy, is a practice that is likely to deceive a consumer
 14 acting reasonably under the circumstances, to the consumer's detriment.

15 67. A business act or practice is "unlawful" under the UCL if it violates any other law
 16 or regulation.

17 68. Among other statutes, laws, and/or regulations, Defendant's acts and practices
 18 violate the following statutes, laws, and/or regulations:

- 19 a. Violating Cal. Civ. Code § 1750, *et seq.*;
- 20 b. Engaging in conduct in which the gravity of harm to Plaintiff and the Class
 21 outweighs the utility of the Defendant's conduct; and/or
- 22 c. Engaging in acts and/or practices and/or omissions that are immoral, unethical,
 23 oppressive, and/or unscrupulous and causes injury to consumers which outweigh
 24 its benefits.
- 25 d. Defendant committed unfair and fraudulent business acts and practices in violation
 26 of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly
 27

1 misrepresenting on its website and mobile app the true risks and operation of its
2 service.

3 69. Defendant's acts and practices offend an established public policy of secure
4 electronic money transfers in the marketplace, and constitute immoral, unethical, oppressive, and
5 unscrupulous activities that are substantially injurious to consumers.

6 70. The harm to Plaintiff and the Classes outweighs the utility of Defendant's practices.
7 There were reasonably available alternatives to further Defendant's legitimate business interests,
8 other than the misleading and deceptive conduct described herein.

9 71. Defendant's business practices have misled Plaintiff and the proposed Class and
10 will continue to mislead them in the future.

11 72. Plaintiff relied on Defendant's misrepresentations.

12 73. Had Plaintiff known the true risks of using the Zelle service, she never would have
13 signed up for and used the Zelle service.

14 74. As a direct and proximate result of Defendant's unfair, fraudulent, and/or unlawful
15 practices, Plaintiff and Class members suffered and will continue to suffer actual damages.
16 Defendant's fraudulent conduct is ongoing and present a continuing threat to Class members that
17 they will be deceived into making money transfers with the Zelle service.

18 75. As a result of its unfair, fraudulent, and unlawful conduct, Defendant has been
19 unjustly enriched and should be required to disgorge its unjust profits and make restitution to
20 Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

21
22 **SECOND CAUSE OF ACTION**
23 **Violation of California's False Advertising Law ("FAL")**
24 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
(Asserted on Behalf of the Classes)

25 76. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

26 77. California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500,
27 states that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal
28

property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading....”

78. Defendant’s material misrepresentations and omissions alleged herein violate Bus. & Prof. Code § 17500.

79. Defendant knew or should have known that its misrepresentations and omissions were false, deceptive, and misleading.

80. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and the members of the Classes, on behalf of the general public, seeks an order of this Court enjoining Defendant from continuing to engage, use, or employ their practice of misrepresenting the Zelle service.

81. Further, Plaintiff and the members of the Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendant by means of said misrepresentations.

82. Additionally, Plaintiff and the Class members seek an order requiring Defendant to pay attorneys’ fees pursuant to Cal. Civ. Code § 1021.5.

THIRD CAUSE OF ACTION

Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing (Asserted on Behalf of the Classes)

83. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

84. Plaintiff and members of the Classes contracted with BOA for checking account services, as embodied in the Deposit Agreement & Disclosures.

85. BOA breached the terms of its contract with consumers when as described herein, BOA failed to fairly investigate reported fraudulent transactions on the Zelle money transfer

1 service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle
2 service.

3 86. Further, under the law of each of the states where BOA does business, an implied
4 covenant of good faith and fair dealing governs every contract. The covenant of good faith and
5 fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

6 87. This good faith requirement extends to the manner in which a party employs
7 discretion conferred by a contract.

8 88. Good faith and fair dealing, in connection with executing contracts and discharging
9 performance and other duties according to their terms, means preserving the spirit—not merely
10 the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to
11 comply with the substance of their contract in addition to its form. Evading the spirit of the
12 bargain and abusing the power to specify terms constitute examples of bad faith in the
13 performance of contracts.

14 89. Subterfuge and evasion violate the obligation of good faith in performance even
15 when an actor believes his conduct to be justified. A lack of good faith may be overt or may
16 consist of inaction, and fair dealing may require more than honesty. Other examples of violations
17 of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power
18 to specify terms, and interference with or failure to cooperate in the other party's performance.

19 90. Defendant breached the covenant of good faith and fair dealing when it failed to
20 fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed
21 to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

22 91. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

23 92. Plaintiff and members of the Classes have performed all of the obligations imposed
24 on them under the contract.

25 93. Plaintiff and members of the Classes have sustained monetary damages as a result
26 of BOA's breaches of the contract and covenant of good faith and fair dealing.

27 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

A. Certifying the proposed Classes, appointing Plaintiff as representative of the Classes, and appointing counsel for Plaintiff as lead counsel for the respective Classes;

B. Declaring that Defendant's policies and practices as described herein constitute a breach of contract, and a breach of the covenant of good faith and fair dealing or unjust enrichment, violation of California's Unfair Competition Law and/or violation of California's False Advertising Law.

C. Enjoining Defendant from the wrongful conduct as described herein;

D. Awarding restitution of all fees at issue paid to Defendant by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

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

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

G. Punitive and exemplary damages;

H. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

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

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

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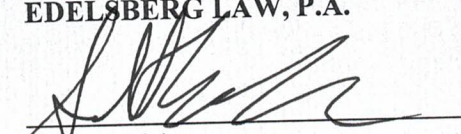
DEMAND FOR JURY TRIAL

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

Dated: April 20, 2022

Respectfully submitted,

EDELSBERG LAW, P.A.



Scott Edelsberg

KALIELGOLD PLLC
Jeffrey D. Kaliel
Sophia Goren Gold

*Attorneys for Plaintiff and the Putative
Class*

EXHIBIT C

TELEPHONE NO.: (305) 975-3320 FAX NO. (Optional):
E-MAIL ADDRESS: scott@edelsberglaw.com
ATTORNEY FOR (Name): Plaintiff, NATALIE TRISTAN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS: 700 Civic Center Drive West
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

CASE NAME:
NATALIE TRISTAN v. BANK OF AMERICA, N.A.

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
(Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☒ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): (1) Unfair Competition; (2) False Advertising; (3) Breach of Contract

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 20, 2022

Scott Edelsberg

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center DRIVE MAILING ADDRESS: 700 W. Civic Center Drive CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Central Justice Center	FOR COURT USE ONLY <div style="text-align: center;">FILED</div> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE <div style="text-align: center;">Apr 20, 2022</div> Clerk of the Court By: Arlene Gill, Deputy
PLAINTIFF: Natalie Tristan	
DEFENDANT: Bank of America N.A	
Short Title: TRISTAN VS. BANK OF AMERICA N.A	CASE NUMBER: 30-2022-01255728-CU-FR-CJC
<div style="text-align: center;">NOTICE OF HEARING CASE MANAGEMENT CONFERENCE</div>	

Please take notice that a(n), Case Management Conference has been scheduled for hearing on 09/27/2022 at 08:45:00 AM in Department C11 of this court, located at Central Justice Center.

Plaintiff(s)/Petitioner(s) to provide notice to all defendant(s)/respondent(s). Parties who file pleadings that add new parties to the proceeding must provide notice of the Case Management Conference to the newly added parties.

IMPORTANT: Prior to your hearing date, please check the Court's website for the most current instructions regarding how to appear for your hearing and access services that are available to answer your questions.

Civil Matters - <https://www.occourts.org/media-relations/civil.html>

Probate/Mental Health - <https://www.occourts.org/media-relations/probate-mental-health.html>

Appellate Division - <https://www.occourts.org/media-relations/appeals-records.html>

IMPORTANTE: Antes de la fecha de su audiencia, visite el sitio web de la Corte para saber cuáles son las instrucciones más actuales para participar en la audiencia y tener acceso a los servicios disponibles para responder a sus preguntas.

Casos Civiles - <https://www.occourts.org/media-relations/civil.html>

Casos de Probate y Salud Mental - <https://www.occourts.org/media-relations/probate-mental-health.html>

División de apelaciones - <https://www.occourts.org/media-relations/appeals-records.html>

QUAN TRỌNG: Trước ngày phiên tòa của quý vị, vui lòng kiểm tra trang mạng của tòa án để biết những hướng dẫn mới nhất về cách ra hầu phiên tòa của quý vị và tiếp cận những dịch vụ hiện có để giải đáp những thắc mắc của quý vị.

Vấn Đề Dân Sự - <https://www.occourts.org/media-relations/civil.html>

Thủ Tục Di Chúc/Sức Khỏe Tinh Thần - <https://www.occourts.org/media-relations/probate-mental-health.html>

Ban phúc thẩm - <https://www.occourts.org/media-relations/appeals-records.html>

Clerk of the Court, By:  , Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
 700 W. Civic Center DRIVE
 Santa Ana 92701

SHORT TITLE: TRISTAN VS. BANK OF AMERICA N.A**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

CASE NUMBER:

30-2022-01255728-CU-FR-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Notice of Hearing has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practices and addressed as indicated below. The certification occurred at Santa Ana, California, on 04/20/2022. Following standard court practice the mailing will occur at Sacramento, California on 04/21/2022.

Clerk of the Court, by: _____



_____, Deputy

KALIEL GOLD PLLC
 1100 NW 15TH STREET # 4TH FLOOR
 WASHINGTON DC, DC 20005

EDELSBERG LAW, P.A.
 1925 E CENTURY PARK # 1700
 LOS ANGELES, CA 90067

EXHIBIT E

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BANK OF AMERICA, N.A.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NATALIE TRISTAN, individually, and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): ORANGE COUNTY SUPERIOR COURT
700 Civic Center Drive West, Santa Ana, CA 92703

CASE NUMBER: (Número del Caso):

30-2022-01255728-CU-FR-CJC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Scott Edelsberg, 1925 Century Park E. Ste. 1700
KalielGold PLLC, Jeffrey D Kaliel, 1100 15th St. NW, 4th Fl., Washington DC 20005 (202) 350-4783 Los Angeles, CA 90067 (305) 975-3320

KalielGold, Sophia Gold, 950 Gilman St., Ste. 200, Berkeley CA 94710 (202) 350-4783

DATE:

(Fecha)

Clerk, by

(Secretario)

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT F



Service of Process Transmittal Summary

TO: Ca Legalit
Bank of America
31303 AGOURA ROAD, CA6-917-02-18
WESTLAKE VILLAGE, CA 91361-4635

RE: Process Served in California

FOR: Bank of America, National Association (Domestic State: N/A)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: NATALIE TRISTAN, individually, and on behalf of all others similarly situated vs. Bank of America, N.A.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Complaint, Attachment(s), Notice, Civil Case Cover Sheet

COURT/AGENCY: Orange County - Superior Court, CA
Case # 30202201255728CUFRCJC

NATURE OF ACTION: Claim for Violation of California's Unfair Competition Law (See document for additional counts)

PROCESS SERVED ON: C T Corporation System, GLENDALE, CA

DATE/METHOD OF SERVICE: By Process Server on 05/18/2022 at 10:38

JURISDICTION SERVED: California

APPEARANCE OR ANSWER DUE: Within 30 days after service (Document(s) may contain additional answer dates)

ATTORNEY(S)/SENDER(S): Scott Edelsberg
EDELBERG LAW, P.A.
1925 E CENTURY PARK # 1700
LOS ANGELES, CA 90067
305-975-3320

ACTION ITEMS: CT has retained the current log, Retain Date: 05/18/2022, Expected Purge Date: 05/23/2022

Image SOP

Email Notification, Ca Legalit calegalit@bofa.com

REGISTERED AGENT CONTACT: C T Corporation System
330 N BRAND BLVD
STE 700
GLENDALE, CA 91203
877-564-7529
MajorAccountTeam2@wolterskluwer.com



Wolters Kluwer

CT Corporation
Service of Process Notification

05/18/2022

CT Log Number 541596807

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Wed, May 18, 2022
Serger Name: DROP SERVICE

Entity Served	BANK OF AMERICA, N.A.
Case Number	30202201255728CUFRCJC
Jurisdiction	CA

Inserts		



SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
BANK OF AMERICA, N.A.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
NATALIE TRISTAN, individually, and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

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The name and address of the court is:
(El nombre y dirección de la corte es): ORANGE COUNTY SUPERIOR COURT
700 Civic Center Drive West, Santa Ana, CA 92703

CASE NUMBER: (Número del Caso):
30-2022-01255728-CU-FR-CJC

Judge John C. Gastelum

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Scott Edelsberg, 1925 Century Park E. Ste. 1700
KalielGold PLLC, Jeffrey D Kaliel, 1100 15th St. NW, 4th Fl., Washington DC 20005 (202) 350-4783 Los Angeles, CA 90067 (305) 975-3320
KalielGold, Sophia Gold, 950 Gilman St., Ste. 200, Berkeley CA 94710 (202) 350-4783

DATE: 04/26/2022 DAVID H. YAMASAKI, Clerk of the Court Clerk, by Deputy
(Fecha) (Secretario) *J. Duarte* (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Jessica Duarte

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): BANK OF AMERICA, N.A.,
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

EDELSBERG LAW, P.A.

Scott Edelsberg (CA Bar No. 330090)
scott@edelsberglaw.com
1925 Century Park East, Suite 1700
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1100 15th Street NW, 4th Floor
Washington, D.C. 20005
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KALIELGOLD PLLC

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950 Gilman Street, Suite 200
Berkeley, CA 94710
Telephone: (202) 350-4783

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NATALIE TRISTAN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No.: 30-2022-01255728-CU-FR-CJC

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Natalie Tristan, individually and on behalf of all others similarly situated, hereby
2 brings this Class Action Complaint against Defendant Bank of America, N.A. (“BOA,” “Bank,”
3 or “Defendant”) and alleges as follows:

4 **INTRODUCTION**

5 1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of
6 similarly situated customers of BOA who have signed up for the Zelle money transfer service
7 and who: have been the victim of fraud on the Zelle service; who have incurred losses due to that
8 fraud that have not been reimbursed by BOA; and who were entitled by the marketing
9 representations of BOA regarding the Zelle service and by the BOA’s contract promises to a full
10 reimbursement of losses caused by fraud on the Zelle service.

11 2. Zelle is a payment transfer service wholly owned and operated by seven of the
12 largest banks in the U.S.

13 3. There are approximately 1,500 member banks and credit unions who participate in
14 the Zelle service. Those members engage in their own significant marketing efforts to encourage
15 their accountholders to sign up for the Zelle service by marketing Zelle as a fast, safe and secure
16 way for consumers to send money. This is false. In fact, there are huge, undisclosed security risks
17 of using the service that BOA omitted from its marketing push to get its accountholders to sign
18 up for Zelle.

19 4. BOA prominently touts Zelle to its accountholders as a secure, free and convenient
20 was to make money transfers. However, it misrepresents and omits a key fact about the service
21 that is unknown to accountholders: that there is virtually no recourse for consumers to recoup
22 losses due to fraud. Indeed, unlike virtually every other payment method commonly used by
23 American consumers—debit cards, credit cards, and checks—there is a no protection for
24 accountholders who are victims of fraud, and virtually no recourse for accountholders attempting
25 to recoup losses due to fraud.

26 5. The unique, misrepresented, and undisclosed architecture of the Zelle payment
27 system means—again, unlike other payment options commonly used by American consumers—
28

1 that virtually any money transferred for any reason via Zelle is gone forever, without recourse,
2 reimbursement or protection.

3 6. Worse, BOA misrepresents and omits the truth about a secret policy it has adopted:
4 it does not and will not reimburse its accountholders for losses via Zelle due to fraud, even where
5 those losses are timely reported by accountholders.

6 7. BOA was required not to misrepresent the unique and dangerous features of the
7 Zelle service in its marketing about it and in contractual representations. But it failed to do so.

8 8. As a result, users like Plaintiff sign up for and use the Zelle service without the
9 benefit of accurate information regarding that service, and later end up with huge, unreimbursed
10 losses due to fraud. Such users never would have signed up for Zelle in the first place if they had
11 known the extreme risks of signing up for and using the service.

12 9. As a member of the Zelle network, the risks are well known to BOA but are omitted
13 from all of its marketing regarding Zelle.

14 10. As a recent New York Times investigation showed, fraud on the Zelle network is a
15 widespread scourge of which bank is well aware. Quoting an industry expert, the *Times* reported:

16 “Organized crime is rampant,” said John Buzzard, Javelin’s lead fraud analyst. “A
17 couple years ago, we were just starting to talk about it” on apps like Zelle and Venmo,
18 Mr. Buzzard said. “Now, it’s common and everywhere.”

19 The banks are aware of the widespread fraud on Zelle. When Mr. Faunce called [his
20 bank] to report the crime, the customer service representative told him, “A lot of people
21 are getting scammed on Zelle this way.” Getting ripped off for \$500 was “actually
22 really good,” Mr. Faunce said the rep told him, because “many people were getting hit
23 for thousands of dollars.”

24 <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last accessed
25 March 28, 2022).

26 11. Had Plaintiff and the Class members known of the true operation and risks of the
27 Zelle service—risks BOA alone was aware of and actively misrepresented—they would not have
28 signed up for and used the Zelle service.

1 website or mobile app. During that sign-up process, a user provides basic information to Zelle
2 to link into the Zelle network.

3 19. While Zelle provides a link to what it calls a “User Agreement” on its website, at
4 no time during the sign-up process on the bank’s website or app did Plaintiff agree to be bound
5 by that document.

6 20. Sign up for the Zelle service allows the fast transfer of account funds to other Zelle
7 users.

8 21. Created in 2017 by the largest banks in the U.S. to enable instant digital money
9 transfers, Zelle is by far the country’s most widely used money transfer service. Last year, people
10 sent \$490 billion in immediate payment transfers through Zelle.

11 22. The Zelle network is operated by Early Warning Services, a company created and
12 owned by seven banks, including Defendant: Bank of America, Capital One, JPMorgan Chase,
13 PNC, Truist, U.S. Bank and Wells Fargo.

14 23. The Zelle service is very popular, but it also has a massive fraud problem—in no
15 small part because of the immediacy with which money transfers are made on the service. If a
16 fraudster removes money from a Zelle user’s bank account, either directly or by fooling the Zelle
17 user to transfer money, those funds are unrecoverable to the consumer.

18 24. Nearly 18 million Americans were defrauded through scams involving person-to-
19 person payment apps like Zelle in 2020 alone, according to Javelin Strategy & Research, an
20 industry consultant.

21 25. Organized crime is rampant on Zelle and other similar person-to-person transfer
22 services.

23 26. The 1500 banks and credit unions who are members of the Zelle network, including
24 BOA, know full well that they have a widespread fraud problem on their hands, but have
25 misrepresented and failed to take steps to warn their accountholders of these risks—or protect
26 their accountholders who fall prey to fraud.

1 27. For example, a common scam involves a scammer impersonating a bank employee
2 and requesting that the accountholder transfer money to a different bank account for testing
3 purposes. Unsuspecting Zelle users, tricked into making a fraudulent transfer, in many cases send
4 hundreds or thousands of dollars to fraudsters.

5 28. In another very common scheme, a Zelle user's phone is stolen and Zelle transfers
6 are made from the stolen phone to the fraudster.

7 29. In short, and unbeknownst to average Zelle users, the Zelle network has become a
8 preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who
9 use social media sites to advertise fake concert tickets and purebred puppies.

10 30. Scams like these are rampant on the Zelle network precisely because of the design
11 and architecture of the network, specifically that money transfer is instantaneous and
12 unrecoverable. Indeed, there is virtually no recourse for consumers to recoup losses due to fraud,
13 unlike other payment methods commonly used by American consumers—debit cards, credit
14 cards, and checks. Zelle provides no protection for accountholders who are victims of fraud, and
15 BOA provides virtually no recourse for accountholders attempting to recoup losses due to fraud.

16 31. The unique, misrepresented, and undisclosed architecture of the Zelle payment
17 system and BOA's own fraud policies means—again, unlike other payment options commonly
18 used by American consumers—that virtually any money transferred for any reason via Zelle is
19 gone forever, without recourse, reimbursement or protection for victimized accountholders.

20
21 **B. BOA Falsely Markets Zelle as a Safe and Secure Way to Transfer Money,**
22 **Omits Information Regarding the Extreme Risks of Signing Up for and**
23 **Using the Service, and Misrepresents Fraud Protections Regarding Zelle**
24 **in its Account Contract**

25 32. In its marketing about Zelle and during the Zelle signup process within the Bank's
26 mobile app or website, the Bank makes repeated promises that Zelle is a "fast, **safe** and easy way
27 to send and receive money" (emphasis added).
28

1 33. It also promises: “Move money in the moment. It’s simple and **secure** – with lots
2 of people you know” (emphasis added),

3 34. At no time in its marketing or during the sign-up process does BOA warn potential
4 users of the true security risks of using the Zelle service—including the risk of fraud and the risk
5 that fraudulent losses will never be reimbursed by BOA.

6 35. Zelle’s services can cause unsuspecting consumers like Plaintiff to incur massive
7 losses on their linked bank accounts.

8 36. BOA misrepresents (and omits facts about) the true nature, benefits, and risks of
9 the Zelle service, functioning of which means that users are at extreme and undisclosed risk of
10 fraud when using Zelle. Had Plaintiff been adequately informed of these risks, she would not
11 have signed up for or used Zelle.

12 37. The Bank’s marketing representations about Zelle—including within its app and
13 website—misrepresent and never disclose these risks and material facts, instead luring
14 accountholders to sign up for and use the service with promises of ease, safety and security.

15 38. These representations—which all users view during the sign-up process—are false
16 and contain material omissions.

17 39. BOA misrepresents the true nature, benefits and risks of the service, which burden
18 users with an extreme and undisclosed risk of Zelle causing losses due to fraud. Plaintiff would
19 not have used Zelle if she had been adequately informed of the risks.

20 40. The Bank’s misrepresentations and omissions are especially pernicious because
21 BOA alone knows a crucial fact regarding Zelle transfers that occur on its accountholders’
22 accounts: as a matter of secret bank policy, fraud-induced Zelle transfers will almost never be
23 reimbursed to accountholders.

24 41. Indeed, upon information and belief, BOA maintains secret policy whereby it
25 refuses to reimburse fraud losses incurred via Zelle, even where its accountholders timely inform
26 BOA of the fraud.

27 42. It misrepresents and fails to disclose this secret policy.
28

43. Further, BOA's Deposit Agreement & Disclosures applicable to consumer accounts repeatedly promises users that, if they timely report fraud, such fraud will be fairly investigated and accountholders will not be liable for fraudulent transfers:

Consumer's Liability for Unauthorized Transfers

Tell us AT ONCE if you believe your card or your personal identification number (PIN) or other code has been lost or stolen. Also, tell us AT ONCE if you believe that an electronic fund transfer has been made without your permission using information from your check. The best way to keep your possible losses down is to call us immediately. Your losses could include all of the money in your account plus, if you have an overdraft protection plan linked to your account, any transfers from another account or any advances on a credit line.

If you tell us within two business days after you learn of the loss or theft of your card or code, you can lose no more than \$50 if someone uses your card without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code, and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods.

***Note:** These liability rules are established by Regulation E, which does not apply to business deposit accounts. For personal deposit accounts, our liability policy regarding unauthorized debit card or ATM card transactions, and unauthorized Online Banking transactions may give you more protection, provided you report the transactions promptly. Please see the agreement you receive with your ATM or debit card and the Online Banking agreement.*

[...]

Contact in Event of Unauthorized Transfer; and Lost or Stolen Card, PIN or Other Code

If you believe your card, PIN or other code is lost or stolen, or learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, notify us immediately by calling the number listed below.

Telephone: 1.800.432.1000

1 You can also write to us at: Bank of America, P.O. Box 53137, #7405, Phoenix, AZ
2 85072-3137

3 You should also call the number or write to the address listed above if you believe a
4 transfer has been made using the information from your check without your permission.

5 If unauthorized activity occurs, you agree to cooperate during the investigation and to
6 complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

7 [...]

8 **In Case of Errors or Questions about your Electronic Transfers You May Sign into**
9 **Online Banking to Report the Error Promptly, or** Call or write us at the telephone
10 number or address below, as soon as you can, if you think your statement or receipt is
11 wrong, or if you need more information about a transfer listed on the statement or
12 receipt.

13 Call us at 1.800.432.100 during normal Claims Department business hours or write us
14 at Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137.

15 We MUST hear from you NO LATER than 60 days after we sent you the FIRST
16 statement on which the error or problem appeared... We will determine whether an
17 error occurred within 10 business days after we hear from you and will correct any
18 error promptly. If we need more time, however, we may take up to 45 days to
19 investigate your complaint or question... For errors involving new accounts, point of
20 sale, or foreign-initiated transfers transactions, we may take up to 90 days (instead of
21 45) to investigate your complaint or question... We will tell you the results within 3
22 business days after completing our investigation. If we decided that there was no error,
23 we will send you a written explanation. You may ask for copies of the documents that
24 we used in our investigation.

25 44. These provisions are and were reasonably understood by Plaintiff to mean that
26 Plaintiff would not be liable for electronic funds transfers effectuated by fraud.

27 C. Plaintiff's Experience

28 45. When Plaintiff signed up for Zelle she was not informed that Zelle's service had a
significant "catch" and that significant monetary losses could result from signing up for the
service—or that those losses almost never are reimbursed by users' banks or credit unions.

46. For example, on November 11, 2022, a fraudster transferred \$2,150 from Plaintiff's
personal bank accounts using the Zelle service.

47. Plaintiff is a young, college student who was searching for rental apartments online.

50. As the fraudster requested, Plaintiff transferred \$150 via Zelle for application fees. Shortly thereafter, the fraudster informed Plaintiff that her application was “approved” and to finalize obtaining the apartment, Plaintiff needed to also transfer via Zelle the security deposit of \$800 and first-month’s rent of \$1,200. Eager to secure the rental, Plaintiff transferred via Zelle an additional \$2,000 to the fraudster.

52. At this point, Plaintiff determined she fell victim to fraud and demanded her money be returned. Despite Plaintiff's demand, the fraudster did not return the money and ceased all communications with Plaintiff.

1 54. Specifically, Plaintiff immediately notified BOA once she realized the fraud.
2 Initially, BOA informed Plaintiff that she would be protected from the fraud and should expect a
3 full reimbursement of the funds. Ultimately, however, BOA denied the claim and refused to
4 reimburse Plaintiff her loss.

55. Plaintiff brings this action individually and as representatives of all those similarly situated, on behalf of the below-defined Classes:

1 All persons with a BOA account who signed up for the Zelle Service
2 and incurred unreimbursed losses due to fraud (the "Class").

3 All California persons with a BOA account who signed up for the Zelle
4 Service and incurred unreimbursed losses due to fraud (the "California
Subclass").

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

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

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

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

- 20 a) Whether Defendant's representations and omissions about the Zelle service are
21 false, misleading, deceptive, or likely to deceive;
- 22 b) Whether Defendant failed to disclose the risks of using the Zelle service;
- 23 c) Whether Plaintiff and the Class members were damaged by Defendant's conduct;
- 24 d) Whether Defendant's actions or inactions violated the consumer protection statute
25 invoked herein; and
- 26 e) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining
27 Defendant's conduct.
- 28

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

7
8 61. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the
9 Classes because, among other things, Plaintiff and all Class members were similarly injured
10 through Defendant's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the
11 members of the Classes, were deprived of monies that rightfully belonged to them. Further, there
12 are no defenses available to Defendant that are unique to Plaintiff.

13 62. **Adequacy of Representation:** Plaintiff is an adequate class representative because
14 they are fully prepared to take all necessary steps to represent fairly and adequately the interests
15 of the members of the Classes, and because their interests do not conflict with the interests of the
16 other Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing,
17 and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's
18 attorneys are experienced in complex class action litigation, and they will prosecute this action
19 vigorously.
20

21 63. **Superiority:** The nature of this action and the claims available to Plaintiff and
22 members of the Classes make the class action format a particularly efficient and appropriate
23 procedure to redress the violations alleged herein. If each Class member were required to file an
24 individual lawsuit, Defendant would necessarily gain an unconscionable advantage since it would
25 be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly
26 superior financial and legal resources. Moreover, the prosecution of separate actions by
27
28

individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendant, and which would establish potentially incompatible standards of conduct for Defendant and/or legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interests of the other Class members not parties to adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

FIRST CAUSE OF ACTION
Violation of California's Unfair Competition Law ("UCL")
Cal. Bus. & Prof. Code § 17200, *et seq.*
(Asserted on Behalf of the Classes)

59. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

60. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice."

61. Defendant's deceptive conduct related to material omissions and/or material misrepresentations that it provides safe and secure Zelle money transfer service through its website and mobile app violates each of the statute's "unfair," "unlawful," and "fraudulent" prongs.

62. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

63. A business act or practice is "unfair" under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to

1 consumers, and that unfairness is determined by weighing the reasons, justifications, and motives
2 of the practice against the gravity of the harm to the alleged victims.

3 64. Defendant's practices as described herein are (a) immoral, unethical, oppressive,
4 and/or unscrupulous and violate established public policy as recognized by, *inter alia*, causing
5 injury to consumers which outweigh any purported benefits or utility.

6 65. A business act or practice is "fraudulent" under the UCL if it is likely to deceive
7 members of the public.

8 66. Defendant's practices, as described herein, constitute "fraudulent" business
9 practices in violation of the UCL because, among other things, they are likely to deceive
10 reasonable consumers, who expect their bank to fully investigate and protect fraudulent losses
11 incurred using the Zelle service. Moreover, Defendant concealed the security risks of using the
12 Zelle service, including the risk of fraud and the risk that fraudulent losses will never be
13 reimbursed by BOA as a matter of secret policy, is a practice that is likely to deceive a consumer
14 acting reasonably under the circumstances, to the consumer's detriment.

15 67. A business act or practice is "unlawful" under the UCL if it violates any other law
16 or regulation.

17 68. Among other statutes, laws, and/or regulations, Defendant's acts and practices
18 violate the following statutes, laws, and/or regulations:

- 19 a. Violating Cal. Civ. Code § 1750, *et seq.*;
- 20 b. Engaging in conduct in which the gravity of harm to Plaintiff and the Class
21 outweighs the utility of the Defendant's conduct; and/or
- 22 c. Engaging in acts and/or practices and/or omissions that are immoral, unethical,
23 oppressive, and/or unscrupulous and causes injury to consumers which outweigh
24 its benefits.
- 25 d. Defendant committed unfair and fraudulent business acts and practices in violation
26 of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly
27

misrepresenting on its website and mobile app the true risks and operation of its service.

69. Defendant's acts and practices offend an established public policy of secure electronic money transfers in the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

70. The harm to Plaintiff and the Classes outweighs the utility of Defendant's practices. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the misleading and deceptive conduct described herein.

71. Defendant's business practices have misled Plaintiff and the proposed Class and will continue to mislead them in the future.

72. Plaintiff relied on Defendant's misrepresentations.

73. Had Plaintiff known the true risks of using the Zelle service, she never would have signed up for and used the Zelle service.

74. As a direct and proximate result of Defendant's unfair, fraudulent, and/or unlawful practices, Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant's fraudulent conduct is ongoing and present a continuing threat to Class members that they will be deceived into making money transfers with the Zelle service.

75. As a result of its unfair, fraudulent, and unlawful conduct, Defendant has been unjustly enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

SECOND CAUSE OF ACTION

Violation of California's False Advertising Law ("FAL")

Cal. Bus. & Prof. Code §§ 17500, *et seq.*

(Asserted on Behalf of the Classes)

76. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

77. California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, states that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal

1 property ... to induce the public to enter into any obligation relating thereto, to make or
 2 disseminate or cause to be made or disseminated ... from this state before the public in any state,
 3 in any newspaper or other publication, or any advertising device, or by public outcry or
 4 proclamation, or in any other manner or means whatever, including over the Internet, any
 5 statement...which is untrue or misleading and which is known, or which by the exercise of
 6 reasonable care should be known, to be untrue or misleading....”

7 78. Defendant’s material misrepresentations and omissions alleged herein violate Bus.
 8 & Prof. Code § 17500.

9 79. Defendant knew or should have known that its misrepresentations and omissions
 10 were false, deceptive, and misleading.

11 80. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and the
 12 members of the Classes, on behalf of the general public, seeks an order of this Court enjoining
 13 Defendant from continuing to engage, use, or employ their practice of misrepresenting the Zelle
 14 service.

15 81. Further, Plaintiff and the members of the Class seek an order requiring Defendant
 16 to disclose such misrepresentations, and additionally request an order awarding Plaintiff
 17 restitution of the money wrongfully acquired by Defendant by means of said misrepresentations.

18 82. Additionally, Plaintiff and the Class members seek an order requiring Defendant to
 19 pay attorneys’ fees pursuant to Cal. Civ. Code § 1021.5.

20 **THIRD CAUSE OF ACTION**

21 **Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing** 22 **(Asserted on Behalf of the Classes)**

23 83. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

24 84. Plaintiff and members of the Classes contracted with BOA for checking account
 25 services, as embodied in the Deposit Agreement & Disclosures.

26 85. BOA breached the terms of its contract with consumers when as described herein,
 27 BOA failed to fairly investigate reported fraudulent transactions on the Zelle money transfer
 28

1 service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle
2 service.

3 86. Further, under the law of each of the states where BOA does business, an implied
4 covenant of good faith and fair dealing governs every contract. The covenant of good faith and
5 fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

6 87. This good faith requirement extends to the manner in which a party employs
7 discretion conferred by a contract.

8 88. Good faith and fair dealing, in connection with executing contracts and discharging
9 performance and other duties according to their terms, means preserving the spirit—not merely
10 the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to
11 comply with the substance of their contract in addition to its form. Evading the spirit of the
12 bargain and abusing the power to specify terms constitute examples of bad faith in the
13 performance of contracts.

14 89. Subterfuge and evasion violate the obligation of good faith in performance even
15 when an actor believes his conduct to be justified. A lack of good faith may be overt or may
16 consist of inaction, and fair dealing may require more than honesty. Other examples of violations
17 of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power
18 to specify terms, and interference with or failure to cooperate in the other party's performance.

19 90. Defendant breached the covenant of good faith and fair dealing when it failed to
20 fairly investigation reported fraudulent transactions on the Zelle money transfer service and failed
21 to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

22 91. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

23 92. Plaintiff and members of the Classes have performed all of the obligations imposed
24 on them under the contract.

25 93. Plaintiff and members of the Classes have sustained monetary damages as a result
26 of BOA's breaches of the contract and covenant of good faith and fair dealing.

27 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

A. Certifying the proposed Classes, appointing Plaintiff as representative of the Classes, and appointing counsel for Plaintiff as lead counsel for the respective Classes;

B. Declaring that Defendant's policies and practices as described herein constitute a breach of contract, and a breach of the covenant of good faith and fair dealing or unjust enrichment, violation of California's Unfair Competition Law and/or violation of California's False Advertising Law.

C. Enjoining Defendant from the wrongful conduct as described herein;

D. Awarding restitution of all fees at issue paid to Defendant by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

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

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

G. Punitive and exemplary damages;

H. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

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

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

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DEMAND FOR JURY TRIAL

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

Dated: April 20, 2022

Respectfully submitted,

EDELSBERG LAW, P.A.


Scott Edelsberg

KALIELGOLD PLLC

Jeffrey D. Kaliei

Sophia Goren Gold

Attorneys for Plaintiff and the Putative Class

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name & Address</i>): <div style="display: flex; justify-content: space-between;"> <div> Telephone No.: E-Mail Address (Optional): ATTORNEY FOR (<i>Name</i>): </div> <div> Fax No. (Optional): Bar No: </div> </div>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Civil Complex Center - 751 W. Santa Ana Blvd., Bldg. 36, Santa Ana, CA 92701-4512	
PLAINTIFF / PETITIONER: DEFENDANT / RESPONDENT:	
CLASS ACTION/B&P 17200 QUESTIONNAIRE <u>(To be filed by counsel for plaintiff/s within 30 days of filing initial complaint)</u>	CASE NUMBER: DEPT: JUDGE: STATUS CONFERENCE DATE:

In response to the conflict of interest issues raised in **Apple Computer, Inc. v. The Superior Court of Los Angeles County** (2005) 126 Cal. App. 4th 1253, counsel for each proposed class representative is to provide the following information under oath to the Court:

1. Is any proposed class representative an attorney? Yes _____ No _____

2. Is any proposed class representative a spouse, child or family member of plaintiff's counsel or of a partner or associate of the law firm of which plaintiff's counsel is a member? Yes No

If yes, explain relationship:

3. Within the last 5 years, has any proposed class representative filed prior class action lawsuits using the same plaintiff's counsel or firm as in the present case?	Yes	No
--	-----	----

If yes, explain: _____

4. Does any proposed class representative have a business relationship with plaintiff's counsel, including but not limited to, the relationship of law partner, associate, employee, principal, agent, independent contractor, or professional corporation? Yes No

If yes, explain relationship:

5. If there is co-counsel, have the attorneys been co-counsel in other class actions?	Yes	No
---	-----	----

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE _____

SIGNATURE OF COUNSEL FOR PLAINTIFF(S)

CLASS ACTION/B&P 17200 QUESTIONNAIRE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center DRIVE MAILING ADDRESS: 700 W. Civic Center Drive CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Central Justice Center PLAINTIFF: Natalie Tristan DEFENDANT: Bank of America N.A. Short Title: TRISTAN VS. BANK OF AMERICA N.A.	FOR COURT USE ONLY <div style="text-align: center;">FILED</div> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE <div style="text-align: center;">Apr 20, 2022</div> Clerk of the Court By: Arlene Gill, Deputy
NOTICE OF HEARING CASE MANAGEMENT CONFERENCE	CASE NUMBER: 30-2022-01255728-CU-FR-CJC

Please take notice that a(n), Case Management Conference has been scheduled for hearing on 09/27/2022 at 08:45:00 AM in Department C11 of this court, located at Central Justice Center.

Plaintiff(s)/Petitioner(s) to provide notice to all defendant(s)/respondent(s). Parties who file pleadings that add new parties to the proceeding must provide notice of the Case Management Conference to the newly added parties.

IMPORTANT: Prior to your hearing date, please check the Court's website for the most current instructions regarding how to appear for your hearing and access services that are available to answer your questions.

Civil Matters - <https://www.occourts.org/media-relations/civil.html>

Probate/Mental Health - <https://www.occourts.org/media-relations/probate-mental-health.html>

Appellate Division - <https://www.occourts.org/media-relations/appeals-records.html>

IMPORTANTE: Antes de la fecha de su audiencia, visite el sitio web de la Corte para saber cuáles son las instrucciones más actuales para participar en la audiencia y tener acceso a los servicios disponibles para responder a sus preguntas.

Casos Civiles - <https://www.occourts.org/media-relations/civil.html>

Casos de Probate y Salud Mental - <https://www.occourts.org/media-relations/probate-mental-health.html>


División de apelaciones - <https://www.occourts.org/media-relations/appeals-records.html>

QUAN TRỌNG: Trước ngày phiên tòa của quý vị, vui lòng kiểm tra trang mạng của tòa án để biết những hướng dẫn mới nhất về cách ra hầu phiên tòa của quý vị và tiếp cận những dịch vụ hiện có để giải đáp những thắc mắc của quý vị.

Vấn Đề Dân Sự - <https://www.occourts.org/media-relations/civil.html>

Thủ Tục Di Chúc/Sức Khỏe Tinh Thần - <https://www.occourts.org/media-relations/probate-mental-health.html>

Ban phúc thẩm - <https://www.occourts.org/media-relations/appeals-records.html>

Clerk of the Court, By:  , Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE


Central Justice Center
700 W. Civic Center DRIVE
Santa Ana 92701

SHORT TITLE: TRISTAN VS. BANK OF AMERICA N.A

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
30-2022-01255728-CU-FR-CJC

I certify that I am not a party to this cause. I certify that a true copy of the above Notice of Hearing has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practices and addressed as indicated below. The certification occurred at Santa Ana, California, on 04/20/2022. Following standard court practice the mailing will occur at Sacramento, California on 04/21/2022.

Clerk of the Court, by:  _____, Deputy

KALIEL GOLD PLLC
1100 NW 15TH STREET # 4TH FLOOR
WASHINGTON DC, DC 20005

EDELSBERG LAW, P.A.
1925 E CENTURY PARK # 1700
LOS ANGELES, CA 90067

30-2022-01255728-CU-FR-CJC-PCA-#2-DANIEL H. YAMASAKI, Clerk of the Court By Arlene Gil, Deputy Clerk.

Scott Edelsberg (SBN 330090)

Edelsberg Law, P.A., 1925 Century Park E., Ste. 1700, Los Angeles, CA 90067

TELEPHONE NO.: (305) 975-3320

FAX NO. (Optional):

E-MAIL ADDRESS: scott@edelsberglaw.com

ATTORNEY FOR (Name): Plaintiff, NATALIE TRISTAN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

STREET ADDRESS: 700 Civic Center Drive West

MAILING ADDRESS: 700 Civic Center Drive West

CITY AND ZIP CODE: Santa Ana, CA 92701

BRANCH NAME: Central Justice Center

CASE NAME:

NATALIE TRISTAN v. BANK OF AMERICA, N.A.

CIVIL CASE COVER SHEET

☒ **Unlimited** (Amount demanded exceeds \$25,000) ☐ **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

30-2022-01255728-CU-FR-CJC

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☒ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): (1) Unfair Competition; (2) False Advertising; (3) Breach of Contract

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 20, 2022

Scott Edelsberg

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD Non-PI/PD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (35) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open bank accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage <i>(not provisionally complex)</i> (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i> Unlawful Detainer Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i> Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition <i>(not specified above)</i> (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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EXHIBIT G

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 05/23/2022

TIME: 02:21:00 PM

DEPT: C12

JUDICIAL OFFICER PRESIDING: Supervising Judge Layne H. Melzer

CLERK: L. Johnson

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2022-01255728-CU-FR-CJC** CASE INIT.DATE: 04/20/2022

CASE TITLE: **Tristan vs. Bank of America N.A**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 73767866

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

This matter having been referred to the Supervising Judge.

The above entitled-case having been determined to be assigned to the unlimited civil panel in error, the Court now rules as follows:

The Court designates the case complex.

This case is removed from the inventory of the Honorable John Gastelum, in Department C11, and reassigned to the Honorable Randall J. Sherman, in Department CX105 for all purposes.

Counsel to contact clerk in Department CX105 within 15 days of receipt of this order to reschedule any pending hearings.

Each party who has not paid the Complex fee of \$ 1000.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The Court determines that for purposes of exercising C.C.P. 170.6 rights, there are two sides to this matter unless the contrary is brought to the attention of the Court, by Ex-Parte motion. Counsel has 15 days from the date of the enclosed certificate of mailing in which to exercise any rights under C.C.P. 170.6.

Clerk to give notice to Plaintiff and Plaintiff to give notice to all other parties.

Plaintiff to file proof of service with the court within 10 days.

EXHIBIT H

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Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

NATALIE TRISTAN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No.: 30-2022-01255728-CU-FR-
CJC

AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Natalie Tristan, individually and on behalf of all others similarly situated, hereby
2 brings this Amended Class Action Complaint against Defendant Bank of America, N.A. (“BOA,”
3 “Bank,” or “Defendant”) and alleges as follows:

4 **INTRODUCTION**

5 1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of
6 similarly situated customers of BOA who have signed up for the Zelle money transfer service
7 and who: have been the victim of fraud on the Zelle service; who have incurred losses due to that
8 fraud that have not been reimbursed by BOA; and who were entitled by the marketing
9 representations of BOA regarding the Zelle service and by the BOA’s contract promises to a full
10 reimbursement of losses caused by fraud on the Zelle service.

11 2. Zelle is a person-to-person (“P2P”) payment transfer service wholly owned and
12 operated by seven of the largest banks in the U.S. Person-to-Person payments allow a consumer
13 to send money to another person without needing to write a check, swipe a physical card, or
14 exchange cash.

15 3. There are approximately 1,500 member banks and credit unions who participate in
16 the Zelle service. Those members engage in their own significant marketing efforts to encourage
17 their accountholders to sign up for the Zelle service by marketing Zelle as a fast, safe and secure
18 way for consumers to send money. This is false. In fact, there are huge, undisclosed security risks
19 of using the service that BOA omitted from its marketing push to get its accountholders to sign
20 up for Zelle.

21 4. BOA prominently touts Zelle to its accountholders as a secure, free and convenient
22 way to make money transfers. However, it misrepresents and omits a key fact about the service
23 that is unknown to accountholders: that there is virtually no recourse for consumers to recoup
24 losses due to fraud. Indeed, unlike virtually every other payment method commonly used by
25 American consumers—debit cards, credit cards, and checks—there is a no protection for
26 accountholders who are victims of fraud, and virtually no recourse for accountholders attempting
27 to recoup losses due to fraud.

1 5. The unique, misrepresented, and undisclosed architecture of the Zelle payment
2 system means—again, unlike other payment options commonly used by American consumers—
3 that virtually any money transferred for any reason via Zelle is gone forever, without recourse,
4 reimbursement or protection.

5 6. Worse, BOA misrepresents and omits the truth about a secret policy it has adopted:
6 it does not and will not reimburse its accountholders for losses via Zelle due to fraud, even where
7 those losses are timely reported by accountholders.

8 7. BOA was required not to misrepresent the unique and dangerous features of the
9 Zelle service in its marketing about it and in contractual representations. But it failed to do so.

10 8. As a result, users like Plaintiff sign up for and use the Zelle service without the
11 benefit of accurate information regarding that service, and later end up with huge, unreimbursed
12 losses due to fraud. Such users never would have signed up for Zelle in the first place if they had
13 known the extreme risks of signing up for and using the service.

14 9. As a member of the Zelle network, the risks are well known to BOA but are omitted
15 from all of its marketing regarding Zelle.

16 10. As a recent New York Times investigation showed, fraud on the Zelle network is a
17 widespread scourge of which bank is well aware. Quoting an industry expert, the *Times* reported:

18 “Organized crime is rampant,” said John Buzzard, Javelin’s lead fraud analyst. “A
19 couple years ago, we were just starting to talk about it” on apps like Zelle and Venmo,
20 Mr. Buzzard said. “Now, it’s common and everywhere.”

21 The banks are aware of the widespread fraud on Zelle. When Mr. Faunce called [his
22 bank] to report the crime, the customer service representative told him, “A lot of people
23 are getting scammed on Zelle this way.” Getting ripped off for \$500 was “actually
really good,” Mr. Faunce said the rep told him, because “many people were getting hit
for thousands of dollars.”

24 <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last accessed
25 March 28, 2022).

FACTUAL ALLEGATIONS

A. Overview

18. It is free to sign up with Zelle, and in fact Zelle is integrated into the websites and mobile apps of BOA. In marketing and within the website and app itself, BOA encourages its accountholders to sign up for the Zelle service—a sign up that occurs quickly within the BOA website or mobile app. During that sign-up process, a user provides basic information to Zelle to link into the Zelle network.

19. While Zelle provides a link to what it calls a “User Agreement” on its website, at no time during the sign-up process on the bank’s website or app did Plaintiff agree to be bound by that document.

20. Sign up for the Zelle service allows the fast transfer of account funds to other Zelle users.

21. Created in 2017 by the largest banks in the U.S. to enable instant digital money transfers, Zelle is by far the country’s most widely used money transfer service. Last year, people sent \$490 billion in immediate payment transfers through Zelle.

22. The Zelle network is operated by Early Warning Services, a company created and owned by seven banks, including Defendant: Bank of America, Capital One, JPMorgan Chase, PNC, Truist, U.S. Bank and Wells Fargo.

23. The Zelle service is very popular, but it also has a massive fraud problem—in no small part because of the immediacy with which money transfers are made on the service. If a fraudster removes money from a Zelle user’s bank account, either directly or by fooling the Zelle user to transfer money, those funds are unrecoverable to the consumer.

24. Nearly 18 million Americans were defrauded through scams involving person-to-person payment apps like Zelle in 2020 alone, according to Javelin Strategy & Research, an industry consultant.

25. Organized crime is rampant on Zelle and other similar person-to-person transfer services.

1 26. The 1500 banks and credit unions who are members of the Zelle network, including
2 BOA, know full well that they have a widespread fraud problem on their hands, but have
3 misrepresented and failed to take steps to warn their accountholders of these risks—or protect
4 their accountholders who fall prey to fraud.

5 27. For example, a common scam involves a scammer impersonating a bank employee
6 and requesting that the accountholder transfer money to a different bank account for testing
7 purposes. Unsuspecting Zelle users, tricked into making a fraudulent transfer, in many cases send
8 hundreds or thousands of dollars to fraudsters.

9 28. In another very common scheme, a Zelle user's phone is stolen and Zelle transfers
10 are made from the stolen phone to the fraudster.

11 29. In short, and unbeknownst to average Zelle users, the Zelle network has become a
12 preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who
13 use social media sites to advertise fake concert tickets and purebred puppies.

14 30. Scams like these are rampant on the Zelle network precisely because of the design
15 and architecture of the network, specifically that money transfer is instantaneous and
16 unrecoverable. Indeed, there is virtually no recourse for consumers to recoup losses due to fraud,
17 unlike other payment methods commonly used by American consumers—debit cards, credit
18 cards, and checks. Zelle provides no protection for accountholders who are victims of fraud, and
19 BOA provides virtually no recourse for accountholders attempting to recoup losses due to fraud.

20 31. The unique, misrepresented, and undisclosed architecture of the Zelle payment
21 system and BOA's own fraud policies means—again, unlike other payment options commonly
22 used by American consumers—that virtually any money transferred for any reason via Zelle is
23 gone forever, without recourse, reimbursement or protection for victimized accountholders.

24
25 **B. BOA Falsely Markets Zelle as a Safe and Secure Way to Transfer Money,**
26 **Omits Information Regarding the Extreme Risks of Signing Up for and**
27 **Using the Service, and Misrepresents Fraud Protections Regarding Zelle**
28 **in its Account Contract**

1 32. In its marketing about Zelle and during the Zelle signup process within the Bank’s
2 mobile app or website, the Bank makes repeated promises that Zelle is a “fast, **safe** and easy way
3 to send and receive money” (emphasis added).

4 33. It also promises: “Move money in the moment. It’s simple and **secure** – with lots
5 of people you know” (emphasis added),

6 34. At no time in its marketing or during the sign-up process does BOA warn potential
7 users of the true security risks of using the Zelle service—including the risk of fraud and the risk
8 that fraudulent losses will never be reimbursed by BOA.

9 35. Zelle’s services can cause unsuspecting consumers like Plaintiff to incur massive
10 losses on their linked bank accounts.

11 36. BOA misrepresents (and omits facts about) the true nature, benefits, and risks of
12 the Zelle service, functioning of which means that users are at extreme and undisclosed risk of
13 fraud when using Zelle. Had Plaintiff been adequately informed of these risks, she would not
14 have signed up for or used Zelle.

15 37. The Bank’s marketing representations about Zelle—including within its app and
16 website—misrepresent and never disclose these risks and material facts, instead luring
17 accountholders to sign up for and use the service with promises of ease, safety and security.

18 38. These representations—which all users view during the sign-up process—are false
19 and contain material omissions.

20 39. BOA misrepresents the true nature, benefits and risks of the service, which burden
21 users with an extreme and undisclosed risk of Zelle causing losses due to fraud. Plaintiff would
22 not have used Zelle if she had been adequately informed of the risks.

23 40. The Bank’s misrepresentations and omissions are especially pernicious because
24 BOA alone knows a crucial fact regarding Zelle transfers that occur on its accountholders’
25 accounts: as a matter of secret bank policy, fraud-induced Zelle transfers will almost never be
26 reimbursed to accountholders.

41. Indeed, upon information and belief, BOA maintains secret policy whereby it refuses to reimburse fraud losses incurred via Zelle, even where its accountholders timely inform BOA of the fraud.

42. It misrepresents and fails to disclose this secret policy.

43. Further, BOA's Deposit Agreement & Disclosures applicable to consumer accounts repeatedly promises users that, if they timely report fraud, such fraud will be fairly investigated and accountholders will not be liable for fraudulent transfers:

Consumer's Liability for Unauthorized Transfers

Tell us AT ONCE if you believe your card or your personal identification number (PIN) or other code has been lost or stolen. Also, tell us AT ONCE if you believe that an electronic fund transfer has been made without your permission using information from your check. The best way to keep your possible losses down is to call us immediately. Your losses could include all of the money in your account plus, if you have an overdraft protection plan linked to your account, any transfers from another account or any advances on a credit line.

If you tell us within two business days after you learn of the loss or theft of your card or code, you can lose no more than \$50 if someone uses your card without your permission.

If you do NOT tell us within two business days after you learn of the loss or theft of your card or code, and we can prove we could have stopped someone from using your card or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us in writing within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us, we will extend the time periods.

***Note:** These liability rules are established by Regulation E, which does not apply to business deposit accounts. For personal deposit accounts, our liability policy regarding unauthorized debit card or ATM card transactions, and unauthorized Online Banking transactions may give you more protection, provided you report the transactions promptly. Please see the agreement you receive with your ATM or debit card and the Online Banking agreement.*

[...]

Contact in Event of Unauthorized Transfer; and Lost or Stolen Card, PIN or Other Code

If you believe your card, PIN or other code is lost or stolen, or learned by an unauthorized person, or that someone has transferred or may transfer money from your account without your permission, notify us immediately by calling the number listed below.

Telephone: 1.800.432.1000

You can also write to us at: Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

If unauthorized activity occurs, you agree to cooperate during the investigation and to complete a Lost/Stolen Card and Fraud Claims Report or similar affidavit.

[...]

In Case of Errors or Questions about your Electronic Transfers You May Sign into Online Banking to Report the Error Promptly, or Call or write us at the telephone number or address below, as soon as you can, if you think your statement or receipt is wrong, or if you need more information about a transfer listed on the statement or receipt.

Call us at 1.800.432.100 during normal Claims Department business hours or write us at Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-3137.

We MUST hear from you NO LATER than 60 days after we sent you the FIRST statement on which the error or problem appeared... We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question... For errors involving new accounts, point of sale, or foreign-initiated transfers transactions, we may take up to 90 days (instead of 45) to investigate your complaint or question... We will tell you the results within 3 business days after completing our investigation. If we decided that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

44. These provisions are and were reasonably understood by Plaintiff to mean that Plaintiff would not be liable for electronic funds transfers effectuated by fraud.

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///

///

C. BOA Is Required to Follow EFTA Requirements and It Fails to do So

45. The Electronic Fund Transfer Act requires banks to reimburse customers for losses on transfers that were “initiated by a person other than the consumer without actual authority to initiate the transfer.”¹

46. An unauthorized Electronic Fund Transfer (“EFT”) is an EFT from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. 12 C.F.R. § 1005.2(m).

47. Unauthorized EFTs include transfers initiated by a person who obtained a consumer’s access device through fraud or robbery and consumer transfers at an ATM that were induced by force. Comment 2(m)-3 and 4.

48. According to the Consumer Financial Protection Bureau (“CFPB”), “If a consumer has provided timely notice of an error under 12 CFR 1005.11(b)(1) and the financial institution determines that the error was an unauthorized EFT, the liability protections in Regulation E section 1005.6 would apply.”²

49. Recent CFPB guidance on unauthorized EFTs indicates P2P payments are EFTs, such as transactions made with Zelle, and trigger “error resolution obligations” to consumers to protect them from situations where they are fraudulently induced to initiate an unauthorized EFT from a third-party.³

50. The CFPB has made it clear that a transaction that is fraudulently induced by a third party is an unauthorized electronic funds transfer subject to the limitations of liability in 12 C.F.R. § 1005.6.⁴

51. Even so, Defendant has not reversed or refunded all funds of Plaintiff’s disputed and unauthorized transactions, though obligated to do so.

¹ Electronic Fund Transfers FAQ, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#unauthorized-eft> (last accessed June 6, 2022).

² *Id.*

³ *Id.*

⁴ <https://www.consumerfinance.gov/rules-policy/regulations/1005/2/> (“An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud”) (last accessed June 6, 2022).

52. Because banks, such as Defendant, fail to protect consumers as widespread “fraud flourishes” on Zelle, Senators Elizabeth Warren, Robert Menendez and Jack Reed sent a letter to the CEO of Zelle noting:

The Consumer Financial Protection Bureau previously clarified that Regulation E of the Electronic Fund Transfer Act Protected victims of fraudulent money transfers, including those who were “induced” into transferring the money themselves, while the FDIC issued a report in March 2022 finding that both the banks and the platform—in this case Zelle—were held responsible for fraudulent electronic transfers through Regulation E.

See **Exhibit 1**, Warren Letter to Zelle on Scams and Fraud (emphasis added).

53. Unfortunately, BOA regularly fails to consider fraudulently induced Zelle transactions as “unauthorized EFTs,” thus depriving accountholders of their rights to be reimbursed for such fraudulent transfers, even where the losses are timely reported by consumers.

D. Plaintiff’s Experience

54. When Plaintiff signed up for Zelle she was not informed that Zelle’s service had a significant “catch” and that significant monetary losses could result from signing up for the service—or that those losses almost never are reimbursed by users’ banks or credit unions.

55. For example, on November 11, 2022, a fraudster transferred \$2,150 from Plaintiff’s personal bank accounts using the Zelle service.

56. Plaintiff is a young, college student who was searching for rental apartments online.

57. In November 2021, Plaintiff was searching for rental apartments and believed she found a potential unit to lease online from a fraudster who went by the name of Orlin Aguilera.

58. Plaintiff was interested in the purported rental unit and began communicating with the fraudster who informed Plaintiff to submit a rental application and fees to be screened for approval as a tenant.

59. As the fraudster requested, Plaintiff transferred \$150 via Zelle for application fees. Shortly thereafter, the fraudster informed Plaintiff that her application was “approved” and to finalize obtaining the apartment, Plaintiff needed to also transfer via Zelle the security deposit of

1 \$800 and first-month's rent of \$1,200. Eager to secure the rental, Plaintiff transferred via Zelle
2 an additional \$2,000 to the fraudster.

3 60. Afterwards, Plaintiff and the fraudster coordinated a day and time for her to move-
4 in and collect the keys. However, on the purported move-in day, Plaintiff arrived at the apartment
5 but Orlin Aguilera, the fraudster, was nowhere to be found. The fraudster repeatedly called
6 Plaintiff with excuses for his tardiness and reassured Plaintiff that he would be arriving promptly
7 with the keys, but he never showed.

8 61. At this point, Plaintiff determined she fell victim to fraud and demanded her money
9 be returned. Despite Plaintiff's demand, the fraudster did not return the money and ceased all
10 communications with Plaintiff.

11 62. Plaintiff timely informed BOA of the fraud, but BOA refused to reimburse her for
12 the losses.

13 63. Specifically, Plaintiff immediately notified BOA once she realized the fraud.
14 Initially, BOA informed Plaintiff that she would be protected from the fraud and should expect a
15 full reimbursement of the funds. Ultimately, however, BOA denied the claim and refused to
16 reimburse Plaintiff her loss.

17 **CLASS ALLEGATIONS**

18 64. Plaintiff brings this action individually and as representatives of all those similarly
19 situated, on behalf of the below-defined Classes:

20
21 All persons with a BOA account who signed up for the Zelle Service
22 and incurred unreimbursed losses due to fraud (the "Class").

23 All California persons with a BOA account who signed up for the Zelle
24 Service and incurred unreimbursed losses due to fraud (the "California
Subclass").

25 65. Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries,
26 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
27 this matter and the members of their immediate families and judicial staffs.

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

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

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

- a) Whether Defendant's representations and omissions about the Zelle service are false, misleading, deceptive, or likely to deceive;
- b) Whether Defendant failed to disclose the risks of using the Zelle service;
- c) Whether Plaintiff and the Class members were damaged by Defendant's conduct;
- d) Whether Defendant's actions or inactions violated the consumer protection statute invoked herein;
- e) Whether Defendant's actions or inactions violated the EFTA; and
- f) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendant's conduct.

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

1 70. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the
2 Classes because, among other things, Plaintiff and all Class members were similarly injured
3 through Defendant's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the
4 members of the Classes, were deprived of monies that rightfully belonged to them. Further, there
5 are no defenses available to Defendant that are unique to Plaintiff.

6 71. **Adequacy of Representation:** Plaintiff is an adequate class representative because
7 they are fully prepared to take all necessary steps to represent fairly and adequately the interests
8 of the members of the Classes, and because their interests do not conflict with the interests of the
9 other Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing,
10 and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's
11 attorneys are experienced in complex class action litigation, and they will prosecute this action
12 vigorously.

13 72. **Superiority:** The nature of this action and the claims available to Plaintiff and
14 members of the Classes make the class action format a particularly efficient and appropriate
15 procedure to redress the violations alleged herein. If each Class member were required to file an
16 individual lawsuit, Defendant would necessarily gain an unconscionable advantage since it would
17 be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly
18 superior financial and legal resources. Moreover, the prosecution of separate actions by
19 individual Class members, even if possible, would create a substantial risk of inconsistent or
20 varying verdicts or adjudications with respect to the individual Class members against Defendant,
21 and which would establish potentially incompatible standards of conduct for Defendant and/or
22 legal determinations with respect to individual Class members which would, as a practical matter,
23 be dispositive of the interests of the other Class members not parties to adjudications or which
24 would substantially impair or impede the ability of the Class members to protect their interests.

Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

FIRST CAUSE OF ACTION
Violation of California's Unfair Competition Law ("UCL")
Cal. Bus. & Prof. Code § 17200, *et seq.*
(Asserted on Behalf of the Classes)

59. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

60. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice."

61. Defendant's deceptive conduct related to material omissions and/or material misrepresentations that it provides safe and secure Zelle money transfer service through its website and mobile app violates each of the statute's "unfair," "unlawful," and "fraudulent" prongs.

62. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

63. A business act or practice is "unfair" under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications, and motives of the practice against the gravity of the harm to the alleged victims.

64. Defendant's practices as described herein are (a) immoral, unethical, oppressive, and/or unscrupulous and violate established public policy as recognized by, *inter alia*, causing injury to consumers which outweigh any purported benefits or utility.

65. A business act or practice is "fraudulent" under the UCL if it is likely to deceive members of the public.

1 66. Defendant's practices, as described herein, constitute "fraudulent" business
2 practices in violation of the UCL because, among other things, they are likely to deceive
3 reasonable consumers, who expect their bank to fully investigate and protect fraudulent losses
4 incurred using the Zelle service. Moreover, Defendant concealed the security risks of using the
5 Zelle service, including the risk of fraud and the risk that fraudulent losses will never be
6 reimbursed by BOA as a matter of secret policy, is a practice that is likely to deceive a consumer
7 acting reasonably under the circumstances, to the consumer's detriment.

8 67. A business act or practice is "unlawful" under the UCL if it violates any other law
9 or regulation.

10 68. Among other statutes, laws, and/or regulations, Defendant's acts and practices
11 violate the following statutes, laws, and/or regulations:

- 12 a. Violating Cal. Civ. Code § 1750, *et seq.*;
- 13 b. Violating the EFTA;
- 14 c. Engaging in conduct in which the gravity of harm to Plaintiff and the Class
15 outweighs the utility of the Defendant's conduct;
- 16 d. Engaging in acts and/or practices and/or omissions that are immoral, unethical,
17 oppressive, and/or unscrupulous and causes injury to consumers which outweigh
18 its benefits; and/or
- 19 e. Defendant committed unfair and fraudulent business acts and practices in violation
20 of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly
21 misrepresenting on its website and mobile app the true risks and operation of its
22 service.

23 69. Defendant's acts and practices offend an established public policy of secure
24 electronic money transfers in the marketplace, and constitute immoral, unethical, oppressive, and
25 unscrupulous activities that are substantially injurious to consumers.

1 70. The harm to Plaintiff and the Classes outweighs the utility of Defendant's practices.
2 There were reasonably available alternatives to further Defendant's legitimate business interests,
3 other than the misleading and deceptive conduct described herein.

4 71. Defendant's business practices have misled Plaintiff and the proposed Class and
5 will continue to mislead them in the future.

6 72. Plaintiff relied on Defendant's misrepresentations.

7 73. Had Plaintiff known the true risks of using the Zelle service, she never would have
8 signed up for and used the Zelle service.

9 74. As a direct and proximate result of Defendant's unfair, fraudulent, and/or unlawful
10 practices, Plaintiff and Class members suffered and will continue to suffer actual damages.
11 Defendant's fraudulent conduct is ongoing and present a continuing threat to Class members that
12 they will be deceived into making money transfers with the Zelle service.

13 75. As a result of its unfair, fraudulent, and unlawful conduct, Defendant has been
14 unjustly enriched and should be required to disgorge its unjust profits and make restitution to
15 Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

16
17 **SECOND CAUSE OF ACTION**
18 **Violation of California's False Advertising Law ("FAL")**
19 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
 (Asserted on Behalf of the Classes)

20 76. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

21 77. California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500,
22 states that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal
23 property ... to induce the public to enter into any obligation relating thereto, to make or
24 disseminate or cause to be made or disseminated ... from this state before the public in any state,
25 in any newspaper or other publication, or any advertising device, or by public outcry or
26 proclamation, or in any other manner or means whatever, including over the Internet, any
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statement...which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading....”

78. Defendant’s material misrepresentations and omissions alleged herein violate Bus. & Prof. Code § 17500.

79. Defendant knew or should have known that its misrepresentations and omissions were false, deceptive, and misleading.

80. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and the members of the Classes, on behalf of the general public, seeks an order of this Court enjoining Defendant from continuing to engage, use, or employ their practice of misrepresenting the Zelle service.

81. Further, Plaintiff and the members of the Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff restitution of the money wrongfully acquired by Defendant by means of said misrepresentations.

82. Additionally, Plaintiff and the Class members seek an order requiring Defendant to pay attorneys’ fees pursuant to Cal. Civ. Code § 1021.5.

THIRD CAUSE OF ACTION

Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing (Asserted on Behalf of the Classes)

83. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

84. Plaintiff and members of the Classes contracted with BOA for checking account services, as embodied in the Deposit Agreement & Disclosures.

85. BOA breached the terms of its contract with consumers when as described herein, BOA failed to fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

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1 86. Further, under the law of each of the states where BOA does business, an implied
2 covenant of good faith and fair dealing governs every contract. The covenant of good faith and
3 fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

4 87. This good faith requirement extends to the manner in which a party employs
5 discretion conferred by a contract.

6 88. Good faith and fair dealing, in connection with executing contracts and discharging
7 performance and other duties according to their terms, means preserving the spirit—not merely
8 the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to
9 comply with the substance of their contract in addition to its form. Evading the spirit of the
10 bargain and abusing the power to specify terms constitute examples of bad faith in the
11 performance of contracts.

12 89. Subterfuge and evasion violate the obligation of good faith in performance even
13 when an actor believes his conduct to be justified. A lack of good faith may be overt or may
14 consist of inaction, and fair dealing may require more than honesty. Other examples of violations
15 of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power
16 to specify terms, and interference with or failure to cooperate in the other party's performance.

17 90. Defendant breached the covenant of good faith and fair dealing when it failed to
18 fairly investigate reported fraudulent transactions on the Zelle money transfer service and failed
19 to reimburse accountholders for fraud-induced losses incurred using the Zelle service.

20 91. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

21 92. Plaintiff and members of the Classes have performed all of the obligations imposed
22 on them under the contract.

23 93. Plaintiff and members of the Classes have sustained monetary damages as a result
24 of BOA's breaches of the contract and covenant of good faith and fair dealing.

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FOURTH CAUSE OF ACTION
Violation of the Electronic Funds Transfer Act (“EFTA”)
15 U.S.C. §§ 1693, *et seq.*
(Asserted on Behalf of the Classes)

94. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

95. The Electronic Fund Transfer Act and Regulation E apply to electronic fund transfers that authorize a financial institution to debit or credit a consumer’s account. 12 C.F.R. § 1005.3(a).

96. The primary objective of the EFTA is “the protection of individual consumers engaging in electronic fund transfers and remittance transfers.” 12 C.F.R. § 1005.1(b).

97. Defendant is a financial institution. 12 C.F.R. § 1005.2(i).

98. Zelle is a financial institution, as the applicable code, 12 C.F.R. § 1005.2(i), interpreted by the Consumer Financial Protection Bureau.⁵

99. “If a financial institution, within sixty days after having transmitted to a consumer pursuant to [15 U.S.C. § 1693d(a), (c), or (d)] or notification pursuant to [15 U.S.C. § 1693d(d)] receives oral or written notice in which the consumer[:] (1) sets forth or otherwise enables the financial institution to identify the name and the account number of the consumer; (2) indicates the consumer’s belief that the documentation, or, in the case of notification pursuant to [15 U.S.C. § 1693d(b)], the consumer’s account, contains an error and the amount of such error; and (3) sets forth the reasons for the consumer’s belief (where applicable) that an error has occurred,” the financial institution is required to investigate the alleged error. 15 U.S.C. § 1693f(a).

100. After said investigation, the financial institution must determine whether an “error” has occurred and report or mail the results of such investigation and determination to the consumer within ten (10) business days. 15 U.S.C. § 1693f(a).

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⁵ Electronic Fund Transfers FAQs, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#financial-institutions-2> (last accessed June 6, 2022).

101. A financial institution that provisionally recredits the consumer's account for the amount alleged to be in error pending an investigation, however, is afforded forty-five (45) business days after receipt of notice of error to investigate. *Id.* § 16993f(c).

102. Pursuant to the EFTA, an error includes "an unauthorized electronic fund transfer." *Id.* § 1693f(f).

103. An Electronic Fund Transfer ("EFT") is any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. 12 C.F.R. 1005.3(b)(1). Accordingly, Regulation E applies to any person-to-person ("P2P") or mobile payment transactions that meet the definition of EFT. 12 C.F.R. § 1005.3(b)(1)(v); *id.*, Comment 3(b)(1)-1.ii.

104. Unauthorized EFTs are EFTs from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. 12 C.F.R. § 1005.2(m).

105. According to the Consumer Financial Protection Bureau, when a third party fraudulently induces a consumer into sharing account access information that is used to initiate an EFT from the consumer's account, that transfer meets Regulation E's definition of an unauthorized EFT.⁶

106. In particular, Comment 1005.2(m)-3 of Regulation E explains that an unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through robbery or fraud. As such, when a consumer is fraudulently induced into sharing account access information with a third party, and a third party uses that information to make an EFT from the consumer's account, the transfer is an unauthorized EFT under regulation E. 12 C.F.R. § 1005.2(m), Comment 1005.2(m)-3.

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⁶ "Electronic Fund Transfers FAQs," Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#financial-institutions-2> (last accessed June 6, 2022).

1 107. Here, Plaintiff and Members of the Classes were fraudulently induced by third-
2 party scammers to make unauthorized money transfers from their BOA accounts.

3 108. After the unauthorized EFTs were made, the EFTs appeared on the bank statements
4 of Plaintiff and Members of the Classes.

5 109. Plaintiff and Members of the Classes notified Defendant of these errors within sixty
6 (60) days of their appearances on their accounts.

7 110. As a direct and proximate result of Defendant's conduct, Plaintiff and Members of
8 the Classes were unable to reclaim the account funds taken from scammers from unauthorized
9 EFTs.

10 111. Defendant knowingly and willfully concluded that the transfers of funds via Zelle
11 on accounts of Plaintiff and Members of the Classes were not in error when such conclusions
12 could not reasonably have been drawn from the evidence available to the financial institutions at
13 the time of the investigation. 15 U.S.C. § 1693f(e)(2).

14 112. Defendant intentionally determined that the unauthorized transfer of funds via
15 Zelle on accounts of Plaintiff and Members of the Classes were not in error due to, at least in
16 part, their financial self-interest as a stakeholder in Zelle.

17 113. Defendant refused to reverse or refund funds to Plaintiff and Members of the
18 Classes.

19 114. As such, Plaintiff and Members of the Classes are each entitled to (i) actual
20 damages; (ii) treble damages; (iii) the lesser of \$500,000.00 or one percent (1%) of the net worth
21 of Defendant; and (iv) reasonable attorneys' fees and costs. *Id.* §§ 1693f(e)(2), 1693m(a)(2)(B)–
22 (3).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

A. Certifying the proposed Classes, appointing Plaintiff as representative of the Classes, and appointing counsel for Plaintiff as lead counsel for the respective Classes;

B. Declaring that Defendant's policies and practices as described herein constitute a breach of contract, and a breach of the covenant of good faith and fair dealing or unjust enrichment, violation of California's Unfair Competition Law, violation of California's False Advertising Law and/or violation of the Electronic Fund Transfers Act.

C. Enjoining Defendant from the wrongful conduct as described herein;

D. Awarding restitution of all fees at issue paid to Defendant by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

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

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

G. Punitive and exemplary damages;

H. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

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

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

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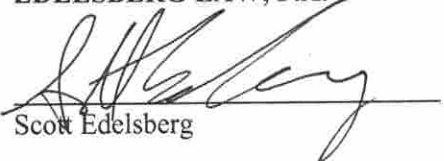
DEMAND FOR JURY TRIAL

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

Dated: June 8, 2022

Respectfully submitted,

EDELSBERG LAW, P.A.


Scott Edelsberg

KALIELGOLD PLLC
Jeffrey D. Kalien
Sophia Goren Gold

Attorneys for Plaintiff and the Putative Class

EXHIBIT 1

United States Senate

WASHINGTON, DC 20510

April 29, 2022

Al Ko
Early Warning Services, LLC
16552 N 90th St
Scottsdale, AZ 85260

Dear Mr. Ko,

We write regarding disturbing reports of a rise in fraud and scams on your online peer-to-peer money transfer platform Zelle, and the ongoing failure by Zelle or the banks that own this service to address these scams and provide appropriate redress to defrauded consumers. This “widespread fraud” on money transfer apps has affected nearly 18 million Americans.¹ Given the rise of increasingly sophisticated scams on your platform and the widely documented difficulties consumers have faced in seeking relief from banks, we seek to understand the extent to which Zelle allows fraud to flourish and the steps your company is taking to increase consumer protection and help users recover lost funds.

After its introduction in 2017, Zelle exploded in popularity, in large part because its connections to large financial institutions allowed it to sell itself as “fast, free, and ubiquitous.”² Your company, Early Warning Services, LLC is owned by seven of the country’s biggest banks, including JP Morgan Chase & Co., Bank of America, and Wells Fargo, giving consumers the convenience of an integrated platform and providing an implicit promise that activity on the platform is as secure as activity at the bank teller window.³ In 2021, Zelle “drove \$490 billion in transactions, more than double Venmo’s \$230 P2P volume.”⁴

The increased activity on Zelle is putting millions of consumers at risk as fraud flourishes:

Police reports and dispatches from industry analysts make it clear that the network has become a preferred tool for grifters like romance scammers, cryptocurrency con artists, and those who prowl social media sites advertising concert tickets and purebred puppies — only to disappear with buyers’ cash after they pay.⁵

¹ New York Times, “Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem,” Stacy Cowley and Lananh Nguyen, March 6, 2022, <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>.

² New York Times, “Cash Faces a New Challenger in Zelle, a Mobile Banking Service,” Stacy Cowley, June 12, 2017, <https://www.nytimes.com/2017/06/12/business/dealbook/mobile-banking-zelle-venmo-apple-pay.html>.

³ Early Warning Services, LLC, website accessed April 25, 2022, <https://www.earlywarning.com/about>; New York Times, “Cash Faces a New Challenger in Zelle, a Mobile Banking Service,” Stacy Cowley, June 12, 2017, <https://www.nytimes.com/2017/06/12/business/dealbook/mobile-banking-zelle-venmo-apple-pay.html>.

⁴ American Banker, “Can Zelle change the narrative around P2P fraud?,” Kate Fitzgerald, March 9, 2022, <https://www.americanbanker.com/payments/news/can-zelle-change-the-narrative-around-p2p-fraud>.

⁵ New York Times, “Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem,” Stacy Cowley and Lananh Nguyen, March 6, 2022, <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>.

Reports of consumers losing thousands of dollars have come out of California,⁶ Massachusetts,⁷ and Georgia.⁸ These scams, many of which involve a scammer creating a Zelle account linked to the consumer's own phone number, have cost victims their life savings and robbed them of funds essential to their small businesses, further underscoring the consequences of this widespread fraud.⁹

Alarming, both your company and the big banks who both own and partner with the platform have abdicated responsibility for fraudulent transactions, leaving consumers with no way to get back their funds. Zelle's biggest draw – the immediacy of its transfers – also makes scams more effective and “a favorite of fraudsters,” as consumers have no option to cancel a transaction even moments after authorizing it.¹⁰ And banks have chosen to let consumers suffer, blaming them for authorizing fraudulent transactions.¹¹ According to Consumer Watchdog, banks were essentially “throw[ing] up their hands and say ‘it’s not our problem because you authenticated it.’”¹² A former executive at your company even argued that banks have not done enough to deter fraud on Zelle, warning that banks had not sufficiently educated consumers about the risks.¹³ One customer observed that “it’s like the banks have colluded with the sleazebags on the street to be able to steal.”¹⁴

The policies of your company and the banks that own and operate on it create a confusing and unfair environment for consumers, who are already facing “rampant” and sophisticated threats from spammers on the platform.¹⁵ The Consumer Financial Protection Bureau previously clarified that Regulation E of the Electronic Fund Transfer Act protected victims of fraudulent money transfers, including those who were “induced” into transferring the money themselves,¹⁶ while the FDIC issued a report in March 2022 finding that both the banks and the platform – in

⁶ ABC 7 News, “LA woman loses over \$18K through 'Zelle' after scammers text, call her pretending to be bank,” Carlos Granda, March 12, 2022, <https://abc7.com/los-angeles-zelle-scam-text-message/11644167/>.

⁷ Boston 25 News, ““They’re not robots talking to you. They’re actual people.” Zelle app users warn of latest scams,” Chris Flanagan, March 23, 2022, <https://www.boston25news.com/news/massachusetts/theyre-not-robots-talking-you-theyre-actual-people-zelle-app-users-warn-latest-scams/WJZVXE23JZFCTPBD5XOPZZXF6I/>.

⁸ WBS-TV, “Zelle warns about scams, says it’s not responsible for funds stolen through app,” Ashli Lincoln, March 28, 2022, <https://www.wsbtv.com/news/local/zelle-warns-about-scams-says-its-not-responsible-funds-stolen-through-app/ZTCNAVOTTNG5RNTAOAXPWELXB4/>.

⁹ *Id.*

¹⁰ KARE 11, “Two Minnesota women were tricked by the same scam on Zelle, here's how you can protect yourself,” Gordon Severson, March 22, 2022, <https://www.kare11.com/article/money/minnesota-women-tricked-by-the-same-scam-on-zelle-heres-how-you-can-protect-yourself/89-3016a498-c8db-407a-ab1f-632f24204d9a>; New York Times, “Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem,” Stacy Cowley and Lananh Nguyen, March 6, 2022, <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>.

¹¹ New York Times, “Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem,” Stacy Cowley and Lananh Nguyen, March 6, 2022, <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>.

¹² ABC 7, “Calif. woman loses over \$18K through 'Zelle' after scammers text, call her pretending to be bank,” Carlos Granda, March 14, 2022, <https://abc7news.com/zelle-scam-electronic-withdrawals-bank-of-america/11650620/>.

¹³ New York Times, “Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem,” Stacy Cowley and Lananh Nguyen, March 6, 2022, <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>.

¹⁴ *Id.*

¹⁵ *Id.*

this case Zelle – were held responsible for fraudulent electronic transfers through Regulation E.¹⁷ Given this regulatory landscape, your company and the banks have a clear responsibility to more aggressively protect consumers.

In order to better understand how consumers have experienced fraud on your platform we ask that you provide answers to the following questions by May 13, 2022:

1. What are the procedures for rooting out scams on the online platform Zelle, and how has your company adjusted those procedures in light of “rampant [...] organized crime”¹⁸ on the platform?
2. What are Zelle’s policies for determining which consumers receive refunds for fraudulent claims?
 - a. Is this a joint process with the account holders’ bank? If so, are these procedures standardized across all banks and financial institutions using the platform?
3. Does Regulation E of the Electronic Fund Transfers Act apply to the scams seen regularly on Zelle, including those that involve consumers induced into authorizing fraudulent transfers?
 - a. Under Regulation E, would Early Warning Services, LLC or the account holders’ bank be responsible for refunding the funds?
4. How many reports of fraud from Zelle customers have Early Warning Services received for each of the last five full calendar years, and from January 1, 2022, to the present? For each year, and for the period from January 1, 2022, to the present, please provide:
 - a. The total number of reported cases of fraud from Zelle customers.
 - b. The total dollar value of reported fraud.
 - c. The number of cases where Zelle provided refunds to customers.
 - d. The total value of these refunds.
 - e. The number of cases where Zelle referred fraud to law enforcement or to federal or state bank regulators,

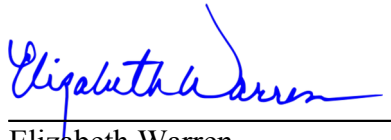
Thank you for your attention to this matter.

Sincerely,

¹⁶ Boston 25 News, ““They’re not robots talking to you. They’re actual people.” Zelle app users warn of latest scams,” Chris Flanagan, March 23, 2022, <https://www.boston25news.com/news/massachusetts/theyre-not-robots-talking-you-theyre-actual-people-zelle-app-users-warn-latest-scams/WJZVXE23JZFCTPBD5XOPZZXF6I/>.

¹⁷ Consumer Finance Monitor, “FDIC Consumer Compliance Supervisory Highlights looks at unauthorized EFTs, overdraft programs, re-presentment of unpaid transactions, and fair lending,” John L. Culhane, Jr., April 7, 2022, <https://www.consumerfinancemonitor.com/2022/04/07/fdic-consumer-compliance-supervisory-highlights-looks-at-unauthorized-efts-overdraft-programs-re-presentment-of-unpaid-transactions-and-fair-lending/>.

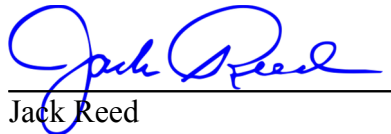
¹⁸ New York Times, “Fraud Is Flourishing on Zelle. The Banks Say It’s Not Their Problem,” Stacy Cowley and Lananh Nguyen, March 6, 2022, <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html>.



Elizabeth Warren
United States Senator



Robert Menendez
United States Senator



Jack Reed
United States Senator

EXHIBIT I

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 06/08/2022

TIME: 03:31:00 PM

DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman

CLERK: J. Phu

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2022-01255728-CU-FR-CJC** CASE INIT.DATE: 04/20/2022

CASE TITLE: **Tristan vs. Bank of America N.A**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

EVENT ID/DOCUMENT ID: 73778937

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Each party who has not paid the Complex fee of \$ 1,000.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The Initial Case Management Conference is scheduled for 09/16/2022 at 09:00 AM in Department CX105.

Plaintiff shall, at least five court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the CMC (Case management Statement) formused for non-complex cases (Judicial Council Form CM-110).

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 352. Plaintiff shall give notice of the Status Conference and the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

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 Failed to Warn Zelle Users of 'Extreme' Fraud Risks, Class Action Claims](#)
