

23STCV01554

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: David Cunningham III

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11 Attorneys for Plaintiffs and the Putative Class

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 COZETTE WILLNER, in her individual
 capacity, and on behalf of all others similarly
 15 situated,

16 Plaintiff,

17 vs.

18 BANK OF AMERICA CORPORATION;
 EARLY WARNING SERVICES, LLC DBA
 19 ZELLEPAY.COM.; and DOES 1-100,
 inclusive,

20 Defendants.
21

CIVIL ACTION NO. 23STCV01554

CLASS ACTION

COMPLAINT

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1 Through this Complaint, Plaintiff COZETTE WILLNER (“Plaintiff”), by and through his
2 undersigned attorneys, alleges against BANK OF AMERICA CORPORATION, EARLY
3 WARNING SERVICES, LLC DBA ZELLEPAY.COM., and DOES 1-100 (collectively,
4 “Defendants”), as follows:

5 **NATURE OF ACTION**

6 1. This action relates to a massive fraud committed by Defendants, whereby Defendants
7 fraudulently and illegally made, caused, and/or allowed unauthorized withdrawals of moneys from
8 class members’ Bank of America bank accounts using Zelle.

9 **JURISDICTION AND VENUE**

10 2. Defendants are within the jurisdiction of this Court in that they transact millions of
11 dollars of business in the State of California and in Los Angeles County. As a result, Defendants
12 have obtained the benefits of the laws of the State of California and its construction building materials
13 market.

14 3. Venue is proper in this County because Defendants have conducted substantial
15 business in this County, Plaintiff resides in this County, and the transactions in question occurred in
16 this County.

17 **THE PARTIES**

18 4. Plaintiff Cozette Willner is a resident of Los Angeles County in California.

19 5. Plaintiff is informed and believe and thereupon alleges that Defendant BANK OF
20 AMERICA CORPORATION (“BANK OF AMERICA”) is a corporation formed under the laws of
21 Delaware with its principal place of business in the State of North Carolina and transacts millions of
22 dollars per year of business in California, including in this County and other counties throughout
23 California.

24 6. Plaintiff is informed and believe and thereupon alleges that Defendant EARLY
25 WARNING SERVICES, LLC DBA ZELLEPAY.COM (“ZELLE”) is a corporation millions of
26 dollars per year of business transactions in California, including in this County and other counties
27 throughout California.

28 7. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

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1 associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so Plaintiffs
2 sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 Defendants is in some manner responsible for the conduct alleged herein. Upon discovering the true
4 names and capacities of these fictitiously named defendants, Plaintiff will amend this Complaint to
5 show the true names and capacities of these fictitiously named defendants.

6 8. Plaintiff is informed and believes and thereupon alleges that at all times mentioned,
7 each of the Defendants was (and still is) the employee, agent, partner, joint venturer, alter ego, and/or
8 co-conspirator of the other such defendants. At all times mentioned, a unity of interest in ownership
9 and other interests between each of such Defendants has existed such that any separateness ceased to
10 exist between them. The exercise of complete dominance and control over the other entities and their
11 properties, rights and interests, rendered such entities as mere shells and instrumentalities of each
12 other.

13 **FACTUAL ALLEGATIONS**

14 9. Defendant Bank of America is one of the largest banks in the world. With Bank of
15 America, customers have the ability to open bank accounts, both checking and savings accounts. As
16 the second largest bank in America, customers entrust Bank of America to hold and secure their
17 moneys and to release their moneys only upon the customer’s proper and express authorization to do
18 so.

19 10. Defendant Zelle is a mobile application that allows customers to transfer moneys from
20 their bank account to the bank account of another person without having to wire funds. On its website,
21 www.zellepay.com, Zelle claims that it offers a way to “Safely send money to friends and family, no
22 matter where they bank!” Zelle further claims that “Zelle® is a great way to send money to friends
23 and family, even if they bank somewhere different than you do. That means it’s super easy to pitch
24 in or get paid back for all sorts of things like coffee for your coworkers or dinner with
25 friends. Zelle® is already in lots of banking apps, so look for it in yours today.” With Zelle,
26 customers can make debit transactions and transfer moneys from their bank account to another
27 person’s bank account. Zelle connects with many of the largest banks, including Bank of America.

28 11. Customers who have both a Bank of America bank account and Zelle can easily

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1 transfer moneys from their Bank of America bank account to someone else’s bank account. Once a
2 transaction has been processed, the money is immediately withdrawn from the sender’s bank account
3 and immediately placed in the recipient’s bank account.

4 12. Plaintiff is informed and believes and thereupon alleges that during at least January
5 2023, and possibly earlier, Defendants were causing, allowed to be caused, and/or allowed
6 unauthorized withdrawals from customers’ Bank of America bank accounts using Zelle. The
7 withdrawals show as a Zelle transaction but were never authorized by the customer. Plaintiff is
8 informed and believes and thereupon alleges that the unauthorized withdrawals range from \$5.00 to
9 hundreds, or even thousands of dollars. Plaintiff is informed and believes that this occurred to
10 hundreds, if not thousands, people who had both a Bank of America account and Zelle. Plaintiff is
11 informed an believes that the unauthorized withdrawals were caused by Defendants’ internal system.

12 **PLAINTIFF’S EXPERIENCES**

13 13. On or about January 18, 2023, Defendants caused and/or allowed various unauthorized
14 Zelle withdrawals from Plaintiff Willner’s Bank of America bank account. The amounts of the
15 withdrawals are as follows: \$5.00, \$75.00, \$100.00, \$125.00, \$185.00, and \$192.00. Each of these
16 transactions contains the description “Zelle Transfer Conf#” followed by a unique code. Plaintiff
17 Willner did not initiate or authorize any of these transactions. Nevertheless, Defendants caused and
18 processed these unauthorized withdrawals from Plaintiff Willner’s bank account amounting to
19 \$682.00.

20 **CLASS ACTION ALLEGATIONS**

21 14. Plaintiff brings this case as a class action pursuant to California Code of Civil
22 Procedure § 382 on behalf of a putative class (the “Class” or “Class Members”) consisting of:

23 All California residents who had unauthorized Zelle withdrawals from their Bank of
24 America account at any time from four years prior to the filing of this Complaint (plus
25 any tolling) through trial (the “Class Period”).

26 15. Plaintiff reserves the right to amend the class definition or add any class or subclass
27 prior to seeking class certification.

28 16. **Numerosity.** Although Plaintiff does not know the exact number of members in the

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1 Class, Plaintiff is informed and believes and on that basis allege that due to the nature of the commerce
2 involved, the members of the Class are sufficiently numerous in number, most likely hundreds or
3 thousands of persons, that joinder of all class members is impracticable.

4 17. **Typicality.** Plaintiff’s claims are typical of the Class claims in that Plaintiff and the
5 Class members have both a Bank of America bank account and Zelle and have had unauthorized
6 transactions from their bank accounts due to Defendants’ deceptive, unlawful, fraudulent, and unfair
7 conduct.

8 18. **Existence of common questions of fact and/or law.** Numerous questions of law and
9 fact are common to the Class. Common questions, including, but not limited to, the following, will
10 predominate this litigation:

- 11 a. Whether Defendants have caused unauthorized transactions from consumers’
12 Bank of America bank accounts;
- 13 b. Whether Defendants have made misrepresentations and/or omissions
14 concerning their products and/or services, including those relating to safety
15 and privacy;
- 16 c. Whether Defendants have made misrepresentations and/or omissions
17 concerning the value, sponsorship, approval, characteristics, uses, benefits,
18 and/or qualities of their services and/or products;
- 19 d. Whether Defendants have made misrepresentations and/or omissions
20 concerning the standard, quality, or grade of their products and/or services;
- 21 e. Whether Defendants have made representations that a transaction confers or
22 involves rights, remedies, or obligations that it does not have or involve;
- 23 f. Whether Defendants advertise and/or market their products and/or services and
24 with intent not to sell it as advertised;
- 25 g. Whether Defendants have made representations that the consumer will receive
26 a rebate, discount, or other economic benefit, if the earning of the benefit is
27 contingent on an event to occur subsequent to the consummation of the
28 transaction;

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- 1 h. Whether Defendants have made misrepresentations the affiliation, connection,
- 2 or association with, or certification by, another;
- 3 i. Whether Defendants have violated the law by causing or allowing transactions
- 4 from class members’ bank accounts without authorization;
- 5 j. Whether Defendants were unjustly enriched;
- 6 k. The nature and extent of damages and other remedies to which the conduct of
- 7 Defendants entitle the class members;
- 8 l. Whether Defendants’ practices, policies, representations, concealments, and
- 9 non-disclosures violate the CLRA and/or the UCL;
- 10 m. Whether the Class is entitled to injunctive relief prohibiting the challenged
- 11 practice and enjoining such practices in the future;
- 12 n. Whether the Class is entitled to punitive damages; and
- 13 o. Whether Plaintiff and the Class are entitled to attorneys’ fees and expenses.

14 19. **Adequacy.** Plaintiff will fairly and adequately represent the interests of the Class in
 15 that Plaintiff is typical of absent class members and seeks to vigorously litigate the claims of the
 16 Class. Furthermore, Plaintiff has retained competent counsel experienced in class action litigation.
 17 Plaintiff’s counsel will fairly and adequately protect the interests of the Class.

18 20. This class action is superior to the alternatives, if any, for the fair and efficient
 19 adjudication of this controversy. The relief sought per individual class member is small given the
 20 burden and expense of individual prosecution of the potentially extensive litigation necessitated to
 21 prosecute the Class’s claims. Furthermore, it would be virtually impossible for Class members to
 22 seek redress on an individual basis. Even if Class members themselves could afford such individual
 23 litigation, the court system could not.

24 21. Individual litigation of the legal and factual issues raised by the conduct of Defendants
 25 would increase delay and expense to all parties and to the court system. The class action device
 26 presents far fewer management difficulties and provides the benefits of a single, uniform
 27 adjudication, economies of scale and comprehensive supervision by a single court. Given the similar
 28 nature of the Class members’ claims and the law applicable thereto, the Court and the parties will

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1 easily be able to manage a class action.

2 22. Prosecution of separate actions by individual class members would create the risk of
3 inconsistent or varying adjudications concerning Defendants’ conduct, establishing incompatible
4 standards of conduct for Defendants and absent class members.

5 23. Injunctive relief is appropriate as to the Class as a whole because Defendants have
6 acted or refused to act on grounds generally applicable to the Class.

7
8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

11 **(CAL. CIV. CODE § 1750 et seq.)**

12 **(Against All Defendants)**

13 24. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

14 25. Plaintiff and members of the Class are individuals who have purchased services from
15 Defendants for personal, family, or household purposes.

16 26. Defendants are “persons” as defined by Civil Code § 1761(c), and Plaintiff is a
17 “consumer,” as defined by Civil Code § 1761(d).

18 27. Defendants have violated and continue to violate Civil Code § 1770 by engaging in
19 unfair, fraudulent, deceptive, and unconscionable conduct, including, but not limited to, the
20 following:

21 a. Making misrepresentations and/or omissions concerning their products and/or
22 services, including with respect to safety and privacy.

23 b. Making misrepresentations and/or omissions concerning the value,
24 sponsorship, approval, characteristics, uses, benefits, and/or qualities of their services and/or
25 products;

26 c. Making misrepresentations and/or omissions concerning the standard, quality,
27 or grade of their products and/or services;

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1 d. Representing that a transaction confers or involves rights, remedies, or
2 obligations that it does not have or involve;

3 e. Advertising and marketing their products and/or services and with intent not
4 to sell it as advertised;

5 f. Representing that the consumer will receive a rebate, discount, or other
6 economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the
7 consummation of the transaction;

8 g. Misrepresenting the affiliation, connection, or association with, or
9 certification by, another.

10 28. A reasonable consumer would attach importance to Defendants' representations and
11 omissions.

12 29. Defendants intended to commit the aforementioned unlawful conduct. Defendants
13 are aware of their policies and practices, their representations and omissions made to Plaintiff and
14 class members, their contractual obligations, and the harm befallen upon Plaintiff and the Class for
15 their conduct.

16 30. Plaintiff has concurrently filed the declaration of venue required by Civil Code §
17 1780(d).

18 31. Pursuant to Civil Code § 1782, Plaintiff's counsel sent by certified mail, a notice
19 letter to Defendants demanding that within 30 days Defendants implement corrective action
20 including, but not limited to, refunding all moneys wrongfully and fraudulently deducted and/or
21 withdrawn from the money balance on consumers' bank accounts. If Defendants fail to implement
22 corrective action within the 30 days demanded, Plaintiff will amend this Complaint to include a
23 claim for damages.

24 32. As a result of Defendants' actions and conduct, as set forth herein, Plaintiff and the
25 Class have suffered injury-in-fact and have lost money or property in that they are unable to receive
26 the services they previously paid for and must incur charges to receive services they already paid
27 for.

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1 33. Pursuant to section 1770 of the California Civil Code, Plaintiff and the Class are
2 entitled temporary, preliminary, and permanent injustice relief enjoining Defendants from engaging
3 in the wrongful practices set forth herein.

4 34. Plaintiff engaged counsel to prosecute this action and is entitled to recover costs and
5 reasonable attorneys' fees according to proof at trial.

6
7 **SECOND CAUSE OF ACTION**
8 **VIOLATION OF UNFAIR COMPETITION ACT**
9 **(CAL. BUS. & PROF. CODE § 17200 et seq.)**

10 **(Against All Defendants)**

11 35. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

12 36. Defendants' conduct, as complained herein, is likely to deceive a reasonable
13 consumer, and members of the public are likely to be deceived by Defendants' practices and policies.

14 37. Defendants' conduct, as complained herein, constitutes unlawful conduct, in part,
15 because it violates the CLRA and constitutes wire fraud and bank fraud.

16 38. Defendants' conduct, as complained herein, is immoral, unethical, oppressive,
17 unscrupulous, and/or substantially injurious to consumers, such that the gravity of the harm to
18 Plaintiff and class members substantially outweighs the utility, if any, of Defendants' conduct.

19 39. Plaintiff requests that this Court enter such orders or judgments as may be necessary
20 to restore to any person in interest any money which may have been acquired by means of such
21 unfair practices as provided in Business and Professions Code § 17203 and Civil Code § 3345,
22 and/or, to the extent permitted by law, to require the disgorgement by Defendants of all revenues,
23 and benefits that may have been obtained by Defendants as a result of such fraudulent, unlawful,
24 and/or unfair business acts or practices, and for such other relief as set forth below. Plaintiff and
25 the Class seek an order requiring Defendants to make full restitution of all moneys wrongfully
26 obtained from Plaintiff and the Class.

27 40. Plaintiff and the Class have suffered, and will continue to suffer, irreparable injury if
28 Defendants are permitted to continue to engage in the conduct described herein. Pursuant to

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1 Business and Professions Code § 17203, Plaintiff and the Class are entitled temporary, preliminary,
2 and permanent injustice relief enjoining Defendants from engaging in the wrongful practices set
3 forth herein and requiring Defendants to adhere to their contractual obligations and provide Plaintiff
4 and the Class with laser hair treatment services without further charge.

5 41. Plaintiff engaged counsel to prosecute this action and is entitled to recover costs and
6 reasonable attorneys' fees according to proof at trial.

7 **THIRD CAUSE OF ACTION**

8 **FALSE AND MISLEADING ADVERTISING**

9 **(CAL. BUS. & PROF. CODE § 17500, et seq.)**

10 **(Against All Defendants)**

11 42. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

12 43. Defendants engaged in deceptive conduct, including deceptive, misleading, and/or
13 false omissions and representations relating to their products and/or services.

14 44. Defendants were aware, or by the exercise of reasonable case should have been
15 aware, that their omissions and representations were deceptive, misleading, and/or false.

16 45. As a result of Defendants' actions and conduct, as set forth herein, Plaintiff and the
17 Class have suffered injury-in-fact and have lost money or property as set forth herein.

18 46. Plaintiff requests that this Court enter such orders or judgments as may be necessary
19 to restore to any person in interest any money which may have been acquired by means of such
20 unfair practices as provided in Business and Professions Code § 17203 and Civil Code § 3345,
21 and/or, to the extent permitted by law, to require the disgorgement by Defendants of all revenues,
22 and benefits that may have been obtained by Defendants as a result of such fraudulent, unlawful,
23 and/or unfair business acts or practices, and for such other relief as set forth below. Plaintiff and the
24 Class seek an order requiring Defendants to make full restitution of all moneys wrongfully obtained
25 from Plaintiff and the Class.

26 47. Plaintiff and the Class have suffered, and will continue to suffer, irreparable injury if
27 Defendants are permitted to continue to engage in the conduct described herein. Pursuant to
28 Business and Professions Code § 17203, Plaintiff and the Class are entitled temporary, preliminary,

1 and permanent injustice relief enjoining Defendants from engaging in the wrongful practices set
2 forth herein and requiring Defendants to adhere to their contractual obligations and provide Plaintiff
3 and the Class with laser hair treatment services without further charge.

4 48. Plaintiff engaged counsel to prosecute this action and is entitled to recover costs and
5 reasonable attorneys' fees according to proof at trial.

6 **FOURTH CAUSE OF ACTION**

7 **RESTITUTION**

8 **(Against all Defendants)**

9 49. Plaintiff incorporates by reference all the above allegations as if fully set forth herein.

10 50. Defendants have benefited and have been unjustly enriched by the above-alleged
11 conduct to the detriment of Plaintiff and the Class.

12 51. Defendants have knowledge of this benefit, and have voluntarily accepted and retained
13 this benefit.

14 52. The circumstances as described herein are such that it would be inequitable for
15 Defendants to retain these ill-gotten benefits without refunding all moneys obtained by such wrongful
16 conduct to Plaintiff and the class members.

17 53. Plaintiff and the class members are entitled to the amount of Defendants' ill-gotten
18 gains, including interest, resulting from their unlawful, unjust and inequitable conduct as described
19 above.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, pray for
22 judgment against Defendants as follows:

- 23 1. For an order certifying the Class;
- 24 2. For an order appointing Esensten Law and Bisnar Chase as Class Counsel and Plaintiff
25 as Class Representative;
- 26 3. For an award of general damages according to proof;
- 27 4. For an award of treble damages according to proof;
- 28 5. For an award of special damages according to proof;

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- 1 6. For an award of punitive damages in an amount sufficient to deter and make an example
- 2 of Defendants;
- 3 7. For an award of restitution in an amount according to proof;
- 4 8. For disgorgement in an amount according to proof;
- 5 9. For a temporary restraining order, a preliminary injunction, and a permanent injunction
- 6 enjoining Defendants, and their agents, servants, employees and all persons acting under or in concert
- 7 with them, from engaging in the wrongful practices set forth herein;
- 8 10. For reasonable attorneys’ fees and costs incurred herein;
- 9 11. For an award of pre-judgment and post-judgment interest on all amounts awarded; and
- 10 12. For all general, special, and equitable relief to which the Plaintiffs and the members of
- 11 the Class(es) are entitled by law.

12
13 DATED: January 24, 2023

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16 By: *Jordan Esensten*
JORDAN S. ESENSTEN
Attorneys for Plaintiff and the Putative Class

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: January 24, 2023

ESENSTEN LAW

By: *Jordan Esensten*
JORDAN S. ESENSTEN
Attorneys for Plaintiffs and the Putative Class

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America, Zelle Under Fire Over Allegedly Unauthorized Account Withdrawals](#)
