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**MAJOR JURY CASE**  
**CLASS ACTION**  
**ASSESSMENT OF DAMAGES HEARING IS REQUIRED**



**Attorneys for Plaintiff, the Class, and Subclass**

**STEVEN CHECCHIA, on behalf of herself and all other similarly situated,**

**Plaintiff,**

**v.**

**BANK OF AMERICA, N.A.,**

**Defendant.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**TERM, 2021**

**NO:**

**CLASS ACTION COMPLAINT**

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

Lawyer Reference Service  
Philadelphia Bar Association

**AVISO**

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades y otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA

1101 Market Street, 11th Floor  
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ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR  
ASISTENCIA LEGAL.

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Plaintiff Steven Checchia (“Plaintiff”), on behalf of himself and all persons similarly situated, alleges the following based on personal knowledge as to allegations regarding the Plaintiff and on information and belief as to other allegations.

### **INTRODUCTION**

1. Plaintiff brings this action on behalf of himself and a class of all similarly situated consumers against Defendant Bank of America, N.A. (“BofA”), arising from the improper assessment of more than one fee, including non-sufficient funds fees (“NSF Fees”) and/or overdraft fees (“OD Fees”), on the same check (“Multiple Fees”).

2. BofA charges accountholders the following fees relevant to these allegations: (1) a \$35 NSF fee when there are insufficient funds to pay a check and it rejects the check; (2) a \$35 OD Fee when there are insufficient funds to pay a check and it accepts the check.

3. As alleged more fully below, it is a breach of BofA’s Account Documents (defined below) and reasonable consumer expectations for BofA to charge more than one \$35 NSF Fee and/or OD Fee on the same check, since the Account Documents explicitly states—and reasonable consumers understand—that the same check can only incur a single NSF or OD Fee.

4. While Defendant may generally assess contracted for account fees in any number, amount, or method it desires, it may not assess such fees in breach of its binding contracts with its accountholders.

5. Plaintiff, and other BofA customers, have been injured by BofA’s Multiple Fees practice. On behalf of himself and the Class, Plaintiff seeks damages, restitution and declaratory

relief for BofA's breach of contract and breach of good faith and fair dealing, and violation of North Carolina and Pennsylvania consumer protection laws.

### **JURISDICTION**

6. This Court has jurisdiction over this action and venue is proper based on BofA's substantial operations in Philadelphia County and the Plaintiff's transactions in Philadelphia County.

### **PARTIES**

7. Plaintiff Checchia is a citizen and resident of the Commonwealth of Pennsylvania. Plaintiff maintains a checking account at BofA.

8. Defendant BofA is a national bank with its headquarters and principal place of business located in Charlotte, NC, with branches located throughout Pennsylvania and in Philadelphia County. Among other things, BofA is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative class.

### **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

9. When a BofA checking account consumer writes a check but has insufficient funds in the account to cover that item, BofA's "Deposit Agreement" attached hereto as *Exhibit A* and the "Fee Schedule" attached hereto as *Exhibit B* (collectively "Account Documents") allow it to either approve the check into overdraft (and charges a \$35 OD Fee) or reject the check unpaid (and charges a \$35 NSF Fee).

10. In contrast to its Account Documents, however, BofA regularly assesses Multiple Fees on the same check.

11. Plaintiff does not dispute BofA's right to reject a check and charge a single NSF Fee or approve a check and charge a single OD Fee, but BofA unlawfully maximizes its already

profitable fee practice with deceptive practices that also violate the express terms of its Account Documents and consumer protection laws.

12. Unbeknownst to consumers, each time BofA reprocesses a check for payment after it was initially rejected for insufficient funds, BofA chooses to treat it as a new and unique item that is subject to yet another NSF Fee or OD Fee. But BofA's Account Documents never disclose that this counterintuitive and deceptive result could be possible and, in fact, suggests the opposite.

13. The Account Documents indicate that only a single NSF Fee or OD Fee will be charged per "item," however many times that item, or in this case, check, is reprocessed with no request from the customer to do so. A check initially rejected for insufficient funds, especially through no action by the customer, cannot and does not fairly become a new, unique item for fee assessment purposes.

14. BofA's Account Documents never discloses this practice. Rather, BofA's Account Documents indicate it will only charge a single NSF Fee on an item or per item.

**A. Plaintiff's Experience**

15. On January 13, 2017, Plaintiff wrote a check for \$75 on check numbered 109. Because Plaintiff had insufficient funds in his checking account, BofA rejected the check and charged Plaintiff a \$35 NSF Fee for doing so. Plaintiff does not dispute this initial fee, as it is allowed by BOFA's Account Documents.

16. Unbeknownst to Plaintiff, that very same check bearing check number 109 was processed again by BofA five days later, on January 18, 2017. This time, BofA paid the check into overdraft and charged Plaintiff a \$35 OD Fee for doing so. In sum, BofA charged Plaintiff \$70 in fees to process a single check for barely more than that amount.

17. Plaintiff took no affirmative action to reinitiate or resubmit the check, and he did

not write a new check. Rather, Plaintiff understood the check to be a single item as is laid out in BofA's Account Documents, capable at most of receiving a single NSF Fee (if BofA returned it) or a single OD Fee (if BofA paid it).

**B. The Imposition of Multiple Fees on a Single Check Violates BofA's Express Promises and Representations**

18. The Account Documents provide the general terms of Plaintiff's relationship with BofA, and therein BofA makes explicit promises and representations regarding how transactions will be processed, as well as when NSF Fees and OD Fees may be assessed.

19. The Account Documents contain explicit terms indicating that only an NSF Fee or OD Fee will only be assessed once per check, when in fact BofA regularly charges Multiple Fees per check even though a customer only requested the payment once.

20. At the time Plaintiff wrote the check, BofA's Deposit Agreement stated:

*Item means all orders and instructions for the payment, transfer or withdrawal of funds from an account. As examples, item includes: a check, substitute check, purported substitute check, electronic transaction (including an ACH transaction, ATM withdrawal or transfer, or point of sale transaction), draft, demand draft, remotely created check, remotely created consumer check, image replacement document, indemnified copy, preauthorized draft, preauthorized payment, automatic transfer, telephone-initiated transfer, Online Banking transfer or bill payment instruction, withdrawal slip, in-person transfer or withdrawal, cash ticket, deposit adjustment, or other order of instruction for the payment, transfer, or withdrawal of funds, or an image, digital image, or a photocopy of any of the foregoing.*

[...]

When we determine that you do not have enough available funds in your account to cover *a check* or other item, then we consider *the check* or other item an insufficient funds item...without notice to you, we either authorize or pay the insufficient funds item and overdraw your account (an overdraft item) or we decline or return the insufficient funds item without payment (a returned item).

Ex. A at 5, 12 (emphases added).

21. “Item” cannot mean each re-submission of the same check because it is defined to mean “all orders and instructions for the payment, transfer or withdrawal of funds” and there is no new order or instruction for payment of a re-submitted check. It is simply another attempt at the original order or instruction. Again, Plaintiff never wrote a second check.

22. Further, the relevant Fee Schedule in effect at the time Plaintiff wrote the check states that a *singular* fee will be assessed for *each* item:

Fee Category	Fee Name/Description	Fee Amount
<b>Overdraft Items (an overdraft item)</b>	Overdraft Item Fee	\$35.00 each item
<b>NSF: Returned Items (a returned item)</b>	NSF: Returned Item Fee	\$35.00 each item

Ex. B at 11.

23. The Fee Schedule makes clear that for all transaction types, including checks, only a single NSF Fee or OD Fee can be charged. This is yet another indication to reasonable consumers that the contract means a single NSF Fee or OD Fee may be charged per item.

24. The same “item” or “transaction” on an account cannot conceivably become a new one each time it is rejected for payment then reprocessed, especially when—as here— Plaintiff took no action to resubmit it.

25. There is zero indication anywhere in the Account Documents that the same “item” is eligible to incur Multiple Fees.

26. Even if BofA reprocesses an instruction for payment, it is still the same “item.” Its reprocessing is simply another attempt to effectuate an accountholder’s original check.

27. The disclosures described above never discuss a circumstance where BofA may assess Multiple Fees for a single check that was returned for insufficient funds and later reprocessed one or more times and returned again.

28. In sum, BofA promises that one \$35 NSF Fee or OD Fee will be assessed per check, and these terms must mean all iterations of the same instruction for payment. As such, BofA breached the contract when it charged more than one fee per check.

29. Reasonable consumers understand any given authorization for payment to be one, singular “item” or “transaction” as those terms are used in BofA’s Account Documents.

30. Taken together, the representations and omissions identified above convey to customers that all submissions for payment via check will be treated as the same “item,” which BofA will either approve (resulting in an overdraft item) or reject (resulting in a returned item) when it decides there are insufficient funds in the account.

31. Customers reasonably understand, based on the language of BofA’s Account Documents, that its reprocessing of checks are simply additional attempts to complete the original order or instruction for payment, and as such, will not trigger NSF Fees or OD Fees. In other words, it is always the same item or transaction.

32. For these reasons, the contract documents bar BofA from assessing more than one NSF Fees and OD Fees on the same “item.”

33. This practice is not universal in the banking industry. Major banks like Chase—

the largest consumer bank in the country—do not engage in the practice of charging more than one NSF or OD Fee on the same item when it is processed for payment multiple times.

34. Banks like BofA that employ this abusive practice know how to plainly and clearly disclose it. Indeed, other banks that do engage in this abusive practice disclose it expressly to their accountholders—something Defendant here never did.

35. For example, First Citizens Bank, a major institution in the Carolinas, engages in the same abusive practice as BofA, but at least expressly states:

Because we may charge a service fee for an NSF item each time it is presented, we may charge you more than one service fee for any given item. All fees are charged during evening posting. When we charge a fee for NSF items, the charge reduces the available balance in your account and may put your account into (or further into) overdraft.

(emphasis added).

36. First Hawaiian Bank engages in the same abusive practices as BofA, but at least currently discloses it in its online banking agreement, in all capital letters, as follows:

YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY BE CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND RESUBMISSION.

(emphasis added).

37. Not only did BofA misrepresent the truth about its fee practices in its account contract, BofA also fraudulently concealed its Multiple Fees practice from its customers, such as Plaintiff.

38. Specifically, BofA issued monthly statements to its accountholders that disguised and made impossible to discover its multiple fee practice.

39. Pursuant to federal law, Regulation E of the Electronic Funds Transfer Act, those

monthly statements are the primary disclosure a bank provides its accountholders regarding the assessment of OD Fees or NSF Fees on an account.

40. However, the design of BofA's bank statements made it impossible for Plaintiff to discover the truth about BofA's Multiple Fees practice.

41. As shown in the redacted bank statement provided to Plaintiff, attached hereto as *Exhibit C*, BofA places checks in a separate statement section; falsely shows checks as having been deducted from an account balance when they were not; lists OD Fees and NSF Fees in yet another section, and never states which fees were caused by which account transaction.

42. This is designed to make it impossible for reasonable consumers like Plaintiff to discover BofA's true Multiple Fees Practice.

43. Plaintiff did not and could not discover BofA's improper assessment of Multiple Fees on the same check due to the design of the bank statements issued by BofA.

### **CLASS ALLEGATIONS**

44. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Rule 1700 of the Pennsylvania Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of Rules 1702, 1708, and 1709.

45. The proposed "Classes" are defined as:

All Bank of America checking account holders in the United States who, during the applicable statute of limitations, were charged multiple NSF Fees and/or OD Fees on the same check (the "Nationwide Class").

All Bank of America checking account holders in Pennsylvania who, during the applicable statute of limitations, were charged multiple NSF Fees and/or OD Fees on the same check (the "Pennsylvania Subclass").

46. Plaintiff reserves the right to modify or amend the definition of the proposed Classes before the Court determines whether certification is appropriate.

47. Excluded from the Classes are BofA, its parents, subsidiaries, affiliates, officers and directors, any entity in which BofA has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

48. The members of the Classes are so numerous that joinder is impractical. The Class consist of at least hundreds of thousands of members, the identity of whom is within the knowledge of and can be ascertained only by resort to BofA's records.

49. There are common questions of law and fact common to the Classes and those common questions predominate over any questions affecting only individual class members.

50. Among the questions of law and fact common to the Classes are whether BofA:

- a. Breached contract provisions by charging Multiple Fees on the same "item";
- b. Breached its covenant of good faith and fair dealing with Plaintiff and other members of the Class through its BofA fee policies and practices;
- c. Violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law through its fee policies and practices;
- d. Violated the North Carolina Consumer Protection Law through its fee policies and practices;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory relief to which the Classes are entitled.

51. The claims of the representative Plaintiff are typical of the claims of the Classes in

that they arise out of the same wrongful BofA fee policies and practices. Plaintiff seeks to represent class members, who similar to Plaintiff, were charged improper and deceptive fees as alleged herein. The representative Plaintiff, like all class members, has been damaged by BofA's misconduct in that he has been assessed unfair and unconscionable BofA account fees. Furthermore, the factual basis of BofA's misconduct is common to all class members and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other class member.

52. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers and against financial institutions. Accordingly, Plaintiff is adequate representatives and will fairly and adequately protect the interests of the Classes.

53. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual class member's claim is small relative to the complexity of the litigation, and due to the financial resources of BofA, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the class members will continue to suffer losses and BofA's misconduct will proceed without remedy.

54. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might

otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**  
**(On Behalf of Plaintiff and the Classes)**

55. Plaintiff repeats paragraphs 1 through 56 above.

56. Plaintiff and BofA have contracted for bank account deposit, checking, ATM, and debit card services, as embodied in BofA's Account Documents.

57. The Account Documents prohibit BofA from charging Multiple Fees on a single check.

58. Therefore, BofA breached the terms of its account contract by charging these fees.

59. Additionally, under the laws of North Carolina, Pennsylvania and the other states where BofA does business, good faith is an element of every contract pertaining to the assessment of account fees. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

60. BofA has breached the covenant of good faith and fair dealing in the Account Agreement by charging Multiple Fees on a single check as alleged herein.

61. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the Account Agreement.

62. Plaintiff and members of the Classes have sustained damages as a result of BofA's breaches of the Account Documents and related breaches of the covenant of good faith and fair dealing.

**SECOND CLAIM FOR RELIEF**  
**Violations of North Carolina Consumer Protection Law**  
**(On Behalf of Plaintiff and the Nationwide Class)**

63. Plaintiffs repeat paragraphs 1 through 56 above.

64. As described herein, BofA's unconscionable and unfair actions regarding the assessment of Multiple Fees, including NSF and OD Fees, constitute unfair competition and unfair and deceptive trade practices as defined by N.C.G.S. § 75.1-1 et seq.

65. As described herein, the assessments are both unfair and deceptive, as they violate industry standards and offend public policy, and they deceive customers who do not expect the charges.

66. BofA's actions affected commerce in North Carolina, as many of its North Carolina customers were charged these unfair and deceptive fees.

67. Plaintiff relied upon Bank of America's representations that it would not charge Multiple Fees on a single check. This reliance was reasonable, as it was based upon both BofA's Account Documents, industry practice, and common sense.

68. Plaintiffs have been actually damaged as the direct and proximate result of BofA's unfair competition and unfair and deceptive trade practices.

69. Plaintiffs are entitled to recovery of treble damages and, in the discretion of the Court, reasonable attorneys' fees and costs by virtue of BofA's unfair and deceptive trade practices.

**THIRD CLAIM FOR RELIEF**  
**Violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law**

**(On Behalf of Plaintiff and the Pennsylvania Subclass)**

70. Plaintiff repeats paragraphs 1 through 56 above.

71. This claim is asserted on behalf of Plaintiff and the Pennsylvania Subclass of BofA customers who are Pennsylvania citizens and enjoy the protections of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq.

72. BofA engages in unfair business practices relating to the imposition of Multiple Fees on consumers, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. In particular, the wrongful conduct described herein violated 73 P.S. § 201-2(4)(v) (representing that goods or services have characteristics, uses, or benefits that they do not have), § 201-2(4)(xiv) (failing to comply with the terms of any written guarantee or warranty given to a buyer), and § 201-2(4)(xxi) (engaging in any other deceptive conduct which creates a likelihood of confusion or misunderstanding).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Class demand a jury trial on all claims so triable and judgment as follows:

- a. Certifying the proposed Classes;
- b. Declaring BofA's Multiple Fees policy and practice alleged herein to be wrongful, unfair and unconscionable;
- c. Restitution of all BofA Multiple Fees paid to BofA by Plaintiff and the members of the Classes, as a result of the wrongs alleged herein in an amount to be determined at trial;
- d. Disgorgement of the ill-gotten gains derived by BofA from its misconduct;
- e. Actual damages in an amount according to proof;
- f. Punitive and exemplary damages;

- g. Pre-judgment interest at the maximum rate permitted by applicable law;
- h. Treble damages;
- i. Costs and disbursements incurred in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- j. Such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Complaint that are so triable as a matter of right.

Dated: May 19, 2021

Respectfully submitted,

**GOLOMB & HONIK, P.C.**



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*\*Pro Hac Vice* Forthcoming

**VERIFICATION**

**STEVEN CHECCHIA** hereby states that he is the Plaintiff in this action and verifies that the statements made in the **CLASS ACTION COMPLAINT** filed on May 17, 2021 are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

DocuSigned by:



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**STEVEN CHECCHIA**

Date: 5/17/2021