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CV2022-005057

Attorneys for Plaintiff and the Putative Class

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

Robert Arant, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

Early Warning Services, LLC d/b/a/ ZELLE,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Robert Arant, individually and on behalf of all others similarly situated, hereby brings this Class Action Complaint against Defendant Early Warning Services, LLC d/b/a/ ZELLE (“Defendant” or “Zelle”) and alleges as follows:

INTRODUCTION

1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of similarly situated Zelle money transfer users who have been the victim of fraud on the Zelle service; who incurred losses due to fraud that have not been reimbursed by their banks or credit unions; and who were deceived by the marketing representations of Zelle into using its service,

1 despite the major risks associated therewith. In its rush to add users, Zelle markets the false
2 promise of a safe, secure and seamless money transfer experience.

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

5 3. Zelle encourages bank accountholders to sign up for the service by marketing itself
6 as a fast, safe and secure way for consumers to send money. This is false. In fact, there are huge,
7 undisclosed security risks of using the service, including from fraudsters who regularly exploit
8 the service.
9

10 4. Zelle's marketing representations never inform users that *consumers*—not Zelle
11 or the banks through whom money is transferred—bear the full risk of these grave security and
12 fraud threats.

13 5. Indeed, because of Zelle's extremely close relationship both with the seven U.S.
14 Banks that own and operate it, and the hundreds of other banks that are members of its network,
15 Zelle is fully aware that a) there is a major fraud problem on its platform; and b) the banks that
16 are a part of the network almost never reimburse victims of Zelle fraud for their losses.
17

18 6. As a result, users like Plaintiff unwittingly sign up for the Zelle service and later
19 end up with huge, unreimbursed fraud losses. Such users never would have signed up for Zelle
20 in the first place if they had known the extreme risks of signing up for and using the service—
21 including that the risks of fraud would not be covered by Zelle and its member banks.
22

23 7. These risks are known to Zelle and its member banks but is omitted from all of its
24 marketing.

25 8. Had Plaintiff and the Class members known of the true operation and risks of the
26 Zelle service, they would not have used the Zelle service.
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1 9. Plaintiff and the Class members have been injured by signing up for and using the
2 Zelle service. Plaintiff brings this action on behalf of himself, the putative Class, and the general
3 public. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction on behalf
4 of the general public to prevent Zelle and member banks from continuing to engage in its illegal
5 practices as described herein.

6 **PARTIES**

7
8 10. Plaintiff Robert Arant is a citizen and resident of Seattle, Washington.

9 11. Defendant Early Warning Services, LLC is a Delaware corporation with its
10 principal place of business in Scottsdale, Arizona.

11 **JURISDICTION AND VENUE**

12 12. The Superior Court has jurisdiction over this action pursuant to Ariz. Rev. Stat.
13 §22-201(B) and Art. 6, §14, Arizona Constitution. The amount in controversy exceeds the sum
14 or value of \$10,000 exclusive of interest, costs, and attorneys' fees.

15 13. Defendant is subject to personal jurisdiction in Arizona as its principal place of
16 business is in Scottsdale, Arizona.

17 14. Venue is proper in this Court pursuant to Ariz. Rev. Stat. § 12-401 because
18 Defendant resides in Maricopa County.

19 **FACTUAL ALLEGATIONS**

20 **A. Overview**

21
22 15. It is free to sign up with Zelle. During the quick sign-up process, which takes place
23 from within the user's bank's app or website, a user provides basic information to Zelle.

24 16. While Zelle provides a link to what it calls a "User Agreement" on its website, at
25 no time during the sign-up process on the bank's website or app do users like Plaintiff agree to
26 be bound by that document.
27

1 17. Signing up allows the fast transfer of account funds to other Zelle users.

2 18. Created in 2017 by the largest banks in the U.S. to enable instant digital money
3 transfers, Zelle is the country's most widely used money transfer service. Last year, people sent
4 \$490 billion in immediate payment transfers through Zelle.

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

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

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

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

17 23. Zelle knows full well that they have a widespread fraud problem on their hands,
18 but has failed to take steps to warn users of these risks—or protect users who fall prey to fraud.
19 Worse, Zelle knows full well that its member banks are not reimbursing users for fraud losses,
20 but has failed to take steps to warn users of this fact.

21 24. For example, a common scam involves a scammer impersonating a bank employee
22 and requesting that the accountholder transfer money to a different bank account for testing
23 purposes. Unsuspecting Zelle users, tricked into making a fraudulent transfer, in many cases send
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1 hundreds or thousands of dollars to fraudsters. Generally, such lost funds are never reimbursed
2 by Zelle member banks.

3 25. In another very common scheme, a Zelle user's phone is stolen and Zelle transfers
4 are made from the stolen phone to the fraudster.

5 26. In short, and unbeknownst to average Zelle users, the Zelle network has become a
6 preferred tool for fraudsters like romance scammers, cryptocurrency con artists and those who
7 use social media sites to advertise fake concert tickets and purebred puppies. Generally, such lost
8 funds are never reimbursed by Zelle member banks.
9

10 **B. Zelle Falsely Markets Itself as Safe and Secure Way to Transfer Money**
11 **and Fails to Warn About the Extreme Risks of Signing Up for and Using**
12 **the Service**

13 27. In its marketing and during the signup process, Zelle makes repeated promises that
14 it is a "fast, safe and easy way to send and receive money."

15 28. It also promises: "Move money in the moment. It's simple and secure – with lots
16 of people you know."

17 29. It also promises:

18 **Your money travels safely** from the minute you hit send to the minute it hits their
19 account. Straight from you to them. So you get peace of mind and so does your nanny,
20 your neighbor, and your friend Ned who sold you his old TV.

(emphasis added).

21 30. It goes on to promise that:

22 **The Zelle® app uses authentication and**
23 **monitoring features to make your payments more**
24 **secure. So whether you're using the Zelle® app or**
25 **using Zelle® through your bank or credit union's**
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1 mobile app or online banking, you'll have peace of
2 mind.

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4 31. But for the reasons described herein, use of the service is not “safe” or “secure.”

5 32. At no time in its marketing or during the sign-up process does Zelle warn potential
6 users of the true security risks and fraud loss risks of using its service.

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

9
10 34. Zelle misrepresents (and omits facts about) the true nature, benefits, and risks of
11 its service, functioning of which means that users are at extreme and undisclosed risk of fraud
12 when using Zelle. Had Plaintiff been adequately informed of these risks, he would not have used
13 Zelle.

14 35. Zelle’s marketing materials—including within the app, in app stores, and on Zelle’s
15 website—never disclose these risks and material facts, instead luring consumers to sign up for
16 and use the service with promises of ease and safety.

17
18 36. Zelle’s representations—which all users view during the sign-up process—are false
19 and contain material omissions.

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

23
24 **C. Plaintiff’s Experience**

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

1 39. For example, on March 7, 2022, a fraudster transferred \$2,000 from Plaintiff's bank
2 account using the Zelle service.

3 40. Plaintiff was seeking to purchase kittens from an online breeder. Plaintiff was
4 familiar with purchasing pets online as he found his previous cat from an online breeder.

5 41. Plaintiff contacted a fraudster masquerading as a cat breeder through a website
6 purporting to offer two Bengal kittens for \$2,000 total. The website was professional and well
7 designed.
8

9 42. After answering Plaintiff's questions about the kittens, the fraudster informed him
10 that payment would be accepted through Zelle.

11 43. Plaintiff had never used Zelle before then and had no idea of the rampant fraud on
12 the Zelle network. He downloaded the Zelle app, linked his personal bank account, and proceeded
13 to transfer \$2,000 using the Zelle service to the fraudster.
14

15 44. The following day, on March 8, 2022, the fraudster transferred an additional \$2,400
16 from Plaintiff's bank account using the Zelle service.

17 45. The fraudster claimed to reside in Tucson, Arizona, so he instructed Plaintiff to
18 transfer an additional \$1,400 to pay for "travel expenses" to send the kittens to Plaintiff in Seattle,
19 Washington. Then, the fraudster requested an additional \$1,000 to "microchip and vaccinate" the
20 kittens. As instructed, Plaintiff transferred both amounts via Zelle and the fraudster provided him
21 with a purported tracking number for the kittens.
22

23 46. In total, the fraudster transferred \$4,400 from Plaintiff's bank account using the
24 Zelle service over two days.

25 47. Soon after, Plaintiff checked the shipping status of the kittens with a tracking
26 number provided by the fraudster; the tracking number, however, was invalid. Plaintiff attempted
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1 to contact the fraudster for clarification, but the fraudster never responded. At this point, Plaintiff
2 realized he fell victim to fraud.

3 48. Plaintiff timely informed his bank of the fraud, but his bank refused to reimburse
4 him for the losses.

5 **CLASS ALLEGATIONS**

6 49. Pursuant to Ariz. R. Civ. P. 23, Plaintiff brings this action individually and as
7 representatives of all those similarly situated, on behalf of the below-defined Classes:
8

9 All persons who signed up for the Zelle Service and incurred
10 unreimbursed losses due to fraud (the “Class”).

11 All Washington persons who signed up for the Zelle Service and
12 incurred unreimbursed losses due to fraud (the “Washington Subclass”).

13 50. Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries,
14 employees, officers, agents, and directors. Also excluded are any judicial officers presiding over
15 this matter and the members of their immediate families and judicial staffs.

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

19 52. **Numerosity:** The members of the Class are so numerous that joinder of all
20 members would be unfeasible and impracticable. The precise membership of the Class is
21 unknown to Plaintiff at this time; however, it is estimated that the Class number is greater than
22 one hundred individuals. The identity of such membership is readily ascertainable via inspection
23 of Defendant’s books and records or other approved methods. Class members may be notified of
24 the pendency of this action by mail, email, internet postings, and/or publication.
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1 53. **Common Questions of Law or Fact:** There are common questions of law and fact
2 as to Plaintiff and all other similarly situated persons, which predominate over questions affecting
3 only individual Class members, including, without limitation:

- 4 a) Whether Zelle’s representations and omissions about its service are false,
5 misleading, deceptive, or likely to deceive;
6 b) Whether Zelle failed to disclose the fraud fee risks of using its service;
7 c) Whether Plaintiff and the Class members were damaged by Zelle’s conduct;
8 d) Whether Zelle’s actions or inactions violated the consumer protection statute
9 invoked herein; and
10 e) Whether Plaintiff are entitled to a preliminary and permanent injunction enjoining
11 Defendant’s conduct.
12

13 54. **Predominance of Common Questions:** Common questions of law and fact
14 predominate over questions that affect only individual members of the Class. The common
15 questions of law set forth above are numerous and substantial and stem from Zelle’s uniform
16 practices applicable to each individual Class member. As such, these common questions
17 predominate over individual questions concerning each Class member’s showing as to his or her
18 eligibility for recovery or as to the amount of his or her damages.
19

20 55. **Typicality:** Plaintiff’s claims are typical of the claims of the other members of the
21 Class because, among other things, Plaintiff and all Class members were similarly injured
22 through Zelle’s uniform misconduct as alleged above. As alleged herein, Plaintiff, like the
23 members of the Class, were deprived of monies that rightfully belonged to them. Further, there
24 are no defenses available to Zelle that are unique to Plaintiff.
25

26 56. **Adequacy of Representation:** Plaintiff is an adequate class representative because
27 they are fully prepared to take all necessary steps to represent fairly and adequately the interests
28

1 of the members of the Class, and because their interests do not conflict with the interests of the
2 other Class members they seek to represent. Moreover, Plaintiff’s attorneys are ready, willing,
3 and able to fully and adequately represent Plaintiff and the members of the Class. Plaintiff’s
4 attorneys are experienced in complex class action litigation, and they will prosecute this action
5 vigorously.

6 57. **Superiority:** The nature of this action and the claims available to Plaintiff and
7 members of the Class make the class action format a particularly efficient and appropriate
8 procedure to redress the violations alleged herein. If each Class member were required to file an
9 individual lawsuit, Zelle would necessarily gain an unconscionable advantage since it would be
10 able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly
11 superior financial and legal resources. Moreover, the prosecution of separate actions by
12 individual Class members, even if possible, would create a substantial risk of inconsistent or
13 varying verdicts or adjudications with respect to the individual Class members against Zelle, and
14 which would establish potentially incompatible standards of conduct for Zelle and/or legal
15 determinations with respect to individual Class members which would, as a practical matter, be
16 dispositive of the interests of the other Class members not parties to adjudications or which would
17 substantially impair or impede the ability of the Class members to protect their interests. Further,
18 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
19 individual prosecution considering all of the concomitant costs and expenses attending thereto.
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23 **FIRST CAUSE OF ACTION**
24 **Violations of Arizona’s Consumer Fraud Act (“CFA”)**
25 **Ariz. Rev. Stat. Ann. § 44-1521, *et seq.***
26 **(On behalf of Plaintiff and the Nationwide Class)**

27 58. Plaintiff repeats and realleges the above allegations as if fully set forth herein.
28

1 59. The Arizona Consumer Fraud Act lists prohibited unlawful activities:

2 The act, use, or employment by any person of any deception, deceptive
3 act or practice, fraud, false pretense, false promise, misrepresentation,
4 or concealment, suppression or omission of any material fact with intent
5 that others rely upon such concealment, suppression or omission, in
6 connection with the sale or advertisement of any merchandise whether
7 or not any person has in fact been misled, deceived, or damaged thereby,
8 is declared to be an unlawful practice.

9 A.R.S. § 44-1522(A).

10 60. Defendant's deceptive conduct related to material misrepresentations and/or
11 material misrepresentations that it provides safe and secure electronic money transfers through
12 its Zelle service violates the CFA.

13 61. Defendant knew or should've known that its misrepresentations and omissions
14 were false, deceptive, and misleading.

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

17 63. Defendant's acts and practices, as alleged above, are unfair and deceptive and had,
18 and continue to have, the capacity to deceive and injure consumers.

19 64. Plaintiff relied on Defendant's misrepresentations.

20 65. Had Plaintiff known the true risks of using Defendant's Zelle service, he never
21 would have signed up for and used the Zelle service.

22 66. As a direct and proximate result of Defendant's deceptive acts and practices,
23 Plaintiff and Class members suffered and will continue to suffer actual damages in the amount of
24 fraud-induced losses incurred via Defendant's Zelle service.

25 **SECOND CAUSE OF ACTION**

26 **Violations of Washington's Consumer Protection Act ("CPA")**

27 **Wash. Rev. Code § 19.86.010, *et seq.***

28 **(On behalf of Plaintiff and the Washington Class)**

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

1 68. The CPA prohibits “[u]nfair methods of competition and unfair or deceptive acts
2 or practices in the conduct of any trade or commerce.” RCW 19.86.020.

3 69. Plaintiff and members of the Washington Class are “persons” within the meaning
4 of RCW 19.86.010(1).

5 70. Defendant is a “person” within the meaning of RCW 19.86.010(1).

6 71. Defendant’s common courses of conduct, as alleged herein, are unfair and
7 deceptive and had, and continue to have, the capacity to deceive a substantial portion of the
8 public.
9

10 72. Defendant’s common courses of unfair and deceptive conduct occur in trade or
11 commerce and impact the public interest because Defendant’s Zelle service is in the business of
12 providing electronic money transfer services to tens of thousands of consumers in Washington.
13 Thousands of Washingtonians have suffered and will continue to suffer injury by Defendant’s
14 unfair and deceptive acts and practices.
15

16 73. Defendant’s common courses of conduct offend an established public policy of
17 secure electronic money transfers in the marketplace, and constitute immoral, unethical,
18 oppressive, and unscrupulous activities that are substantially injurious to consumers.

19 74. Defendant’s common courses of conduct caused injury to the business or property
20 of Plaintiff and the Washington Class.

21 75. Defendant’s common courses of conduct have misled Plaintiff and the Washington
22 Class and will continue to mislead them in the future.
23

24 76. As a result of Defendant’s unfair and deceptive practices, Plaintiff and the
25 Washington Class have been damaged in amounts to be determined at trial and pursuant to RCW
26 19.86.090, Plaintiff and the Washington Class is entitled to recover such damages, including
27 interest, as well as three times actual damages (up to \$25,000), attorneys’ fees and costs..
28

1 77. Under RCW 19.86.090, Plaintiff and the Washington Class seek an order enjoining
2 Defendant from engaging in the deceptive and unlawful acts and practices described herein.

3 78. Plaintiff and the Washington Class is also entitled to additional equitable relief as
4 the Court deems appropriate, including but not limited to disgorgement for the benefit of the
5 Washington Class of all or part of ill-gotten gains Defendant has received in connection with the
6 acts described herein.

7
8 **PRAYER FOR RELIEF**

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

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

13 B. Declaring that Zelle's policies and practices as described herein constitute a
14 violation of Arizona's Consumer Fraud act and/or Washington's Consumer Protection Act;

15 C. Enjoining Zelle from the wrongful conduct as described herein;

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

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

19 F. Punitive and exemplary damages;

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

21 H. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in
22 connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant
23 to applicable law and any other basis; and
24

25 I. Awarding such other relief as this Court deems just and proper.
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DEMAND FOR JURY TRIAL

1
2 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this
3 Class Action Complaint that are so triable.

4 Dated: April 20, 2022

Respectfully submitted,

SHAMIS & GENTILE, P.A.

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6
7 By: /s/ Andrew Shamis

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