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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

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

4 **Consumer’s Liability for Unauthorized Transfers**

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

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

15 If you do NOT tell us within two business days after you learn of the loss or theft of
16 your card or code, and we can prove we could have stopped someone from using your
17 card or code without your permission if you had told us, you could lose as much as
18 \$500.

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

25 ***Note:** These liability rules are established by Regulation E, which does not apply to
26 business deposit accounts. For personal deposit accounts, our liability policy
27 regarding unauthorized debit card or ATM card transactions, and unauthorized Online
28 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.*

[...]

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

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

Telephone: 1.800.432.1000

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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.

C. Plaintiff’s Experience

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.

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

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

6 50. As the fraudster requested, Plaintiff transferred \$150 via Zelle for application fees.
7 Shortly thereafter, the fraudster informed Plaintiff that her application was “approved” and to
8 finalize obtaining the apartment, Plaintiff needed to also transfer via Zelle the security deposit of
9 \$800 and first-month’s rent of \$1,200. Eager to secure the rental, Plaintiff transferred via Zelle
10 an additional \$2,000 to the fraudster.

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

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

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

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

25 **CLASS ALLEGATIONS**

26 55. Plaintiff brings this action individually and as representatives of all those similarly
27 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
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
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1 individual Class members, even if possible, would create a substantial risk of inconsistent or
2 varying verdicts or adjudications with respect to the individual Class members against Defendant,
3 and which would establish potentially incompatible standards of conduct for Defendant and/or
4 legal determinations with respect to individual Class members which would, as a practical matter,
5 be dispositive of the interests of the other Class members not parties to adjudications or which
6 would substantially impair or impede the ability of the Class members to protect their interests.
7 Further, the claims of the individual members of the Classes are not sufficiently large to warrant
8 vigorous individual prosecution considering all of the concomitant costs and expenses attending
9 thereto.
10

11
12 **FIRST CAUSE OF ACTION**
13 **Violation of California’s Unfair Competition Law (“UCL”)**
14 **Cal. Bus. & Prof. Code § 17200, *et seq.***
15 **(Asserted on Behalf of the Classes)**

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

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

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

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

26 63. A business act or practice is “unfair” under the UCL if it offends an established
27 public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to
28

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
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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
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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 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.

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1 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

16 G. Punitive and exemplary damages;

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

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

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

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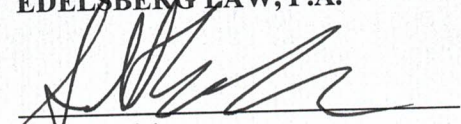
DEMAND FOR JURY TRIAL

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. Kalief
Sophia Goren Gold

Attorneys for Plaintiff and the Putative Class