

1 Jeffrey D. Kalief (SBN 238293)
2 *jkaliel@kalielpllc.com*
3 **KALIEL GOLD PLLC**
4 1100 15th Street., NW, 4th Floor
5 Washington, D.C. 20005
6 Tel: (202) 350-4783

7 Sophia Goren Gold (SBN 307971)
8 *sgold@kalielgold.com*
9 **KALIELGOLD PLLC**
10 950 Gilman Street, Suite 200
11 Berkeley, California 94710
12 Tel: (202) 350-4783

13 Scott Edelsberg (330090)
14 *scott@edelsberglaw.com*
15 **EDELSBERG LAW, P.A.**
16 1925 Century Park East, Suite 1700
17 Los Angeles, CA 90067
18 Telephone: (305) 975-3320

19 *Attorneys for Plaintiff and the Proposed Class*

20
21
22
23
24
25
26
27
28
**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

BRIGITTE LEBER and GLORIMAR
FONTANEZ, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 8:23-cv-00140-DOC-ADS

**FIRST AMENDED CLASS ACTION
COMPLAINT**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Brigitte Leber and Glorimar Fontanez (“Plaintiffs”) bring this complaint, by and through
2 their attorneys and on behalf of all others similarly situated, against Defendant Bank of America, N.A.
3 (“Bank of America,” “BofA,” or the “Bank”) and allege upon information and belief as follows:

4 **INTRODUCTION**

5 1. The Zelle money transfer system is rife with fraud—fraud that places all Zelle users at an
6 acute and immediate risk. Billions of dollars of fraudulent transactions are processed by the service each
7 year. Victims of Zelle fraud, like Plaintiffs, are often left devastated by such fraud, which can drain
8 hundreds or thousands of dollars from their bank accounts.

9 2. But when Zelle fraud victims turn to Bank of America for help, the Bank has a simple,
10 repeated, bad faith response: it is your fault, you are on your own, and we will not help.

11 3. The Bank’s corporate policy of “blaming the victim” is good business for the Bank. As a
12 partial owner of Zelle (along with several other of America’s largest banks), the Bank has a huge incentive
13 to get as many of its customers as possible to sign up for and use the Zelle service for payments and money
14 transfers: the more of its accountholders it can convince to sign up for and use Zelle, the more the Bank
15 saves by avoiding transaction payments to *other* payment networks. Accordingly, the Bank aggressively
16 markets the Zelle service to its accountholders, repeatedly urging accountholders to sign up for Zelle every
17 time they log in to online banking or use the mobile app.

18 4. But the marketing of the Zelle service by Bank of America, including during the quick,
19 rushed process by which Bank of America accountholders sign up for Zelle in the Bank’s mobile banking
20 app and website, contains materially deceptive representations that the service is “safe” and material
21 omissions regarding the acute and immediate risk of fraud. Those representations and omissions, which
22 Plaintiff relied upon, are false and misleading.

23 5. Unlike other commonly used consumer payment systems—credit cards, debit cards, even
24 Paypal—***Zelle has no consumer fraud protections, money transfers are immediate and irrevocable, and***
25 ***the Bank will provide no help in the case of fraud.*** These essential, material facts about Zelle are omitted
26 from marketing about Zelle promulgated by Bank of America, for a simple reason: no reasonable consumer
27 would sign up for and use the service if these facts were fairly disclosed.

PARTIES

16. Plaintiff Brigitte Leber is, and at all times mentioned herein a natural person, individual citizen and resident of Lake Forest, California.

17. Plaintiff Glorimar Fontanez is, and at all times mentioned herein a natural person, individual citizen and resident of Buffalo, New York.

18. Bank of America, N.A. is and was, at all relevant times to this lawsuit, a nationally-chartered bank with its principal place of business in Charlotte, North Carolina. BofA operates banking centers and conducts business throughout the State of California.

ZELLE – THE FAVORITE APP OF FRAUDSTERS AND A MONEYMAKER FOR THE BANK

19. Created in 2017 by America’s largest banks¹ to enable digital money transfers, Zelle comes embedded in banking apps and is now America’s most widely used money transfer service, outpacing its closest rival (Venmo) by \$260 billion in transfers in 2021.²

20. About 1.8 billion payments — totaling \$490 billion — were sent by consumers and businesses through the Zelle Network in 2021, according to the Early Warning Services. Total dollars transferred were up 59% from 2020.

21. Nearly 18 million people have been hit by "widespread fraud" on money transfer apps, according to a letter sent in late April to Zelle's network operator Early Warning Services by U.S. Sens. Elizabeth Warren of Massachusetts, Robert Menendez of New Jersey, and Jack Reed of Rhode Island.³

22. "Zelle’s biggest draw — the immediacy of its transfers — also makes scams more effective and 'a favorite of fraudsters,' as consumers have no option to cancel a transaction even moments after authorizing it," the letter stated.

23. The 1,700 banks and credit unions who are members of the Zelle network, including BofA, know full well that they have a widespread fraud problem on their hands, but have misrepresented and

¹ Bank of America, Capital One, JPMorgan Chase, PNC, BB&T (now Truist), U.S. Bank and Wells Fargo.

² *Fraud is Flourishing on Zelle. The Banks Say It’s Not Their Problem*, The New York Times (March 6, 2022) <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last visited September 6, 2022).

³ Letter from Elizabeth Warren, Robert Menendez, Jack Reed, Sen., U.S. Cong., to Al Ko, CEO, Early Warning Services (April 2, 2022).

1 failed to take steps to warn their accountholders of these risks—or protect their accountholders who fall
2 prey to fraud.

3 24. The rampant fraud on Zelle is only escalating, according to an October 2022 senate report.
4 Data provided by several banks revealed the rapidly increasing extent of fraud on the platform. The four
5 banks that reported the relevant data received scam and fraud claims in excess of \$90 million in 2020, and
6 are on pace to receive scam and fraud claims in excess of \$255 million in 2022.⁴

7 25. In short, and unbeknownst to average Zelle users, but fully known to the Bank, the Zelle
8 network has become a preferred tool for fraudsters like romance scammers, cryptocurrency con artists and
9 those who use social media sites to advertise fake concert tickets and purebred puppies—or simply for
10 those who steal phones and computers and use their access to drain money from accounts via Zelle.

11 26. As one U.S. Senator said to CEOs of some of the banks that own Zelle: “Zelle is not safe.
12 You built the system, you profit from every transaction on the system and you tell people that it is safe.
13 But when someone is defrauded, you claim that’s the customer’s problem,” said Senator Elizabeth Warren,
14 during a Senate Banking Committee hearing in September 2023.

15 27. Fraudsters and scammers have turned to Zelle as their favorite service. The service seems
16 designed precisely to meet their fraudulent needs, since transfers are immediate and unrecoverable. There
17 is an additional design feature of Zelle that makes it a fraudster’s favorite: one can become a Zelle user
18 and recipient *without revealing their true identity*.

19 28. Led by Idaho Attorney General Lawrence Wasden and Oregon Attorney General Ellen
20 Rosenblum, a bipartisan coalition of thirty-three (33) attorneys general wrote the Consumer Financial
21 Consumer Protection Bureau (“CFPB”), calling for stronger consumer safeguards for money sharing
22 platforms and apps like Zelle. The letter, written in response to the CFPB’s request for comments on its
23 inquiry into “Big Tech Payment Platforms,” noted a rise in complaints against popular payment apps
24 including Zelle. The letter highlighted that: “[m]any consumers have been scammed out of hundreds or
25 thousands of dollars by other users of these payment platforms [like Zelle]. *Scammers are attracted to*

26
27
28 ⁴ “Facilitating Fraud: How Consumers Defrauded on Zelle are Left High and Dry by the Banks that Created It,” Office of Sen. Elizabeth Warren.

1 *real-time payment platforms, in large part, because they do not need to reveal their true identity to set*
2 *up an account”* (emphasis added).

3 29. As a result, crooks are using Zelle and other apps to rob consumers when listing fake
4 puppies to sell, advertising phony apartments or homes to rent, threatening utility service cut-off without
5 immediate transfer of money, or offering extra income from wrapping a personal car in an advertisement.⁵

6 30. A common version of the utility scam involves fraudsters, posing as utility company
7 employees, initially contacting customers via text message, then by phone call and asking them to make
8 missed payments via Zelle.

9 31. Another common scam: a prospective buyer supposedly wants to buy an item listed on
10 Facebook Marketplace but then claims that the seller needs to upgrade his Zelle app to accept money from
11 their "business account" for the big-ticket purchase to go through, according to a June, 2022 alert by the
12 Better Business Bureau. The scammer supposedly puts up \$300 and sends you screenshots of his Zelle
13 app as proof. Then, the scammer pressures you into paying him back.⁶

14 32. Fraudsters posing as friends and family is one of the primary scams perpetuated on Zelle.
15 And yet in the limited circumstances in which the Bank provided any usage guide to Zelle, it suggested
16 that users use Zelle to send to friends and family members.

17 33. Zelle is plagued with fraud, including repeat, well-known, and common scams, such as the
18 ones mentioned above, that Bank of America was aware of but never warned its customers about.

19 34. Fraud incidents are rarely "one and done" events, and bad actors come back time and again
20 until the compromised organization puts the right controls in place.

21 35. "Scammers go where it's easy to get the money. Zelle is their current mechanism to drain
22 consumer accounts," warned Ed Mierzwinski, PIRG Education Fund's senior director of federal consumer
23

24
25 ⁵ Letter from Ellen F. Rosenblum Oregon Attorney General, and Lawrence Wasden, Idaho Attorney
26 General to Rohit Chopra, Director, Consumer Financial Protection Bureau (December 20, 2021),
27 [https://www.doj.state.or.us/wpcontent/uploads/2021/12/State-Attorneys-General-Comment-on-CFPBs-](https://www.doj.state.or.us/wpcontent/uploads/2021/12/State-Attorneys-General-Comment-on-CFPBs-Inquiryinto-Big-Tech-Payment-Platforms-2021.pdf)
28 [Inquiryinto-Big-Tech-Payment-Platforms-2021.pdf](https://www.doj.state.or.us/wpcontent/uploads/2021/12/State-Attorneys-General-Comment-on-CFPBs-Inquiryinto-Big-Tech-Payment-Platforms-2021.pdf) (last accessed November 21, 2022).

⁶ Better Business Bureau, *BBB Scam Alert: Crafty New Scam Targeting Facebook Marketplace Sellers*
(June 24, 2022), [https://www.bbb.org/article/scams/27212-scam-alert-how-to-spot-shady-buyerson-](https://www.bbb.org/article/scams/27212-scam-alert-how-to-spot-shady-buyerson-facebook-marketplace)
[facebook-marketplace](https://www.bbb.org/article/scams/27212-scam-alert-how-to-spot-shady-buyerson-facebook-marketplace) (last accessed November 21, 2022).

1 programs. "The scammers are taking advantage of consumers because the banks are letting
2 them," Mierzwinski said. "My basic advice is don't use these apps."⁷

3 36. The unique, misrepresented, and undisclosed architecture of the Zelle payment system and
4 BofA's own fraud policies means—again, unlike other payment options commonly used by American
5 consumers—that virtually any money transferred for any reason via Zelle is gone forever, without recourse,
6 reimbursement or protection for victimized accountholders.

7 37. Craigslist, PayPal, and Venmo faced early criticism for leaving users vulnerable to fraud.
8 In response, each made changes. Craigslist, for example, added a warning about scams on every sale listing.
9 PayPal increased the protections it offers on some digital sales and provided a detailed disclosure about
10 what transactions it will and won't protect.

11 38. And Venmo—which, like Zelle, does not protect users if a seller does not deliver what they
12 promised—upgraded its security policies in 2015 to better detect fraud, including by notifying customers
13 when someone adds an email address or new device to their account. The Federal Trade Commission later
14 criticized the company for not having those protections in place from the start.

15 39. Bank of America, however, did nothing to stop the problem or sufficiently warn users of
16 the problem prior to the lawsuit filed by Plaintiff, for fear of suppressing new users and use of the service
17 by existing users, and because of its financial interests.

18 40. On information and belief, BofA uses Zelle to insulate itself from financial liability for
19 fraudulent and unauthorized transactions.

20 41. Banks and credit unions have a huge financial incentive to offer customers Zelle as part of
21 their wider suite of banking services. Indeed, Early Warning Services (which operates Zelle) pitches Zelle
22 to financial institutions with data claiming that "customers using Zelle are more profitable and stay with
23 the financial institution longer."⁸

24
25 ⁷ Tompor, Susan, *DTE impersonators drained Rochester Hills woman's checking account using Zelle app*,
26 Detroit Free Press (June 30, 2022), <https://www.freep.com/story/money/personal-finance/susan-tompor/2022/06/30/utility-shutoff-scam-stole-cash-via-zelle/7714138001/> (last accessed September 7,
27 2022).

28 ⁸ *Zelle® Closes 2020 with Record \$307 Billion Sent on 1.2 Billion Transactions*, (March 19, 2021)
<https://www.zellepay.com/press-releases/zeller-closes-2020-record-307-billion-sent-12-billion-transactions> (last accessed February 6, 2022).

1 42. Zelle saves money for banks and credit unions as they spend less in other transaction costs,
2 for example, on stocking ATMs with cash, as the head of Enterprise Payments at BofA noted about Zelle.⁹

3 43. Zelle also saves participating financial institutions money by minimizing the fees the banks
4 and credit unions are charged for competitor digital payment apps and helps reduce other costly physical
5 services like paper checks.

6 44. Banks also viewed Zelle as an entry point to drive members to their mobile app to maintain
7 a central role in their financial lives.

8 45. Ultimately, banks offer Zelle to attract and retain customers, and when their customers use
9 it, financial institutions like Bank of America profit.

10 **BANK OF AMERICA’S FALSE AND MISLEADING ZELLE MARKETING AND DECEPTIVE**
11 **SIGN-UP PROCESS LURES ACCOUNTHOLDERS TO SIGN UP FOR AND USE ZELLE**

12 Mass Marketing

13 46. Zelle was introduced to the American public with a massive advertising blitz starting in
14 2018. Bank of America and partner banks marketed Zelle as a safer alternative to other instant payment
15 apps “because it’s backed by the banks.”

16 47. Marketing for Zelle is jointly designed and promulgated by Zelle and member banks. The
17 advertisements exploit accountholders’ existing trust in their financial institutions and focus on reinforcing
18 that it’s a trusted bank-backed app: “We do our own campaigns and we also work closely with banks and
19 credit unions to give them materials and messaging to reach their customers.” Stated Melissa Lowry, Vice-
20 President of Marketing and Branding at Early Warning Services, ***“People can hear about Zelle from their***
21 ***banks and credit unions that they already know and trust.”***¹⁰

22
23
24 ⁹ *What’s Zelle? Banks hope commercials get customers to notice the app*, Reuters, (January 29, 2018)
25 <https://www.reuters.com/article/us-usa-banks-payments-zelle/whats-zelle-banks-hope-commercials-get-customers-to-notice-the-app-idUSKBN1FI0GB> (last visited February 6, 2023).

26 ¹⁰ *Zelle’s Melissa Lowery: ‘Beyond awareness, we’re trying to show how we make everyday better,’ Tear*
27 *Sheet* (March 21, 2019), <https://tearsheet.co/podcasts/zelles-melissa-lowry-beyond-awareness-were-trying-to-show-how-we-make-everyday-better> (last accessed February 16,
28 2023).

1 48. BofA and Zelle leveraged consumer trust of their existing financial institution to attract
2 users: “Trust is at the heart of the consumer payment relationship,” said Ravi Loganathan, Head of Business
3 Intelligence at Early Warning Services. “Our research showed that new segments of consumers engaged
4 in a P2P payment for the first time because it was offered from their known and trusted mobile banking
5 environment[.]”¹¹

6 49. Whether the consumer wants it or not, Zelle comes integrated into BofA’s mobile app and
7 online banking website, unlike other peer-to-peer payment apps which require downloading a third-party
8 app.

9 50. Moreover, BofA’s embedding of Zelle into its mobile app and website deceives consumers
10 into perceiving Zelle as an extension of their traditional banking services: “In our research, we learned that
11 people who are peer-to-peer skeptics are those resistant to using something outside traditional banking,”
12 said Rose Corvo, Chief Administrative Officer for Early Warning. “The fact that they have it in their
13 banking app — that gets through the safety barriers in mind.”

14 51. In other words, Zelle and BofA marketed Zelle with a fundamental pitch: we are your
15 trusted financial institution, and we would not offer you a product that was not as “safe” as other products
16 offered by Bank of America.

17 52. Aggressive marketing touted Zelle’s safety and security. In one TV commercial that aired
18 in January 2018, performer Daveed Diggs from the Broadway show Hamilton rapped, “You can send
19 money safely cause that’s what it’s for / It’s backed by the banks so you know it’s secure.”

20 53. Plaintiffs recall viewing this advertisement and understood the promise of “safety” and
21 “backed by the banks” to refer to fraud and dispute resolution protection as existed with other BofA
22 traditional payment methods like debit cards and credit cards.

23 54. The general public and its leaders also reasonable understood the Zelle “safety” promises
24 to refer to fraud protection. As Senator Elizabeth Warren said to CEOs of some of the banks that own Zelle,
25 during a Senate Banking Committee hearing in September 2022: “Zelle is not safe. You built the system,
26

27 ¹¹ *Zelle® Study Finds Growing Use of Digital Payments Across Generations* (July 11, 2018),
28 <https://www.zellepay.com/press-releases/zelle-study-finds-growing-use-of-digital-payments-across-generations> (last accessed February 16, 2023).

1 you profit from every transaction on the system and you tell people that it is safe. But when someone is
2 defrauded, you claim that’s the customer’s problem.”

3 Marketing During the Use of the BofA Mobile App and Website and During Zelle Sign-up

4 55. It is free to sign up with Zelle, and Zelle is integrated into BofA’s websites and mobile app.

5 56. There is no way to disable or remove Zelle from BofA’s website or mobile app.

6 57. Accountholders sign up for Zelle after they have already become BofA accountholders—
7 often, years later.

8 58. During the Zelle sign-up process, users are not affirmatively provided with agreements or
9 disclosures previously provided at the time they opened their BofA account.

10 59. Bank of America’s mobile app and online banking website feature numerous invitations
11 and advertisements to sign up for and use the Zelle service.

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

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

17 62. Plaintiffs recall viewing both these statements prior to signing up for and using Zelle and
18 understood them to refer to fraud and dispute resolution protection as existed with other BofA traditional
19 payment methods like debit cards and credit cards.

20 63. In 2017, the BofA website featured a page devoted to explaining and marketing Zelle. That
21 page directed consumers to the Zelle sign-up process and expressly said: “**You are not liable for**
22 **fraudulent Online and Mobile Banking transactions** when you notify the bank within 60 days of the
23 transaction first appearing on your statement and comply with security responsibilities.” (emphasis added).

24 64. The Zelle FAQs available on the website reiterated those promises:

25 **What is Zelle®?**

26 [...]

27 **Is it secure?**

1 Yes, with our Bank of America Mobile Banking Security Guarantee, you are
2 protected by the same security you're used to where **you will not be liable for**
3 **fraudulent transactions (when reported promptly)** and we will help keep your
information safe.

4 65. The Zelle FAQs urged consumers to download its mobile app and send money with Zelle
5 promising: "**It's secure**: As always, you are not responsible for transactions you didn't authorize."

6 66. This marketing statement shows even the Bank uses "secure" to refer not merely to basic
7 technological functions of Zelle, but to fraud protection.

8 67. It was reasonable for Plaintiffs to understand those promises to mean that, like other
9 commonly used consumer payment options, they would be provided protection in the event of fraud.

10 68. At no time in its marketing or during the sign-up process does BofA warn potential users of
11 the true security risks of using the Zelle service—including the immediate and acute risk of fraud, the
12 dangerous architecture of the system (described above) and the risk that fraudulent losses will never be
13 reimbursed by BofA.

14 69. The Bank misrepresents (and omits facts about) the true nature, benefits, and risks of the
15 Zelle service, functioning of which means that users are at extreme and undisclosed risk of fraud when
16 using Zelle. Had Plaintiffs been adequately informed of these risks, they would not have signed up for or
17 used Zelle.

18 70. BofA prominently touts Zelle to its accountholders as a secure, free and convenient way to
19 make money transfers. However, the marketing (including during the sign-up process) misrepresents and
20 omits a key fact about the service that is unknown to accountholders: that there is virtually no recourse for
21 consumers to recoup losses due to fraud. Indeed, unlike virtually every other payment method commonly
22 used by American consumers—debit cards, credit cards, and even Paypal—there is a no protection for
23 accountholders who are victims of fraud, and virtually no recourse for accountholders attempting to recoup
24 losses due to fraud.

25 71. The unique, misrepresented, and undisclosed architecture of the Zelle payment system
26 means—again, unlike other payment options commonly used by American consumers—that virtually any
27 money transferred for any reason via Zelle is gone forever, without recourse, reimbursement or protection.
28 This too is omitted from all marketing, including during the sign-up process.

1 81. Zelle is never mentioned by name, not even a single time, in the Deposit Agreement that
2 accountholders receive when opening a Bank of America account.

3 82. With respect to transactions *not* governed by Regulation E, the Agreement states:

4 Review Statements and Report Suspected Problems Immediately

5 You must promptly review the notices, statements and other communications, along with
6 any accompanying checks and other items, we send you. You must also report problems or
7 **unauthorized transactions** to us immediately, by calling the number for customer service
on your statement.

8 *See Agreement*, at 40 (emphasis added).

9 83. The Agreement further indicates:

10 What Are Problems and Unauthorized Transactions

11 Problems and **unauthorized transactions include suspected fraud**; missing deposits;
12 **unauthorized electronic transfers**; missing, stolen, or unauthorized checks or other
13 withdrawal orders; checks or other withdrawal orders bearing an unauthorized signature,
14 endorsement or alteration; illegible images; encoding errors made by you or us; and
counterfeit checks. This is not a complete list.

15 *Id.*, at 42 (emphasis added).

16 84. The Agreement further states:

17
18 Except as otherwise expressly provided elsewhere in this agreement, if you fail to notify us
19 in writing of suspected problems or **unauthorized transactions** within 60 days after we
20 make your statement or items available to you, you agree that: • you may not make a claim
against us relating to the unreported problems or **unauthorized transactions**, regardless of
the care or lack of care we may have exercised in handling your account;

21 [...]

22 If you report to us that **an unauthorized transaction has occurred on your account, we**
23 **may require you to confirm your report in writing**. We may also require that you give
24 us a statement, under penalty of perjury, about the facts and circumstances relating to your
25 report and provide such other information and proof as we may reasonably request. If you
26 assert a claim regarding a problem, you must cooperate with us in the investigation and
27 prosecution of your claim and any attempt to recover funds. You also agree to assist us in
28 identifying and in seeking criminal and civil penalties against the person responsible. You
must file reports and complaints with appropriate law enforcement authorities. If you fail
or refuse to do these things, we will consider your failure or refusal to be your ratification
of the defect in the statement or item, unauthorized transaction or other problem and your
agreement that we can charge the full amount to your account.

1
2 *Id.*, at 43.

3 85. With respect to transactions governed by Regulation E, the Agreement provides:

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

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

9 [. . .]

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

12 If you do NOT tell us within two business days after you learn of the loss or theft of your
13 card or code, and we can prove we could have stopped someone from using your card or
14 code without your permission if you had told us, you could lose as much as \$500. Also, if
15 your statement shows transfers that you did not make, including those made by card, code
16 or other means, tell us at once. If you do not tell us in writing within 60 days after the
17 statement was mailed to you, you may not get back any money you lost after the 60 days if
we can prove that we could have stopped someone from taking the money if you had told
us in time. If a good reason (such as a long trip or hospital stay) kept you from telling us,
we will extend the time periods.

18 *Note: These liability rules are established by Regulation E, which does not apply to business*
19 *deposit accounts. For personal deposit accounts, our liability policy regarding*
20 *unauthorized debit card or ATM card transactions, and unauthorized Online Banking*
21 *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.

22 [. . .]

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

25 If you believe your card, PIN or other code is lost or stolen, or learned by an unauthorized
26 person, or that someone has transferred or may transfer money from your account without
your permission, notify us immediately by calling the number listed below.
Telephone: 1.800.432.1000

27 You can also write to us at: Bank of America, P.O. Box 53137, #7405, Phoenix, AZ 85072-
28 3137

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

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

5 [...]

6 **In Case of Errors or Questions about your Electronic Transfers You
7 May Sign into Online Banking to Report the Error Promptly, or**

8 Call or write us at the telephone number or address below, as soon as you can, if you think
9 your statement or receipt is wrong, or if you need more information about a transfer listed
10 on the statement or receipt.

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

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

22 *Id.*, at 60-61.

23 86. These provisions are and were reasonably understood by Plaintiffs to mean that Plaintiffs
24 would not be liable for electronic funds transfers effectuated by fraud.

25 87. As alleged with specificity herein, BofA misrepresented fraud protections in its Deposit
26 Agreement. BofA adopted an unreasonable and unfair understanding of the Agreement's term
27 "unauthorized."

28 88. That term reasonably encompasses all transactions occurring as a result of fraud. In other
words, no fraud-induced transaction can reasonable be considered "authorized."

89. BofA unfairly and improperly considers fraudulent Zelle transactions to be "authorized,"
thus shirking fraud protection promises it otherwise makes in the Agreements.

90. Moreover, BofA has adopted an investigations apparatus that almost always rejects valid
claims.

PLAINTIFF LEBER’S FACTUAL ALLEGATIONS

1
2 91. When Plaintiff Leber signed up for Zelle she was not informed that Zelle’s service had a
3 significant “catch” and that significant monetary losses could result from signing up for the service—or
4 that those losses almost never are reimbursed by BofA.

5 92. For example, on or about October 15, 2021, a fraudster transferred approximately \$468.00
6 from Plaintiff’s personal bank account using the Zelle service.

7 93. Plaintiff received an email stating that she was pre-approved for a \$5,000.00 loan from a
8 purported lender called Myerson Lending Group.

9 94. A fraudster acting as a loan officer for Myerson Lending Group communicated with
10 Plaintiff and sent her various documents, including a loan agreement, outlining the loan’s terms and
11 conditions, disbursement, and repayment schedule.

12 95. In order to secure the loan, the loan officer asked Plaintiff to deposit \$468 via Zelle as
13 collateral.

14 96. After Plaintiff transferred \$468 via Zelle, the loan officer informed Plaintiff that she needed
15 to transfer more funds as her initial collateral payment was insufficient.

16 97. At this point, Plaintiff requested to be refunded the \$468 because she did not have additional
17 funds to send another payment as the fraudster requested.

18 98. The fraudster informed her that it would take approximately 30 days to process the refund.

19 99. However, Plaintiff was never refunded, the purported loan officer stopped responding, and
20 the Myerson Lending Group’s website was taken down.

21 100. Plaintiff reported the fraud to BofA, but the Bank refused to even open a claim and informed
22 Plaintiff that it does not refund or reimburse for scams.

23 101. Despite Plaintiff timely informing BofA of the fraud, BofA refused to help Plaintiff.

PLAINTIFF FONTANEZ’S FACTUAL ALLEGATIONS

24
25 102. When Plaintiff Fontanez signed up for Zelle she was not informed that Zelle’s service had
26 a significant “catch” and that significant monetary losses could result from signing up for the service—or
27 that those losses almost never are reimbursed by BofA.

28 103. For example, on November 3, 2021, a fraudster transferred approximately \$750.00 from

1 Plaintiff's personal bank account using the Zelle service.

2 104. Plaintiff Fontanez was attempting to secure an apartment online.

3 105. A fraudster masquerading as a landlord's agent, requested Plaintiff Fontanez send \$750.00
4 via Zelle as a deposit for the apartment.

5 106. After transferring the money, Plaintiff Fontanez requested additional information from the
6 fraudster, who stopped responding to Plaintiff.

7 107. Plaintiff reported the fraud to BofA, but the Bank refused to even open a claim and informed
8 Plaintiff that there was nothing it could do.

9 108. Despite Plaintiff timely informing BofA of the fraud, BofA refused to help Plaintiff.

10 **CLASS ALLEGATIONS**

11 109. Plaintiffs bring this action on behalf of themselves and on behalf of all other persons
12 similarly situated, on behalf of the below-defined Class:

13 All persons who: a) had a bank account with BofA and were induced via
14 fraud to perform a Zelle transfer; b) alerted BofA of the fraudulent transfer;
15 and c) did not have the fraudulent transfer amount(s) credited by BofA (the
16 "Nationwide Class")

17 All persons in California who: a) had a bank account with BofA and were
18 induced via fraud to perform a Zelle transfer; b) alerted BofA of the
19 fraudulent transfer; and c) did not have the fraudulent transfer amount(s)
20 credited by BofA (the "California Class")

21 All persons in New York who: a) had a bank account with BofA and were
22 induced via fraud to perform a Zelle transfer; b) alerted BofA of the
23 fraudulent transfer; and c) did not have the fraudulent transfer amount(s)
24 credited by BofA (the "New York Class")

25 110. Excluded from the Class are BofA's officers, directors, and employees; any entity in which
26 BofA has a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and
27 assigns of BofA. Further excluded from the Class are members of the judiciary to whom this case is
28 assigned, their families, and members of their staff.

1 111. **Numerosity**: The members of the Class are so numerous that joinder of all of them is
2 impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, based on
3 information and belief, the Class consists of thousands of individuals.

4 112. **Commonality**: There are questions of law and fact common to the Class, which
5 predominate over any questions affecting only individual Class Members. These common questions of law
6 and fact include, without limitation:

7 a. Whether Plaintiff and the Class Members lost money that was transferred from their
8 account via Zelle;

9 b. Whether Plaintiff and the Class Members were customers of BofA at the time they
10 lost money;

11 c. Whether BofA's representations and omissions about Zelle are false, misleading,
12 decepetive, or likely to deceive;

13 d. Whether BofA failed to disclose the risks of using the Zelle service;

14 e. Whether BofA's conduct was "unlawful" as that term is defined in the UCL;

15 f. Whether BofA's conduct was "unfair" as that term is defined in the UCL;

16 g. Whether BofA's actions or inactions violated the consumer protection statutes
17 invoked herein; and

18 h. Whether Plaintiff and the Class are entitled to injunctive relief.

19 113. **Typicality**: Plaintiff's claims are typical of those of other Class Members because Plaintiff
20 was a victim of the Zelle scam by a third party who caused a withdrawal of funds from her BofA account
21 to occur through the BofA/Zelle mobile application, after disputing that unauthorized transaction, Plaintiff
22 was informed by BofA that the unauthorized transaction would ultimately not be reversed.

23 114. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the
24 interests of Class Members. Plaintiff's Counsel are competent and experienced in litigating consumer class
25 actions.

26 115. **Predominance**: BofA has engaged in a common course of conduct toward Plaintiff and
27 Class Members, in that all were induced into allowing a third party to make unauthorized withdrawals on
28 their BofA accounts using Zelle. The common issues arising from BofA's conduct affecting Class

1 Members set out above predominate over any individual issues. Adjudication of these common issues in a
2 single action has important and desirable advantages of judicial economy.

3 116. **Superiority**: A class action is superior to other available methods for the fair and efficient
4 adjudication of the controversy. Class treatment of common questions of law and fact is superior to multiple
5 individual actions or piecemeal litigation. Absent a Class action, most Class Members would likely find
6 that the cost of litigating their individual claims is prohibitively high and would therefore have no effective
7 remedy. The prosecution of separate actions by individual Class Members would create a risk of
8 inconsistent or varying adjudications with respect to individual Class Members, which would establish
9 incompatible standards of conduct for BofA. In contrast, the conduct of this action as a Class action
10 presents far fewer management difficulties, conserves judicial resources and the parties' resources, and
11 protects the rights of each Class Member.

12 117. BofA has acted on grounds that apply generally to the Class, so that class certification is
13 appropriate.

14 118. All Members of the proposed Class are readily ascertainable. BofA has access to consumer
15 reporting of fraudulent and/or unauthorized transactions on their books and records. Using this information,
16 Class Members can be identified and ascertained for the purpose of providing notice.

17 119. **The Proposed Class Satisfies the Prerequisites for Injunctive Relief**. Defendant has
18 acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final
19 injunctive and equitable relief with respect to the Class as a whole. Plaintiff remains interested in using
20 Zelle to transfer account funds in the future; there is no way for Plaintiff and the Class to know when or if
21 Defendant will cease deceptively misrepresenting the true risks of the Zelle service.

22 120. Specifically, Defendant should be ordered to provide customers with sufficient, prominent
23 disclosures regarding fraud, common scams, and its policies regarding reimbursement of fraudulent
24 transfers *prior* to their decision to sign up for and use Zelle.

25 121. Defendant's ongoing and systemic practices makes injunctive relief with respect to the
26 Class appropriate.

27 122. **Notice**: Plaintiff anticipates providing direct notice to the Class for purposes of class
28 certification, via U.S. Mail and/or email, based upon BofA's and/or BofA's agents' records.

1
2 130. Plaintiff Leber realleges and incorporates herein by reference the allegations contained in
3 all preceding paragraphs, and further allege as follows:

4 131. The UCL defines “unfair business competition” to include any “unlawful, unfair, or
5 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus.
6 & Prof. Code § 17200.

7 132. The UCL imposes strict liability. Plaintiff need not prove that BofA intentionally or
8 negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices
9 occurred.

10 ***“Deceptive” Prong***

11 133. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members
12 of the public.

13 134. BofA’s practices, as described herein, constitute “fraudulent” business practices in violation
14 of the UCL because, among other things, BofA’s marketing regarding Zelle indicates the Bank will protect
15 against fraudulent losses incurred using the Zelle service. Moreover, BofA concealed the security risks of
16 using the Zelle service, including the risk of fraud and the risk that fraudulent losses will never be
17 reimbursed by BofA as a matter of secret policy, is a practice that is likely to deceive a consumer acting
18 reasonably under the circumstances, to the consumer’s detriment.

19 ***“Unfair” Prong***

20 135. A business practice is “unfair” under the UCL if it offends an established public policy or
21 is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and that unfairness
22 is determined by weighing the reasons, justifications and motives of the practices against the gravity of the
23 harm to the alleged victims.

24 136. BofA’s actions constitute “unfair” business practices because, as alleged above, it declined
25 to reverse fraudulent charges on the accounts of Plaintiff and Class Members, despite marketing
26 representations and contract promises.

27 137. The harm to Plaintiff and Class Members grossly outweighs the utility of BofA’s practices
28 as there is no utility to practices of BofA.

1 ***“Unlawful” Prong***

2 138. A business act or practice is “unlawful” under the UCL if it violates any other law or
3 regulation.

4 139. BofA’s acts and practices alleged above constitute unlawful business acts or practices as
5 they have violated sections of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§
6 17500, and sections 1770(a)(5) and (a)(9), of the California Consumer Legal Remedies Act (“CLRA”),
7 Cal. Civ. Code § 1750, *et seq., infra*, as described in Plaintiff’s Second and Third Cause of Action below.

8 140. Defendant’s business practices have misled Plaintiff and the Class and will continue to
9 mislead them in the future.

10 141. As a direct and proximate result of Defendant’s unfair, fraudulent, and/or unlawful
11 practices, Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant’s
12 fraudulent conduct is ongoing and present a continuing threat to Class members that they will be deceived
13 into signing up and using Zelle without the benefit of the full knowledge of its true nature and risks.

14 142. Pursuant to the UCL, Plaintiff and the Class are entitled to preliminary and permanent
15 injunctive relief and order BofA to cease this unfair and unlawful competition, as well as disgorgement
16 and restitution to Plaintiff and the Class of all the revenues associated with this unfair and unlawful
17 competition, or such portion of said revenues as the Court may find applicable.

18 **SECOND CAUSE OF ACTION**
19 **Violation of California’s False Advertising Law (“FAL”)**
20 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
21 **(Asserted on Behalf of Plaintiff Leber and the California Class)**

22 143. Plaintiff Leber repeats and realleges the above allegations as if fully set forth herein.

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

1 145. BofA’s material misrepresentations and omissions alleged herein violate Bus. & Prof. Code
2 § 17500.

3 146. BofA knew or should have known that its misrepresentations and omissions were false,
4 deceptive, and misleading.

5 147. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff and Class
6 Members, on behalf of the general public, seeks an order of this Court enjoining BofA from continuing to
7 engage, use, or employ their practice of misrepresenting the Zelle service.

8 148. Further, Plaintiff and Class Members seek an order requiring BofA to disclose such
9 misrepresentations, and additionally request an order awarding Plaintiff restitution of the money
10 wrongfully acquired by BofA by means of said misrepresentations.

11 149. Additionally, Plaintiff and the Class seek an order requiring BofA to pay attorneys’ fees
12 pursuant to Cal. Civ. Code § 1021.5.

13
14 **THIRD CAUSE OF ACTION**

15 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**

16 **Cal. Civ. Code § 1750, *et seq.***

17 **(Asserted on Behalf of the Plaintiff Leber and the California Class)**

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

19 151. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California
20 Civil Code § 1750, *et seq.* Plaintiff and each member of the proposed Class are “consumers” as defined
21 by California Civil Code § 1761(d). Defendant’s marketing of Zelle to consumers were “transactions”
22 within the meaning of California Civil Code § 1761(e). Defendant’s offering electronic payment services
23 via Zelle to Plaintiff and the Class are “services” within the meaning of California Civil Code § 1761.

24 152. Defendant violated and continues to violate the CLRA by engaging in the following
25 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which
26 were intended to result in, and did result in, the use of the Zelle service:

27 a. “Representing that goods or services have . . . characteristics . . . that they do not have”
28 (a)(5);

b. “Advertising goods or services with intent not to sell them as advertised” (a)(9); and

1 153. Specifically, BofA advertises to customers that Zelle is “safe” and “secure,” but this is false
2 because of the rampant risk of fraud on the platform and Defendant’s refusal to reimburse consumers for
3 fraudulent Zelle transactions.

4 154. At no time does BofA disclose the true nature of Zelle to consumers; instead, it repeatedly
5 conceals and misrepresents this material information throughout its marketing and advertising of Zelle.

6 155. Pursuant to § 1782(a) of the CLRA, Plaintiff’s counsel notified Defendant in writing by
7 certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the problems
8 associated with the actions detailed above and give notice to all affected consumers of Defendant’s intent
9 to act. Defendant failed to agree to rectify the problems associated with the actions detailed above and give
10 notice to all affected consumers within 30 days of the date of written notice, as proscribed by §1782,
11 Accordingly, Plaintiff seeks actual, punitive and statutory damages, and injunctive relief as appropriate
12 against Defendant.

13
FOURTH CAUSE OF ACTION

14 **Violation of North Carolina Unfair Trade Practices Act (“NCUTPA”)**
15 **N.C. Gen. Stat. Ann. §§ 75-1.1, et seq.**
16 **(Asserted on Behalf of Plaintiffs and the Nationwide Class)**

17 156. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

18 157. The North Carolina Unfair Trade Practices Act (“NCUTPA”), makes unlawful “unfair
19 methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting
20 commerce.” N.C. Gen. Stat. Ann. § 75-1.1(a).

21 158. BofA advertised, offered, or sold goods services in North Carolina and engaged in trade or
22 commerce directly or indirectly affecting the people of North Carolina, as defined by N.C. Gen. Stat. Ann.
23 § 75-1.1(b), by offering the Zelle money transfer services through its website and mobile app.

24 159. As alleged herein, BofA, violated the NCUTPA by knowingly and intentionally
25 representing in marketing materials that it provides “safe” and “secure” money transfer services via Zelle
26 through its website and mobile app.
27
28

1 160. Moreover, as alleged herein, BofA, knowingly and intentionally concealed and failed to
2 disclose material facts regarding Zelle in violation of the NCUTPA. Specifically, BofA omitted from all
3 its marketing the material security risks of using the Zelle service, including the risk of fraud and the risk
4 that fraudulent losses will never be reimbursed by BofA as a matter of uniform policy due to its unilateral
5 and unreasonable decision that “fraud” only means transfers initiated by someone other than the
6 accountholder.
7

8 161. BofA’s practice of refusing to reimburse its accountholders’ for fraudulent Zelle
9 transactions is deceptive and unfair because of BofA’s marketing representations that Zelle transfers from
10 consumers’ accounts are safe and secure and because of its marketing and contractual promises which
11 indicate accountholders will not be liable for fraudulent transfers, if they timely report the fraud.
12

13 162. By knowingly and intentionally misrepresenting, omitting, concealing, and failing to
14 disclose material facts regarding use of the Zelle service, as detailed above, BofA engaged in one or more
15 unfair or deceptive business practices prohibited by the NCUTPA.
16

17 163. Defendant’s misrepresentations and omissions regarding the Zelle service were made to
18 Plaintiffs and the Nationwide Class members in a uniform manner.
19

20 164. Defendant’s unfair or deceptive acts or practices, including its misrepresentations,
21 concealments, omissions, and suppression of material facts, as alleged herein, had a tendency or capacity
22 to mislead and create a false impression in consumers’ minds, and were likely to and, in fact, did deceive
23 reasonable consumers, including Plaintiffs and the Nationwide Class members.
24

25 165. The facts regarding Defendant’s Zelle service that Defendant knowingly and intentionally
26 misrepresented, omitted, concealed, and/or failed to disclose would be considered material by a reasonable
27 consumer, and they were, in fact, material to Plaintiffs and the Nationwide Class members.
28

1 166. The harm to Plaintiffs and the Class outweighs the utility of BofA’s practices. There were
2 reasonably available alternatives to further BofA’s legitimate business interests, other than the misleading
3 and deceptive conduct described herein.

4 167. Defendant’s business practices have misled Plaintiffs and the proposed Nationwide Class
5 and will continue to mislead them in the future.

6 168. Plaintiffs and Nationwide Class members relied on Defendant’s misrepresentations.

7 169. Plaintiffs and Nationwide Class members had no way of discerning that Defendant’s
8 representations were false and misleading, or otherwise learning the facts that Defendant had concealed or
9 failed to disclose. Plaintiffs and Nationwide Class members did not, and could not, unravel Defendant’s
10 deception on their own.

11 170. Had Plaintiffs known the true risks of using the Zelle service, they never would have signed
12 up for and used the Zelle service through BofA’s website and mobile app.

13 171. BofA’s actions affected commerce in North Carolina and nationwide, as many BofA
14 customers incurred fraud losses via Zelle.

15 172. Plaintiffs reasonably relied upon BofA’s deceptive misrepresentations regarding its fraud
16 protections. Had Plaintiffs known that they Zelle transfers were not protected by the Bank’s fraud
17 protections and “Zero liability” promises, they would not have used the Zelle service to transfer account
18 funds.

19 173. As a direct and proximate result of Defendant’s deceptive and unfair conduct, Plaintiffs and
20 Nationwide Class members suffered and will continue to suffer actual damages. Defendant’s deceptive and
21 unfair conduct is ongoing and present a continuing risk of future harm to Plaintiffs and the Nationwide
22 Class.

1 174. Plaintiffs and the Nationwide Class members seek an order enjoining Defendant’s unfair and
2 deceptive acts or practices in violation of the NCUTPA and awarding actual damages, treble damages,
3 costs, attorneys’ fees, and any other just and proper relief available pursuant to the NCUTPA.

4
5 **FIFTH CAUSE OF ACTION**
6 **Violation of New York Consumer Fraud Act**
7 **NYGBL § 349, *et seq.***
8 **(Asserted on Behalf of Plaintiff Fontanez and the New York Class)**

9 175. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

10 176. BofA’s practice of misleading and failing to disclose to accountholders the true risks of
11 using the Zelle service, and failing to refund erroneous and fraudulent Zelle transfers despite its marketing
12 and contractual promises violates New York General Business Law § 349 (“NYGBL § 349”).

13 177. NYGBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade,
14 or commerce, or in the furnishing of any service in the state of New York.

15 178. As one of the largest banks in the United States with multiple branch locations in New York,
16 BofA conducted business, trade or commerce in New York State.

17 179. In the conduct of its business, trade, and commerce, and in furnishing services in New York,
18 BofA’s actions were directed at consumers.

19 180. In the conduct of its business, trade, and commerce, and in furnishing services in New York,
20 BofA engaged in deceptive, unfair, and unlawful acts or practices, in violation of N.Y. Gen. Bus. Law §
21 349(a) by misrepresenting material facts, pertaining to the sale and/or furnishing of banking services to the
22 New York Class by misrepresenting (and failing to disclose) to accountholders the true risks of using the
23 Zelle service, by misrepresenting its fraud protections and “Zero liability” promises, and failing to refund
24 accountholders for erroneous and fraudulent Zelle transfers despite its marketing and contractual promises.

25 181. BofA systematically engaged in these deceptive, misleading, and unlawful acts and
26 practices, to the detriment of Plaintiff Fontanez and members of the New York Subclass.

27 182. BofA willfully engaged in such acts and practices and knew that it violated NYGBL § 349,
28 or showed reckless disregard for whether it violated NYGBL § 349.

1 183. As a direct and proximate result of BofA’s deceptive trade practices, Plaintiff and members
2 of the New York Subclass were injured and suffered actual damages.

3 184. BofA’s marketing and contractual representations of Zelle’s safety and security and its fraud
4 protections are material.

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

9 186. As a result of BofA’s violations of NY GBL § 349, Plaintiff and the New York Subclass
10 have lost and will continue to lose money related to fraudulent Zelle transfers that BofA failed to reimburse.
11 Accordingly, they have suffered and will continue to suffer actual damages.

12 187. Accordingly, Plaintiff and the New York Subclass members are entitled to relief under N.Y.
13 Gen. Bus. Law § 349(h), including, but not limited to, actual damages, treble damages, statutory damages,
14 injunctive relief, and/or attorney’s fees and costs.

15
16 **FIFTH CAUSE OF ACTION**
17 **Violation of New York Consumer Fraud Act**
18 **NYGBL § 350, *et seq.***
19 **(Asserted on Behalf of Plaintiff Fontanez and the New York Class)**

20 188. Plaintiff repeat and reallege the above allegations as if fully set forth herein.

21 189. NYGBL § 350 prohibits false advertising in the conduct of any business, trade, or
22 commerce, or in the furnishing of any service in the state of New York.

23 190. Defendant’s advertising regarding Zelle contain untrue and materially misleading
24 statements as they misrepresented Zelle’s safety, security, and customers liability for unauthorized
25 transactions.

26 191. Defendant knowingly and willfully made these false advertisements in violation of New
27 York law.

28 192. As a result of BofA’s misconduct, Plaintiff and New York Subclass members suffered
actual damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against BofA as follows:

- A. Class certification of this action;
- B. Appointment of Plaintiffs as Class Representatives;
- C. Appointment of Plaintiffs’ attorneys as Class Counsel;
- D. An award of actual damages, in an amount to be determined at trial;
- E. Injunctive and other equitable relief against BofA as necessary to protect the interests of Plaintiffs and other Class Members, and an order prohibiting BofA from engaging in unlawful and/or unfair acts described above, including public injunctive relief;
- F. Disgorgement;
- G. An order of restitution from BofA for unjust enrichment;
- H. An order declaring BofA’s conduct as unlawful;
- I. Costs of Suit;
- J. Pre- and post-judgment interest;
- K. An award of reasonable attorneys’ fees; and
- L. Any other relief the Court may deem just and proper, including interest.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: February 23, 2023

Respectfully,

/s/ Scott Edelsberg
 Scott Edelsberg (330090)
 scott@edelsberglaw.com
EDELSBERG LAW, P.A.
 1925 Century Park East, Suite 1700
 Los Angeles, CA 90067
 Telephone: (305) 975-3320

Attorneys for Plaintiff