UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MATTHEW J. SHARP, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	19 C 5223
BANK OF AMERICA, N.A. and BANK OF AMERICA CORPORATION,	)	
Defendants.	)	

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

Before the Court is Defendants Bank of America, N.A.'s ("BANA") and Bank of America Corporation's ("BAC") (collectively, "Bank of America") motion to dismiss Plaintiff Matthew J. Sharp's ("Sharp") class action complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Also before the Court is Bank of America's motion to strike Sharp's nationwide class allegations pursuant to Federal Rule of Civil Procedure 12(f). For the following reasons, the Court grants the motion to dismiss and denies the motion to strike.

BACKGROUND

For purposes of this motion, the Court accepts as true the following facts from the complaint. *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665–66 (7th Cir. 2013). All

reasonable inferences are drawn in Sharp's favor. *League of Women Voters of Chicago v. City of Chicago*, 757 F.3d 722, 724 (7th Cir. 2014).

Defendant BANA is a nationwide financial institution headquartered in Charlotte, North Carolina that provides personal banking services, including personal deposit accounts linked to a debit card. BAC is BANA's parent company. Plaintiff Sharp is an Illinois resident who holds a personal deposit account at a local BANA branch in Illinois.

When opening a personal deposit account, BANA customers must agree to the provisions set forth in various documents, including the Deposit Agreement and Disclosures ("Deposit Agreement"), Personal Schedule of Fees ("Schedule of Fees"), and the Card Agreement and Disclosures ("Card Agreement") (collectively, "the Contract"). BANA offers these terms on a take-it-or-leave-it basis. In June 2010, BANA altered the terms of these agreements to reflect their promise that they would not levy overdraft fees on their depositors if a depositor overdrew their account with a "non-recurring" transaction made with a Bank of America debit card. BANA's Deposit Agreement defines "non-recurring" transactions as purchases made with the debit card on a "one time or day-to-day" basis. "Recurring" transactions, on the other hand, are those transactions depositors "set up to occur automatically," like preauthorized payments or automatic bill payments.

Over the past decade, numerous merchants throughout the country have issued debit cards to their customers that are capable of being linked to personal deposit

accounts at BANA and other financial institutions, also known as decoupled debit cards. These decoupled debit cards allow customers to make purchases at that specific chain of stores. Each retailer approves and issues cards independently from BANA. Each retailer also has separate contracts that detail the terms of the cards they issue to the customers that they share with BANA.

Sometime after June 2010, Sharp opened decoupled debit cards with retailers Target and Speedway, which he linked to his BANA personal deposit account. In January 2017, Sharp used his decoupled debit card to make three separate, non-recurring transactions, each under $100.00 and each resulting in Sharp overdrawing his account. BANA assessed Sharp three $35.00 overdraft fees for these transactions. Likewise, in May 2018, Sharp overdrew his account in a non-recurring transaction worth $31.62 at Speedway. Again, BANA assessed a $35.00 overdraft fee. Sharp also cites two examples from 2015 and 2016 where BANA charged him a $35.00 overdraft fee for a transaction initiated with a decoupled debit card that overdrew his BANA account.

Based on these events, Sharp filed the instant class action complaint on August 1, 2019, alleging claims for breach of contract, breach of the covenant of good faith and fair dealing, unconscionability, conversion, and unjust enrichment. On October 11, 2019, the Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and a motion to strike Sharp's nationwide class allegations under Federal Rule of Civil Procedure 12(f).

LEGAL STANDARD

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations in the complaint must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Plaintiffs need not provide detailed factual allegations, but they must provide enough factual support to raise their right to relief above a speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim must be facially plausible, meaning that the pleadings must "allow…the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The claim must be described "in sufficient detail to give the defendant 'fair notice of what the…claim is and the grounds upon which it rests.'" *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to withstand a 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 678.

Federal Rule of Civil Procedure 12(f) allows the Court to "strike from a pleading … any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). However, "[c]ourts in this District … evaluate motions to strike class allegations under Rule 23, not Rule 12(f)." *Buonomo v. Optimum Outcomes, Inc.*, 301 F.R.D. 292, 295 (N.D. Ill. 2014). Federal Rule of Civil Procedure 23 states that "[a]t an early practicable

time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." Fed. R. Civ. P. 23(c)(1)(A). If the class allegations in the complaint "are facially and inherently deficient … a motion to strike class allegations can be an appropriate device to determine whether the case will proceed as a class action." *Buonomo*, 301 F.R.D. at 295 (internal quotation omitted).

DISCUSSION

As an initial matter, the parties agree that Illinois law applies in this case. Therefore, the Court will apply Illinois law to the underlying dispute.

I. Motion to Dismiss

Bank of America moves to dismiss Sharp's complaint because he fails to state a claim for relief in Counts I through V. Specifically: (1) the breach of contract claim fails because the Contract terms do not apply to decoupled debit cards; (2) Illinois does not recognize the breach of good faith and fair dealing as an independent cause of action; (3) charging overdraft fees is neither procedurally nor substantively unconscionable under Illinois law; (4) Illinois law does not recognize a cause of action for conversion of intangible property, like bank account funds; and (5) an unjust enrichment claim cannot stand where an express agreement governs. Additionally, BAC moves to dismiss the claims against it because its role as a parent company does not provide a basis for imposing liability. The Court addresses each argument in turn.

A. Breach of Contract

To adequately plead a breach of contract claim under Illinois law, Sharp must establish: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resulting injury to the plaintiff. *Applied Indus. Materials Corp. v. Mallinckrodt, Inc.*, 102 F. Supp. 2d 934, 937 (N.D. Ill. 2000) (citing *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192 (1999)).

A valid and enforceable contract requires definite and certain meanings of the essential terms. *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill.2d 306, 515 N.E.2d 61, 65, 113 Ill. Dec. 252 (Ill. 1987). A contract is definite and certain if the parties' intent is readily ascertainable from the agreement. *Id.* The contractual language itself determines the parties' intent, and the entire contract must be viewed as a whole. *Gallagher v. Lenart*, 226 Ill.2d 208, 232, 874 N.E.2d 43, 314 Ill. Dec. 133 (Ill. 2007). If a contract unambiguously answers the issue raised by a party, the Court must give effect to the contract as written. *Quake Const., Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 565 N.E.2d 990, 152 Ill. Dec. 308 (Ill. 1990).

At the outset, the Court notes that for purposes of the motion to dismiss the only element of Sharp's breach of contract claim in dispute is whether BANA breached the Contract. Accordingly, we will limit our analysis to that question.

As previously noted, the Contract is comprised of the Deposit Agreement, the Schedule of Fees, and the Card Agreement. Under the Contract, BANA agreed not to

charge its customers overdraft fees on everyday non-recurring debit card transactions.[1] Yet, BANA assessed overdraft fees on non-recurring transactions made with decoupled debit cards. According to Sharp, this constitutes a breach of the Contract. BANA refutes that position, arguing that Sharp's decoupled debit cards do not count as "debit cards" under the Contract.

Under the Card Agreement, a "Card" means "a personal Bank of America debit card, personal ATM Card, Business ATM Card, mini-card, mobile tag or *any other Access Device that is linked to at least one deposit account with us*." (emphasis added). The Card Agreement defines Access Device as "*a card*, code or other means of access to a consumer's account, or any combination *that may be used to initiate electronic funds transfers*. Electronic Funds Transfers include *all transfers resulting from debit cards*." (emphasis added). Moreover, the Deposit Agreement defines debit card as a card that can be used "to pay for purchases at merchants that accept debit cards, to make deposits at Bank of America ATMS, and to withdraw cash from ATMS."

Sharp reads these definitions together to mean that a debit card linked to and capable of initiating a transaction that debits a Bank of America personal deposit

[1] The Schedule of Fees states, "We do not charge you an Overdraft Item fee on an everyday non-recurring debit card transaction. … We do charge you an Overdraft Item fee each time we authorize and pay any other type of overdraft transaction. These other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, Online and automatic bill payments, and ACH transactions."
The Card Agreement states, "When you do not have enough available funds in your account, including overdraft protection coverage, if any, to cover everyday non-recurring debit card purchases or ATM withdrawals, we will decline the transaction and you will not be subject to overdraft fees. For checks, ACH, recurring debit card transactions and online bill payments, we may decline or return the transaction unpaid or we may complete it and overdraw your account."

account—such as a decoupled debit card—constitutes an "Access Device" and "Card" within the meaning of the Card Agreement and a "debit card" within the meaning of the Deposit Agreement. BANA takes the opposite view, stating that: (1) the definition of "Card" only covers cards issued by BANA, and (2) decoupled debit cards cannot perform all three functions required under the Deposit Agreement's definition.[2] The Court addresses each argument in turn.

Turning first to the definitional scope of the term "Card," we need to assess whether the modifier "Bank of America" extends to the entire list or if it is confined to only the word "debit card." Typically, a modifier is applied "to all items in a series when such an application would represent a natural construction." *Lockhart v. United States*, __ U.S. __, 136 S. Ct. 958, 965 (2016). Indeed, "[i]n common everyday speech and writing it is not the custom or practice to repeat the adjective." *Konstantelos v. Great Am. Cas. Co.*, 241 Ill. App. 283, 286 (Ill. App. Ct. 1926). Applying these principles, the extension of the modifier "Bank of America" would naturally apply to all terms, including Access Device.

This reading is reinforced when considering the Contract as a whole, as some provisions in the Contract would be nonsensical if the Contract terms applied to non-BANA cards. For example, the Schedule of Fees states that there is a $5.00 "[f]ee for

[2] BANA also argues the Contract states that ACH transactions are subject to overdraft fees, and the Target and Speedway agreements warned Sharp that his transactions would be processed as ACH transactions. However, given that Sharp made no allegations concerning the Target or Speedway agreements, the Court cannot consider those documents on a motion to dismiss. *Wright v. Assoc. Ins. Cos. Inc.*, 29 F.3d 1244, 1248 (7th Cir. 1994).

each requested replacement of a card or other debit access device." Similarly, the Card Agreement directs cardholders to call a BANA phone number if their "Card is lost or stolen." Certainly, if BANA did not issue the card initially—like a decoupled debit card—BANA would not be responsible for replacing a lost or stolen card. Additionally, the Card Agreement states that "[t]hroughout this Card Agreement the words…. 'You' and 'your' refer to each person to whom [BANA] issue[s] a Card…." The Card Agreement goes on to use headers such as "Using Your debit card and or Access Device," indicating that the Contract only contemplated debit cards or access devices that were issued by BANA. Accordingly, the Court agrees that the Contract only applies to debit cards or access devices that were issued by BANA, unlike the decoupled debit cards at issue here.

Turning next to the definition of "debit card" under the Deposit Agreement, the Court agrees with BANA that decoupled debit cards do not satisfy all three definitional requirements. According to the Deposit Agreement, a debit card can be used "to pay for purchases at merchants that accept debit cards, to make deposits at Bank of America ATMS, *and* to withdraw cash from ATMS." (emphasis added). Sharp asserts that his decoupled debit cards can be used to make purchases at merchants such as Target and Speedway, and BANA does not dispute that. However, that is only the first of three requirements. Given the use of the word "and" in the definition, all three uses must be satisfied. *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon Cty., Ill.*, 217 Ill.2d 481, 501 (2005) ("As a general rule, the use of the

conjunctive, as in the word 'and,' indicated that the legislature intended for *all* of the listed requirements to be met.") (internal quotation omitted) (emphasis in original); *Perkins & Will v. Security Ins. Co. of Hartford*, 219 Ill. App. 3d 807, 813 (1991) ("[I]t is quite clear in Illinois that, ordinarily, the words 'and' and 'or' are not interchangeable terms. On the contrary, those words are used in the structure of the English language for entirely different purposes; 'and' is strictly of a conjunctive nature and 'or' is strictly of a disjunctive nature."). As decoupled debit cards cannot perform the remaining functions of (1) making deposits at Bank of America ATMs and (2) withdrawing cash from ATMs, they do not meet the definition of a debit card under the Contract.

As such, the Court finds that decoupled debit cards do not fall within the meaning of "debit card," "Card," or "Access Device" under the Contract. Given that BANA only agreed to refrain from charging overdraft fees for everyday non-recurring transactions made with these types of cards, Sharp cannot state a breach of contract claim based on overdraft fees in connection with decoupled debit cards. Therefore, the Court grants the motion to dismiss Count I.

B. Breach of the Implied Covenant of Good Faith and Fair Dealing

Next, Bank of America moves to dismiss Count II's breach of the implied covenant of good faith and fair dealing claim. As this Court previously clarified in *Boone v. MB Financial Bank, N.A.*, "Illinois law … does not recognize an independent cause of action for breach of the implied covenant of good faith and fair dealing. This covenant merely aids in contractual interpretation and is not an independent source of

contractual duties or liability." 375 F. Supp. 3d 987, 995 (N.D. Ill. 2019) (citing *Voyles v. Sandia Mortgage Corp.*, 196 Ill.2d 288 (2001); *McArdle v. Peoria Sch. Dist. No. 150*, 705 F.3d 751, 755 (7th Cir. 2013); *Cohn v. Guaranteed Rate Inc.*, 130 F. Supp. 3d 1198, 1210 (N.D. Ill. 2015)). This understanding is consistent with that of courts throughout this District. *Griffin v. U.S. Bank, N.A.*, 2019 WL 4597364, *8 (N.D. Ill. 2019) ("The implied covenant [of good faith and fair dealing] is not an independent source of duties; rather, it guides the interpretation of the terms of the contract."); *Fair Isaac Corp. v. Trans Union, LLC*, 2019 WL 1436018, *3 (N.D. Ill. 2019) ("[I]t is settled law in Illinois that a breach of good faith and fair dealing cannot be an independent cause of action."); *Hickman v. Wells Fargo Bank, N.A.*, 683 F. Supp. 2d 779, 793 (N.D. Ill. 2010) (collecting cases). Accordingly, the Court grants the motion to dismiss Count II with prejudice.

C. Unconscionability

Bank of America moves to dismiss Sharp's Count III claim for unconscionability. "Under Illinois law, … a finding of unconscionability may be based on either procedural or substantive unconscionability, or a combination of both." *Sanchez v. CleanNet USA, Inc.*, 78 F. Supp. 3d 747, 753 (N.D. Ill. 2015) (quoting *Kinkel v. Cingular Wireless LLC*, 223 Ill.2d 1, 21 (2006). Accordingly, the Court will evaluate each type of unconscionability in turn.

i. Procedural Unconscionability

"Procedural unconscionability refers to a contract where a term is so difficult to find, read, or understand that the plaintiff cannot fairly be said to have been aware he was agreeing to it." *Id.* at 754. This analysis also "takes into account the disparity in bargaining power between the parties," and whether that bargaining position was abused. *Id.* Taken together, "an unconscionable contract is one which encompasses a lack of meaningful choice by one party … [such that] the agreement is one which no reasonable person would make." *Saunders v. Michigan Ave. Nat. Bank*, 278 Ill.App.3d 307, 317 (1996).

Sharp asserts that the Contract is procedurally unconscionable on two grounds: (1) there is a notable disparity in bargaining power between the parties such that customers could not negotiate the terms of the boilerplate Contract, and (2) the Contract does not clearly disclose the circumstances under which customers will be charged overdraft fees when using decoupled debit cards or that such transactions will be processed as ACH transactions.

Turning to the disparity in bargaining power, Illinois courts have repeatedly found that "mere lack of bargaining power is not enough to sustain a claim for unconscionability." *Id.*; *See also Sanchez*, 78 F. Supp. 3d at 754 ("Illinois law does not void contracts where parties have unequal bargaining power, even if a contract is a so-called 'take-it-or-leave-it' deal."); *Streams Sports Club, Ltd. v. Richmond*, 99 Ill.2d 182, 191 (1983) ("[M]ere disparity of bargaining power is not sufficient grounds to vitiate

contractual obligations….”). Indeed, Illinois courts have recognized that adhesion contracts are a “fact of modern life,” *Sanchez*, 78 F. Supp. 3d at 754, and the customer maintains the choice to select from a different service provider with more agreeable terms, such as another bank. *Saunders*, 278 Ill.App.3d at 317. Accordingly, the Court cannot find that the Contract is unconscionable on this basis.

Turning to the alleged failure to disclose the terms related to overdraft fees, the Court notes that Sharp does not point to a specific term or clause that is difficult to find, read, or understand. Moreover, the Schedule of Fees make it clear that BANA will charge overdraft fees for ACH transactions. It does so immediately after exempting transactions initiated with the BANA-issued debit card, in the same font size and format as the rest of the Schedule of Fees. *See Sanchez*, 78 F. Supp. 3d at 755 (rejecting procedural unconscionability claim where lengthy agreement was in regular font and easily readable); *Rosati's Franchising, Inc. v. Fire It Up, LLC*, 2015 WL 3961703, *6 (N.D. Ill. 2015) (rejecting procedural unconscionability claim where clause on the twenty-ninth page of an agreement was labeled and was the same size print as the remainder of the agreement). Sharp's failure to read or understand a clearly defined term of the Contract is not grounds to void an otherwise valid contract due to unconscionability. Sharp's reliance on *In re Checking Account Overdraft Litigation*, 694 F. Supp. 2d 1302 (S.D. Fla. 2010), does not alter our conclusion because that case does not rely on Illinois law in reaching its decision. As such, the Court finds that Sharp's complaint does not plead procedural unconscionability.

ii. Substantive Unconscionability

Substantive unconscionability considers "the actual terms of the contract and examines the relative fairness of the obligations assumed." *Kinkel*, 223 Ill. 2d at 28. Indicators of substantive unconscionability include "contract terms so one-sided as to oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity." *Id.*

Sharp asserts that, "[t]he imposition of $35.00 overdraft fees for transactions initiated with decoupled debit cards was itself unconscionable," as those charges were not reasonably related to the "cost of covering the overdraft and/or its risk of nonpayment." 1:19-cv-5223, Dkt. 28, Pg. 14–15. However, the Appellate Court of Illinois has already rejected the argument that overdraft fees assessed by a bank are substantively unconscionable. *Saunders*, 278 Ill.App.3d at 317 (finding that overdraft fee of $20 per day was not unconscionable). Moreover, as BANA notes, Sharp received two benefits of the bargain, including (1) BANA permitting Sharp to link non-BANA debit cards to his personal account, and (2) BANA's processing of Sharp's transactions notwithstanding his lack of available funds. These terms cannot be reasonably be construed as so "one-sided as to oppress or unfairly surprise an innocent party." Therefore, Sharp does not adequately plead substantive unconscionability, and the Court grants the motion to dismiss Count III.

D. Conversion

Turning to Count IV, Bank of America moves to dismiss Sharp's conversion claim. To state a claim for conversion under Illinois law, Sharp must plead that: "(1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property." *Thakkar v. Ocwen Loan Servicing, LLC*, 2019 WL 2161544, *12 (N.D. Ill. 2019) (quoting *Cirrincione v. Johnson*, 184 Ill. 2d 109, 114 (1998)). Additionally, "under Illinois law, the subject of a conversion claim must be an identifiable object of property." *Song v. PIL, L.L.C.*, 640 F. Supp. 2d 1011, 1017 (N.D. Ill. 2009) (citing *In re Thebus*, 108 Ill.2d 255, 91 Ill.Dec. 623, 483 N.E.2d 1258, 1260 (1985)).

Typically, an asserted right to money does not satisfy the "identifiable object" requirement. *Horbach v. Kaczmarek*, 288 F.3d 969, 978 (7th Cir. 2002). Conversion will only lie if the money at issue can be described as a "specific chattel," meaning "a specific fund or specific money in coin or bills." *Id.* The plaintiff must show "that the money claim belonged to [him] at all times and that defendant converted the money to its own use." *Song*, 640 F. Supp. 2d at 1017. Furthermore, "an action for the conversion of funds may not be maintained to satisfy a mere obligation to pay money." *Id.*

Sharp's conversion claim fails because it can be summed up as a mere obligation to pay money. When Sharp deposited his funds with BANA, their relationship became

that of debtor and creditor. *See Mijatovich v. Columbia Sav. & Loan Assoc.*, 168 Ill. App. 3d 313, 316 (1988); *Travelers Cas. and Sur. Co. of America v. Paderta*, 2010 WL 5419065, *4 (N.D. Ill. 2010) ("[W]hen money is deposited with a bank, title to it passes and the bank becomes a debtor to the extent of the deposit; and to that extent, the depositor becomes a creditor.") (internal quotation marks omitted). Indeed, the Deposit Agreement explicitly informed Sharp of the debtor-creditor nature of his relationship with BANA. As Sharp's debtor, BANA simply owed Sharp an obligation to pay money, which cannot serve as the foundation for a conversion claim. *Safeco Ins. Co. v. Wheaton Bank and Trust Co.*, 2009 WL 2407740, *3 (N.D. Ill. 2009) ("Because money representing a general debt or obligation is not a specific piece of chattel, bank account funds … typically cannot be the basis for a conversion claim …."). Therefore, the Court grants the motion to dismiss Count IV with prejudice.

E. Unjust Enrichment

Next, Bank of America moves to dismiss the unjust enrichment claim in Count V. "In Illinois, '[t]o state a cause of action based on a theory of unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience.'" *Cleary v. Philip Morris Inc.*, 656 F.3d 511, 516 (7th Cir. 2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 137 Ill.Dec. 19, 545 N.E.2d 672, 679 (1989)). However, an unjust enrichment claim cannot stand where an express agreement governs. *Toulon v.*

Cont'l Cas. Co., 877 F.3d 725, 742 (7th Cir. 2017) ("A claim for unjust enrichment is based upon an implied contract; where there is a specific contract that governs the relationship of the parties, the doctrine has no application.") (internal quotation omitted); *Miszczyszyn v. JPMorgan Chase Bank, N.A.*, 2019 WL 1254912, *4 (N.D. Ill. 2019) ("Where plaintiffs have acknowledged that there is an express contract, courts have prevented plaintiffs from pursuing an unjust enrichment claim, even in the alternative.").

The parties do not dispute the existence of an express contract between them, and Sharp's memorandum in opposition to the motion to dismiss reiterates the existence of that contract. Therefore, Sharp cannot bring an unjust enrichment claim outright or in the alternative. Accordingly, the Court grants the motion to dismiss Count V with prejudice.

F. Claims Concerning BAC

Bank of America also moves to dismiss all claims against BAC because Sharp engaged in improper group pleading, and the allegations at issue do not concern BAC. The Court agrees.

Under our system of notice pleading, "[e]ach defendant is entitled to know what he or she did that is asserted to be wrongful." *Bank of America, N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013). "Details about who did what are not merely nice-to-have features of an otherwise-valid complaint; to pass muster under Rule 8 of the Federal

Rules of Civil Procedure, a claim to relief must include such particulars." *Atkins v. Hasan*, 2015 WL 3862724, *2 (N.D. Ill. 2015).

While "it is not fatal for any complaint to collectivize 'defendants' in certain respects," *Dardick v. Zimmerman*, 149 F. Supp. 2d 986, 987 (N.D. Ill. 2001), the complaint must still specify the actions that create liability for a defendant. The instant complaint fails to do so with respect to BAC. The Court in *Haase v. Countrywide Home Loans, Inc.* explained a similar pleading error concerning the same defendants as here, saying:

> An entity's status as a parent company of a subsidiary does not in and of itself establish liability for the parent company for the actions of the subsidiary. … There is no particularized mention in Plaintiffs' First Amended Complaint of any conduct or actions by Bank of America Corporation. Instead, Plaintiffs combine and conflate Bank of America Corporation with Bank of America, N.A. Bank of America Corporation and Bank of America, N.A. are, however, two separate corporate entities. … Because there are no particularized, factual allegations as against Defendant Bank of America Corporation … Plaintiffs have failed to state a claim against Defendant Bank of America Corporation.

Haase v. Countrywide Home Loans, Inc., 2012 WL 12871950, *5 (S.D. Tex. 2012). Recognizing the same flaws in Sharp's complaint, the Court adopts the *Haase* Court's rationale and grants the motion to dismiss BAC as a defendant.

II. Motion to Strike[3]

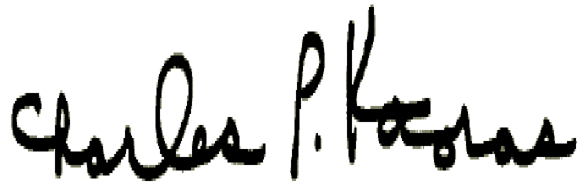
Finally, Bank of America urges the Court to strike Sharp's nationwide class

[3] Although the motion to strike can be denied as moot given the Court's dismissal of the complaint, we believe it is in the interest of judicial economy to resolve the nationwide-class question at this stage because we afforded Sharp leave to amend his complaint.

allegations, encouraging us to extend the Supreme Court's decision in *Bristol-Myers Squibb*, 137 S. Ct. 1773 (2017), to the class action context. However, the Seventh Circuit's recent decision in *Mussat v. IQVIA, Inc.*, 2020 WL 1161166 (7th Cir. 2020), squarely rejects that argument. In *Mussat*, the Seventh Circuit declined to extend the rationale of *Bristol-Myers* to class actions. Rather, the Seventh Circuit held that, "In a Rule 23 class action … the lead plaintiffs earn the right to represent the interests of absent class members by satisfying all four criteria of Rule 23(a) and one branch of Rule 23(b). The absent class members are not full parties to the case for many purposes," including the personal jurisdiction analysis at issue here. *Id.* at *4. As such, Bank of America's motion to strike is denied.

CONCLUSION

For the aforementioned reasons, the Court grants the motion to dismiss and denies the motion to strike. Sharp has thirty days to file an amended complaint consistent with this Opinion. Failure to do so will result in dismissal of the case. It is so ordered.



Dated: 03/31/2020

Charles P. Kocoras
United States District Judge