


STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

FILED

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IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
No. 23 CVS 4529

MECKLENBURG CO., C.S.C.  
AARON ASELTINE, on behalf of himself and  
all others similarly situated,  BY \_\_\_\_\_  
Plaintiff,  
vs.  
BANK OF AMERICA, N.A.,  
Defendant.

CASE NO.

CLASS ACTION

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

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

**INTRODUCTION**

1. Plaintiff brings this action on behalf of himself and classes of all similarly situated consumers against Defendant Bank of America, N.A. (“Bank of America”), arising from its unfair, deceptive, and unlawful practice of misleading personal accountholders into paying wire transfer fees on incoming payments (“Incoming Wire Transfer Fees”) and breaching its account agreement with consumers.

2. Bank of America has been involved a multifaceted effort to obscure, mislead and hide the fact that its charges \$15.00 Incoming Wire Transfer Fees on certain of its personal accountholders when they receive funds to their accounts via wire. Charging such fees is contrary to its contractual promises and marketing representations. Among major U.S. banks, Bank of America is an outlier in hiding the existence and amount of such Incoming Wire Transfer Fees from its personal accountholders. And the fees themselves are prototypical “junk” fees:

unavoidable and hidden, tacked on after the opportunity for any meaningful consumer choice has passed, deducted directly from consumer accounts without consent or notice.

3. Plaintiff and similarly situated personal accountholders are shocked when—after no warning and no disclosure—they are assessed hefty Incoming Wire Transfer Fees after receiving wire deposits into their accounts. Plaintiff and others like him were charged fees for incoming wires when they had no opportunity to review, limit, or avoid the fee.

4. Plaintiff, on behalf of himself and the Classes (defined below), seeks to end Bank of America's deceptive practices and force it to refund improper Incoming Wire Transfer Fees. Plaintiff seeks damages, restitution, and injunctive relief, as set forth more fully below.

### **JURISDICTION AND VENUE**

5. This is an action for injunctive relief, violation of state consumer protection laws, and breach of contract. The amount in controversy exceeds \$25,000 exclusive of interest, costs, and attorneys' fees.

6. Defendant is subject to personal jurisdiction in North Carolina as its principal place of business is in Charlotte, North Carolina.

7. Venue for this action is proper in this Court pursuant to N.C. Gen. Stat. §1-82 because Defendant Bank of America, N.A. resides in Mecklenburg County.

### **PARTIES**

8. Plaintiff is a citizen and resident of El Cerrito, California. Plaintiff maintains a personal bank account at Bank of America.

9. Defendant Bank of America is a national bank with its headquarters and principal

place of business in Charlotte, North Carolina. Among other things, Bank of America is engaged in the business of providing retail banking services to consumers, including Plaintiff and members of the putative Classes.

### FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

i. **Bank of America’s Account Documents Promise to Fully Disclose All Fees Charged on Accounts, But Never Discloses the Existence or Amount of Incoming Wire Transfer Fees**

10. The relevant contractual documents are the Deposit Agreement and Disclosures (Ex. 1), Personal Schedule of Fees (Ex. 2), Online Banking Agreement (Ex. 3), and Wire Transfers FAQs (Ex. 4) (collectively, the “Account Documents”).<sup>1</sup>

11. Bank of America’s Personal Schedule of Fees expressly promises to “list[] the fees associated with your account and *ways to avoid them* when applicable.” Ex. 2 at 2 (emphasis added).

12. The Deposit Agreement repeatedly makes this same promise:

The *Schedule of Fees* lists our accounts and account fees.

Ex. 1, at 2 (emphasis in original).

The *Personal Schedule of Fees* describes our personal accounts and lists applicable fees.

*Id.*, at 10 (emphasis in original).

**Account Fees** Your account is subject to the fees described in the *Schedule of Fees* that applies to your account.

- The *Personal Schedule of Fees* lists account fees that apply to our personal deposit accounts.

....

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<sup>1</sup> The versions of the Account Documents attached as exhibits are representative examples during the relevant time period.

- The schedule that applies to your account is part of the binding contract between you and us.

*Id.*, at 17 (emphasis in original).

13. This commonsense contractual promise—that the Bank will *only* charge fees it warns consumers about first—is also required by federal law. Indeed, banks are required to disclose “[t]he amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.” 12 CFR § 1030.4.

14. Despite promising to disclose all fees and the law requiring such disclosure, none of the Account Documents ever disclose the existence of or amount of the challenged Incoming Wire Transfer Fees.

15. Because Bank of America expressly promised it would disclose all fees it would charge, and because it totally failed to disclose Incoming Wire Transfer Fees in any contract document, it was not permitted to charge such fees.

16. Further, and as discussed *infra*, the Account Documents promised that it would not charge Incoming Wire Transfer Fees at all.

**i. Bank of America’s Account Documents Promise Not to Charge Wire Transfer Fees on Incoming Wires**

17. With respect to fees for wire transfers, the Personal Schedule of Fees states:

Wire Transfers, Incoming or Outgoing....Fee varies

[ ]We may change the fees for wire transfers and drafts at any time. Visit a financial center or call us at the number on your statement for current fees.

Ex. 2 at 14.

18. The Personal Schedule of Fees nowhere states the amount of such a fee for an incoming wire or the circumstances in which such fees will be charged. Instead, it places the

burden on the consumer to seek out answers to these basic questions by calling or asking a banker.

19. Accordingly, the Personal Schedule of Fees did not authorize Bank of America to assess \$15.00 Incoming Wire Transfer Fees.<sup>2</sup>

20. Nor does any other contractual document authorize Bank of America to charge such fees. To the contrary, the other contractual documents clarify no such fees will be charged. The Online Banking Agreement (Ex. 3) purports to list all forms of “ACH and Wire transfers” and the fees associated with such fees:

You may **send and receive** the following types of ACH and Wire transfers:

<b>Types of Transfers<sup>1, 2</sup></b>	<b>Sending Limits (per transaction)<sup>3</sup></b>	<b>Receiving Limits (per transaction)<sup>3</sup></b>	<b>Fees<sup>4</sup></b>	<b>Cut-Off Times  (all eastern PM)</b>
Three Business Day ACH (outbound) <ul style="list-style-type: none"> <li>• Consumer</li> <li>• Small Business</li> </ul>	<ul style="list-style-type: none"> <li>• \$1000</li> <li>• \$5000</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• \$3.00</li> <li>• \$1.00</li> </ul>	<ul style="list-style-type: none"> <li>• 8:00</li> <li>• 8:00</li> </ul>
Three Business Day ACH (inbound) <ul style="list-style-type: none"> <li>• Consumer</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• \$1,000</li> </ul>	<ul style="list-style-type: none"> <li>• \$0.00</li> </ul>	<ul style="list-style-type: none"> <li>• 8:00</li> </ul>
Next Business Day ACH (outbound) <ul style="list-style-type: none"> <li>• Consumer</li> <li>• Small Business</li> </ul>	<ul style="list-style-type: none"> <li>• \$1000</li> <li>• \$5000</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• \$10.00</li> <li>• \$5.00</li> </ul>	<ul style="list-style-type: none"> <li>• 8:00</li> <li>• 8:00</li> </ul>

<sup>2</sup> Apart from being entirely uninformative, “fee varies” is inaccurate. During the relevant time period, Bank of America charged \$15.00 for all incoming domestic wires.

Next Business Day ACH (inbound) <sup>5</sup> • Consumer	• N/A	• \$1,000	• \$0.00	• 8:00
Same Business Day (domestic) Wire Transfer (outbound) • Consumer • Small Business	• \$1000 • \$5000	• N/A	• \$30.00 • \$30.00	• 5:00
International Wire Transfer (outbound) <sup>6</sup> • Consumer  • Small Business	• \$1000  • \$5000	• N/A	• \$45.00 (US Dollar transfer) • \$0.00 (Foreign currency transfer) • \$45.00 (US Dollar transfer) • \$0.00 (Foreign currency transfer)	• 5:00

Ex. 3 (emphasis added and footnotes omitted).

21. Tellingly, no fee for incoming wire transfers is listed at all—indeed, incoming wire transfers are nowhere included in the supposedly all-inclusive list of fees for sending and receiving “ACH and Wire transfers.”

22. By operation of the basic contract-reading maxim *expressio unius est exclusio alterius*, Bank of America’s total exclusion of incoming wire transfers from its supposedly all-

inclusive fee chart must mean one thing: there will be no fees on incoming wire transfers.

23. This same promise is reaffirmed in the Wire Transfer FAQ, which states:

Q: Are there fees and limits for domestic and international wire transfers?

**A: Fees and limits may apply, depending on your account type and the type of wire. You will be able to review any fees and limits before completing your wire transfer in Online Banking. Latest transfer limits are also available in our Online Banking service agreement.** For Remittance Transfers, we're required by law to inform you of the exact fees you will incur for international wires, including fees from other banks. For some requests, we won't have the exact fees from other banks and therefore will not be able to process it. If your request was in US dollars, you may try again in foreign currency — this may help us determine the exact fees incurred for this transaction and enable us to send the wire request successfully.

Ex. 4 (emphasis added).

24. By promising customers that they “will be able to review any fees and limits before completing your wire transfer,” Bank of America reasonably reaffirms that *only outgoing wire transfers* will incur fees, since those are the only fees disclosed “before completing your wire transfer in Online Banking.”

25. Based on these contractual disclosures, Plaintiff reasonably understood he would not have been charged any fee for an incoming wire transfer.

**C. Bank of America’s Deceptive Intent in Hiding Incoming Wire Transfer Fees**

26. Because Incoming Wire Transfer Fees are a major source of income for Bank of America; because consumers assessed such fees have no control over them; and because Bank of America has hoped consumers will not notice such fees when they receive wires (which is, of course, a passive event not controlled by consumers), Bank of America has engaged in an effort to obscure and hide the presence and amount of its Incoming Wire Transfer Fees.

27. Indeed, of all of the bank fees charged by Bank of America, *the only one* it never affirmatively discloses the existence or amount of is the Incoming Wire Transfer Fee.

28. As above, despite agreeing to do so, Bank of America never discloses the existence or amount of such fees, instead coyly requiring consumers to call and ask if or when these fees will be charged and the amount of such fees.

29. Fee disclosures are important to reasonable consumers like Plaintiff. Research shows that fees are the most important factor influencing consumers' selection of a new banking provider. *See* Ron Shevlin, "How Consumers Choose a Bank: A Tale of Two Surveys." Insight Vault, Cornerstone Advisors, 23 Aug. 2018, [www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/](http://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/) (summarizing two consumer surveys that revealed that the most important factor influencing consumers' selection of a new banking provider is the amount of fees charged); Claire Greene and Joanna Stavins, The 2016 and 2017 Surveys of Consumer Payment Choice: Summary Results. Federal Reserve Bank of Boston, 10 May 2018, [www.bostonfed.org/publications/research-data-report/2018/the-2016-and-2017-surveys-of-consumer-payment-choice-summary-results.aspx](http://www.bostonfed.org/publications/research-data-report/2018/the-2016-and-2017-surveys-of-consumer-payment-choice-summary-results.aspx) (finding that 4 in 10 consumers who did not have a bank account cited expense as the reason, including "fees and service charges are too high.").

30. Bank of America is an outlier in the industry in hiding the existence and amount of Incoming Wire Transfer Fees from its personal account holders. Numerous other banks that assess an Incoming Wire Transfer Fee disclose both its existence and the amount. For instance, Wells Fargo's account documents contain the below unambiguous disclosure:

## Service Fees (continued)

<b>Research and verification of accounts</b>		\$25 per hour (\$25 minimum)		
<b>Stop payments</b>	Paper or ACH Item	\$31 each		
<b>Wire transfers</b>		<b>International</b>		
		<b>Domestic</b>	<b>U.S. currency</b>	<b>Foreign currency</b>
Incoming or outgoing domestic wires that contain incorrect information may be subject to multiple fees assessed by the Bank  In addition to any fees, the exchange rate used when we convert one currency to another includes a markup. <sup>3,4,5</sup>	<b>Incoming</b>	\$15 each	\$16 each	\$16 each
	<b>Outgoing</b>	\$30 each	\$45 each	\$35 each (Wires initiated Online and Mobile \$0)
	<b>Repetitive outgoing</b>	\$25 each	\$40 each	\$30 each
<b>Wire transfer fees charged by third parties or other banks</b>	Third parties or other banks may charge fees in addition to those described above			

<https://www.wellsfargo.com/fetch-pdf?formNumber=CNS2013&subProductCode=ANY>

(accessed March 2, 2023.)

31. Most other major banks offer similar disclosures, including TD Bank,<sup>3</sup> PNC Bank,<sup>4</sup> Union Bank,<sup>5</sup> and US Bank.<sup>6</sup>

32. The assessment of unavoidable and undisclosed fees is by definition deceptive. Indeed, the Consumer Financial Protection Bureau calls these “junk fees” and defines them as follows:

Exploitative junk fees charged by banks and non-bank financial institutions have become widespread, with the potential effect of shielding substantial portions of the true price of consumer financial products and services from competition. The CFPB is concerned about fees that far exceed the marginal cost of the service they purport to cover, implying that companies are not just shifting costs to consumers, but rather, taking advantage of a captive relationship with the consumer to drive

<sup>3</sup> [https://www.feeds.td.com/en/document/oao/pdf/1\\_fees.pdf](https://www.feeds.td.com/en/document/oao/pdf/1_fees.pdf) (accessed March 2, 2023)

<sup>4</sup> <https://www.pnc.com/content/dam/pnc-com/pdf/personal/Checking/service-charges-standard-checking-A.pdf> (accessed March 2, 2023.)

<sup>5</sup> <https://assets.unionbank.com/assets/file/personal/disclosures/fee-schedule-consumer.pdf> (accessed March 2, 2023).

<sup>6</sup> <https://www.usbank.com/dam/documents/pdf/deposits/consumer-pricing-information/deposit-products.pdf> (accessed March 2, 2023).

excess profits. Excessive and exploitative fees, whether predictable and transparent to the customer or not, can add up and pose significant costs to people, especially those with low wealth and income.

Many Americans have experienced inflated or surprise fees that, however nominally voluntary, are not meaningfully avoidable or negotiable in the moment.

Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services, Federal Register Vol. 87, No. 22 (February 2, 2022) (accessed online, <https://www.govinfo.gov/content/pkg/FR-2022-02-02/pdf/2022-02071.pdf>.)

33. Bank of America's Incoming Wire Transfer Fees are an especially problematic junk fee because an accountholder does not even do anything or request a service when it receives an inbound wire.

34. That is why many financial institutions refuse to charge such fees at all, at least for domestic transfers. Financial institutions which do not charge such fees include, *inter alia*, Capital One, USAA FSB, Ally Bank, Alliant Credit Union, Charles Schwab, Discover, Fidelity, Synchrony, and Village Bank.

**D. Plaintiff's Incoming Wire Transfer Fees**

35. Plaintiff maintains a checking account with Bank of America.

36. As an example, on October 18, 2022, Plaintiff received an incoming wire transfer.

37. To Plaintiff's surprise, and contrary to Bank of America's promises or representations, he was charged a \$15.00 Incoming Wire Transfer Fee for that incoming wire transfer without the opportunity to review, let alone choose, whether he wanted to incur the fee.

**CLASS ALLEGATIONS**

36. Plaintiff brings this action on behalf of themselves and all others similarly situated pursuant to Rule 23 of the North Carolina Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements.

37. The proposed “Nationwide Class” is defined as:

All Bank of America personal accountholders who, during the applicable statute of limitations through the date of class certification, were charged Incoming Wire Transfer Fees.

38. The alternative California state subclass (“California Subclass”) is defined as:

All Bank of America personal accountholders in the state of California who, during the applicable statute of limitations through the date of class certification, were charged Incoming Wire Transfer Fees.

39. The Nationwide Class and California Subclass defined above are collectively referred to herein as the “Classes.” Plaintiff reserves the right to modify or amend the definitions of the proposed Classes before the Court determines whether certification is appropriate.

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

41. The members of the Classes are so numerous that joinder is impractical. The Classes consist of at least thousands of members, the identity of whom is within the knowledge of, and can be ascertained only by resort to, Bank of America’s records.

42. The claims of the representative Plaintiff are typical of the claims of the Classes he seeks to represent in that the representative Plaintiff, like all members of the Classes, was charged improper and deceptive fees as alleged herein. The representative Plaintiff, like all members of the Classes, was damaged by Bank of America’s misconduct in that he was assessed deceptive Incoming Wire Transfer Fees. Furthermore, the factual basis of Bank of America’s misconduct is common to all members of the Classes and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Classes. And Bank of America

has no unique defenses that would apply to Plaintiff and not the Classes.

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

44. Among the questions of law and fact common to the Classes include the following:
- a. Whether Bank of America violated the consumer protection laws of North Carolina and California by charging Incoming Wire Transfer Fees, and whether its conduct was deceptive;
  - b. Whether Bank of America breached its contract with members of the Classes by charging Incoming Wire Transfer Fees;
  - c. Whether Bank of America breached the duty of good faith and fair dealing;
  - d. The proper method or methods by which to measure damages and/or restitution and/or disgorgement; and
  - e. Whether Plaintiff and the Classes are entitled to declaratory and injunctive relief and the nature of that relief.

45. Plaintiff's claims are typical of the claims of other members of the Classes, in that they arise out of the same wrongful Bank of America Incoming Wire Transfer Fees policies and practices. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other member of the Classes.

46. Plaintiff is committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions and, in particular, consumer class actions against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Classes.

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

48. Even if members of the Classes themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

49. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its treatment as a class action.

50. Bank of America has acted or refused to act on grounds generally applicable to each of the Classes, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each Classes as a whole.

51. All conditions precedent to bringing this action have been satisfied and/or waived.

52. In the alternative, Plaintiff asserts that state specific California Subclass (as alleged *supra*) can be certified and tried on a common basis.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract Including Breach of the**

**Covenant of Good Faith and Fair Dealing**  
**(On Behalf of Plaintiff and the Classes)**

53. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

54. Plaintiff (and fellow members of the Classes) and Bank of America have contracted for bank account deposit and checking services, as embodied in the Account Documents

55. For the reasons alleged herein, the Account Documents bar Bank of America from assessing Incoming Wire Transfer Fees.

56. Bank of America charged Incoming Wire Transfer Fees against Plaintiff and members of the Classes.

57. Therefore, Bank of America breached the terms of the Account Documents that form the contract with consumers by charging Incoming Wire Transfer Fees.

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

59. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to specify

terms, and interference with or failure to cooperate in the other party's performance.

60. Bank of America has breached the covenant of good faith and fair dealing in the Account Agreement through its Incoming Wire Transfer Fees policies and practices as alleged herein.

61. Instead of exercising that discretion in good faith and consistent with Plaintiff's reasonable expectations, Bank of America abuses that any discretion afforded to it by the Account Documents to assess Incoming Wire Transfer Fees and take money out of Plaintiff's accounts without their permission and contrary to his reasonable expectations that he will not be charged Incoming Wire Transfer Fees. Specifically, Bank of America regularly charges Incoming Wire Transfer Fees.

62. By exercising its discretion to enrich itself by gouging its consumers, Bank of America consciously and deliberately frustrates the agreed common purposes of the contract and disappoints the reasonable expectations of Plaintiff and members of the Classes, thereby depriving them of the benefit of their bargain.

63. In addition, Bank of America, to the extent that Bank of America grants itself discretion to charge—or not to charge—Incoming Wire Transfers Fees, when it charges Incoming Wire Transfers Fees, Bank of America breaches the covenant of good faith and fair dealing.

64. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the contract.

65. Plaintiff and members of the Classes have sustained damages as a result of Bank of America's breach of contract and breach of the covenant of good faith and fair dealing.

**SECOND CLAIM FOR RELIEF**  
**North Carolina's Unfair & Deceptive Trade Practices Act**  
**(On Behalf of Plaintiff and the Nationwide Class)**

66. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

67. Application of North Carolina law to the Nationwide Class with respect to Plaintiff's and Nationwide Class members' claims is neither arbitrary nor fundamentally unfair because North Carolina has significant contacts and a significant aggregation of contacts that create a state interest in the claims of Plaintiff and the Nationwide Class.

68. The State of North Carolina has a significant interest in regulating the conduct of businesses operating within its borders. North Carolina, which seeks to protect the rights and interests of North Carolina and all residents and citizens of the United States against a company headquartered and doing business in North Carolina, has an interest in the Plaintiff's claims.

69. The principal place of business of Bank of America in Charlotte, North Carolina, is the "nerve center" of its business activities—the place where its high-level officers direct, control, and coordinate the corporation's activities, including account and major policy, financial, and legal decisions related to Incoming Wire Transfer Fees. Bank of America's corporate decisions regarding how to misrepresent and assess Incoming Wire Transfer Fees were made from and in North Carolina.

70. Under choice of law principles, the common law of North Carolina applies to the nationwide common law claims of all Nationwide Class members. Additionally, given North Carolina's significant interest in regulating the conduct of businesses operating within its borders, North Carolina's consumer protection statutes may be applied to non-resident consumer plaintiffs.

71. As alleged herein, Bank of America violated N.C.G.S. § 75.1-1 *et seq.* when it affirmatively and knowingly misrepresented its Incoming Wire Transfer Fees. Such misrepresentations misled Plaintiff and are likely to mislead the public.

72. Specifically, Plaintiff reasonably relied on Bank of America's misrepresentations regarding its Incoming Wire Transfer Fees practices. Specifically, Plaintiff did not know he would be charged Incoming Wire Transfer Fees and did not know the amount of the fee. If Plaintiff knew he would be charged Incoming Wire Transfer Fees, he would have arranged for an alternate form of payment. Such misrepresentations misled Plaintiff and are likely to mislead the public. Plaintiff seeks to enjoin Bank of America from misrepresenting this material and accurate information in the documents that it makes available to existing personal accountholders and the general public who might consider banking with Bank of America.

73. Plaintiff and members of the Nationwide Class reasonably relied on Bank of America's misrepresentations in that Plaintiff received and reviewed the materials, including the Account Documents, provided by Bank of America, and like any reasonable customer, understood these documents to mean they would not be charged Incoming Wire Transfer Fees. Had Plaintiff and others in the Nationwide Class been informed in any of the documents provided by Bank of America that they would be subject to these practices, they would have been able to weigh the convenience and benefits in engaging in transactions against the cost of the Incoming Wire Transfer Fees charged by Bank of America.

74. Plaintiff and Nationwide Class members were actually damaged as the direct and proximate result of Bank of America's unfair competition and unfair and deceptive trade practices.

75. Plaintiff is entitled to recovery of treble damages and, in the discretion of the Court, reasonable attorneys' fees and costs by virtue of Bank of America's unfair and deceptive trade practices.

**THIRD CLAIM FOR RELIEF**  
**Violation of California Unfair Competition Law**  
**Business and Professions Code § 17200**  
**(On Behalf of Plaintiff and the California Subclass)**

76. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.

77. Plaintiff brings this claim in the alternative for the California Subclass, to the extent the Court declines to apply North Carolina's Unfair & Deceptive Trade Practices Act to the Nationwide Class.

78. Bank of America's conduct alleged herein violates the Unfair Competition Law (the "UCL"), codified at California Business and Professions Code section 17200, *et seq.*

79. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. In service of that purpose, the Legislature framed the UCL's substantive provisions in broad, sweeping language.

80. By defining unfair competition to include any "any unlawful, unfair or fraudulent business act or practice," the UCL permits violations of other laws to be treated as unfair competition that is independently actionable and sweeps within its scope acts and practices not specifically proscribed by any other law.

81. The UCL expressly provides for injunctive relief and also contains provisions denoting its public purpose.

82. As further alleged herein, Bank of America's conduct violates the "unfair," "unlawful," and "deceptive" prong insofar as Bank of America charges Incoming Wire Transfer Fees.

83. Bank of America's conduct was not motivated by any legitimate business or economic need or rationale, as demonstrated by the fact that Bank of America is an outlier in in the industry in stating that it would disclose applicable fees but then failing to disclose the existence

or amount of Incoming Wire Transfer Fees. The harm and adverse impact of Bank of America's conduct on members of the general public was neither outweighed nor justified by any legitimate reasons, justifications, or motives.

84. The harm to Plaintiff and members of the California Subclass arising from Bank of America's unfair, unlawful, and deceptive practices relating to the imposition of the improper Incoming Wire Transfer Fees outweighs the non-existent utility of the practice.

85. Bank of America's unfair business practices as alleged herein are unlawful, immoral, unethical, oppressive, unscrupulous, unconscionable and/or substantially injurious to Plaintiff, members of the California Subclass, and the general public.

86. Bank of America's conduct was substantially injurious to consumers in that they have been forced to pay improper, abusive, and/or unconscionable Incoming Wire Transfer Fees.

87. Moreover, Bank of America's imposition of undisclosed Incoming Wire Transfer Fees is unlawful, as the failure of its account disclosures to disclose the practice violates 12 CFR § 1030.4, which requires:

The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

*Id.* at (4). Bank of America violates this prong because the Account Documents fail to disclose either the amount of the Incoming Wire Transfer Fees or the conditions under which the Incoming Wire Transfer Fees are imposed.

88. Moreover, Bank of America committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly misrepresented its Incoming Wire Transfer Fees policy. Such misrepresentations misled Plaintiff and are likely to mislead the public.

89. Specifically, Plaintiff reasonably relied on Bank of America's misrepresentations regarding its Incoming Wire Transfer Fees practices. Specifically, Plaintiff did not know he would be charged Incoming Wire Transfer Fees and did not know the amount of the fee. If Plaintiff knew he would be charged Incoming Wire Transfer Fees, he would have arranged for an alternate form of payment. Such misrepresentations misled Plaintiff and are likely to mislead the public. Plaintiff seek to enjoin Bank of America from misrepresenting this material and accurate information in the documents that it makes available to existing personal accountholders and the general public who might consider banking with Bank of America.

90. Plaintiff and members of the California Subclass relied on Bank of America's misrepresentations in that they received and reviewed the materials, including the Account Documents, provided by Bank of America, and like any reasonable customer, understood these documents to mean they would not be charged Incoming Wire Transfer Fees. Had Plaintiff and others been informed in any of the documents provided by Bank of America that they would be subject to these practices, they would have been able to weigh the convenience and benefits in engaging in transactions against the cost of the Incoming Wire Transfer Fees charged by Bank of America.

91. As a result of Bank of America's violations of the UCL, Plaintiff and members of the California Subclass have paid, and/or will continue to pay Incoming Wire Transfer Fees and thereby have suffered and will continue to suffer actual damages.

92. Absent injunctive and public injunctive relief prohibiting Bank of America from misrepresenting material information concerning its Incoming Wire Transfer Fees policy at issue in this lawsuit, Plaintiff and other existing personal accountholders, and the general public will be exposed to Bank of America's conduct violative of the UCL.

**PRAYER FOR RELIEF**

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

1. Declaring Bank of America's Incoming Wire Transfer Fees policies and practices to be wrongful, unfair, and unconscionable;
2. Restitution of all Incoming Wire Transfer Fees paid to Bank of America by Plaintiff and the Classes, as a result of the wrongs alleged herein in an amount to be determined at trial;
3. Disgorgement of the ill-gotten gains derived by Bank of America from its misconduct;
4. Actual damages in an amount according to proof;
5. Punitive and exemplary damages;
6. Pre-judgment interest at the maximum rate permitted by applicable law;
7. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
8. Such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

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

Dated: March 6, 2023

Respectfully submitted,

By: David Wilkerson by Esten & Me

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