

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DANIEL CHRISTENSEN, on behalf of
themselves and all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:23-cv-468

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Daniel Christensen (“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 a class of all similarly situated consumers against Defendant Bank of America, N.A. (“Bank of America”), arising from its unfair, deceptive, and unlawful practices.

2. Financial Institutions, including Bank of America, have a reputation for fiercely marketing the supposed perks of credit cards they issue. In a blatant act of false advertising and promotion over many years, Bank of America deceived consumers into applying for rewards credit cards (“Rewards Cards”) for which sign-up bonuses (“Sign-Up Bonuses”) would be paid.

3. Bank of America misrepresented to its credit card applicants that it would pay these Sign-Up Bonuses only to turn around and never do so despite the new customers’ satisfaction of the simple obligation to start using the credit card. With the Rewards Cards at issue, new

accountholders spent the required amount using their new credit cards within the specified time period, and their Sign-Up Bonuses should have automatically been credited to their accounts, either in cash or rewards points.

4. With respect to its Rewards Card practices, Bank of America recently entered a Consent Order with the Consumer Financial Protection Bureau (“CFPB”). The Consent Order is attached as Exhibit A that has exposed the degree to which Bank of America has misrepresented its Sign-Up Bonus practices.

5. Plaintiff, on behalf of himself and the Class (defined below), seeks to end Bank of America’s deceptive practices and sues for actual, statutory, and punitive damages, restitution, and injunctive relief, as set forth more fully below.

JURISDICTION AND VENUE

6. This Court has original jurisdiction of this action under the Class Action Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original jurisdiction because the aggregate claims of the putative class members exceed \$5 million, exclusive of interest and costs, and at least one of the members of the proposed classes is a citizen of a different state than Bank of America.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Bank of America is subject to personal jurisdiction here and regularly conducts business and is headquartered in the North Carolina, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

PARTIES

8. Plaintiff Daniel Christensen is a citizen and resident of Florida. Plaintiff applied for and opened a Rewards credit card account with 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 Class.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. Bank of America's Deceptive Advertising of Rewards Cards and Sign-Up Bonuses

10. Bank of America consistently misrepresented to applicants for its Rewards Cards whether and the extent to which they would be paid a Sign-Up Bonus in the form of cash or rewards to induce the issuance of new Rewards Cards.

11. Plaintiff and other similarly situated Rewards Card accountholders signed up but did not receive their Sign-Up Bonuses either in whole or in part.

12. For example, Bank of America advertised Sign-Up Bonuses for Rewards Cards without stating a limitation to online applications only.

13. As another example, Bank of America employees promoted the Rewards Card with the Sign-Up Bonus, and then customers like Plaintiff applied in-person or via telephone for the Rewards Card, but were never paid their Sign-Up Bonuses.

14. As a third example, applicants were promised a Sign-Up Bonus when they signed up for a Bank of America Rewards Card through a partner, but never received their Sign-Up Bonuses in full or in part.

15. Whether the misrepresentation was made online or orally by Bank of America, members of the "Class" (defined below) were promised that they would receive their full, as advertised Sign-Up Bonus if they met the stated spending minimum within the time required.

16. Bank of America knew that in-person and telephone Rewards Cards applicants whose accounts were approved and opened, like Plaintiff and members of the Class, would not be paid the Sign-Up Bonus.

17. These misrepresentations were material to Plaintiff and members of the Class, who signed up for the Rewards Card, met the spending amount requirement (and any other precondition to receiving the benefit), but did not receive the promised Sign-Up Bonus.

C. Bank of America's Practices Have Several Negative Public Policy Impacts

18. Bank of America's practices are so harmful to the public that very recently, the CFPB required Bank of America to enter into the Consent Order to proscribe these practices. Ex. A.

19. Underlying the severity of Bank of America's misconduct, under the Consent Order, Bank of America must pay a civil money penalty of \$30,000,000.00 to the CFPB.

20. As CFPB Director Rohit Chopra put it: "Bank of America wrongfully withheld credit card rewards. . . [.] **These practices are illegal and undermine customer trust.**"¹ (Emphasis added.)

D. Plaintiff's Experience

21. Plaintiff maintains a credit card account for a Bank of America Allegiant World Mastercard.

22. Plaintiff signed up for the account through a partnership Bank of America maintains with Allegiant in May of 2022.

23. In signing up for the account, Plaintiff relied upon representations made by Bank of America, through Allegiant, that he would receive a Sign-Up Bonus of a \$100 future statement credit and 15,000 bonus points if he met the spending minimum.

24. Plaintiff met the spending minimum, but Bank of America has refused to honor the

¹ <https://www.consumerfinance.gov/about-us/newsroom/bank-of-america-for-illegally-charging-junk-fees-withholding-credit-card-rewards-opening-fake-accounts/>

\$100 future statement credit.

CLASS ALLEGATIONS

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

26. The proposed “Class” is defined as:

All Bank of America accountholders who, from January 1, 2012 through present, signed up for a Rewards Card with a Sign-Up Bonus, but did not receive the full Sign-Up Bonus despite timely meeting any spending requirement.

27. Plaintiffs reserve the right to modify or amend the definitions of the proposed Class before the Court determines whether certification is appropriate.

28. Excluded from the Class 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.

29. The members of the Class are so numerous that joinder is impractical. The Class 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.

30. The claims of Plaintiff for are typical of the claims of the Class:

- a. Plaintiff like all members of the Class, signed up for a Rewards Card with a Sign-Up Bonus, but did not receive a Sign-Up Bonus despite timely meeting the spending requirement.
- b. Plaintiff was damaged because he signed up for a Rewards Card with a Sign-Up Bonus, but did not receive a Sign-Up Bonus despite timely meeting the spending

requirement, and thus like all members of the Class, was damaged by Bank of America's misconduct.

- c. Furthermore, the factual basis of Bank of America's misconduct is common to all members of each of the Class and represents a common thread of unfair and unconscionable conduct resulting in injury to all members of the Class. And Bank of America has no unique defenses that would apply to Plaintiffs and not the Class.

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

32. Among the questions of law and fact common to the Class include the following:

- a. Whether Bank of America violated the consumer protection laws of North Carolina by advertising Sign-Up Bonus for a Rewards Card, but not issuing the Sign-Up Bonus despite Class members timely meeting the spending requirement, and whether its conduct was deceptive;
- b. Whether Bank of America was unjustly enriched when members of the Class signed up for a Rewards Card with a Sign-Up Bonus, but did not receive a Sign-Up Bonus despite timely meeting the spending requirement;
- c. Whether Bank of America breached its contract and/or the implied duty of good faith and fair dealing with Class members who signed up for a Rewards Card with a Sign-Up Bonus that was not paid;
- d. The proper method or methods by which to measure damages and/or restitution and/or disgorgement; and
- e. Whether Plaintiff and the Class are entitled to declaratory and injunctive relief and

the nature of that relief.

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

34. Plaintiff is committed to the vigorous prosecution of this action and has 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 respective Class.

35. 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 Class's claim is small relative to the complexity of the litigation, and due to the financial resources of Bank of America, no member of the Class could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Bank of America's misconduct will proceed without remedy.

36. Even if members of the Class 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.

37. Plaintiff knows of no difficulty to be encountered in the maintenance of this action

that would preclude its treatment as a class action.

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

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

COUNT I
**Breach of Contract Including Breach of the
Covenant of Good Faith and Fair Dealing**

40. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs 1 through 39.

41. Plaintiff (and fellow members of the putative Class) and Bank of America have contracted for financial services, as embodied in the “Terms and Conditions.”

42. The Terms and Conditions include the representations Bank of America made regarding issuing a Sign-Up Bonus when Plaintiff (and fellow members of the Class) signed up for a Bank of America Rewards Card.

43. Bank of America did not issue the Sign-Up Bonus in whole or in part to Plaintiff and members of the Class.

44. Therefore, Bank of America breached the terms of the Account Documents that form the contract Plaintiff (and fellow members of the Class).

45. 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.

46. 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.

47. Bank of America has breached the covenant of good faith and fair dealing in the Account Documents by failing to issue the full Sign-Up Bonus to Plaintiff (and fellow members of the putative Class).

48. 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 by not issuing the Sign-Up Bonus.

49. 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 Class, thereby depriving them of the benefit of their bargain.

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

51. Plaintiff and members of the Class 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.

COUNT II
Unjust Enrichment

52. Plaintiff repeats and incorporates by reference paragraphs 1 through 39.

53. This claim is pled in the alternative to Counts I and III.

54. Plaintiff and members of the Class conferred a monetary benefit on Bank of America by signing up for and then using their Rewards Cards to purchase services or goods.

55. Bank of America had knowledge of this benefit when it accepted the money from Plaintiff and members of the Class.

56. Plaintiff and members of the Class used their Rewards Cards to make purchases of services or goods with the expectation of receiving the full Sign-Up Bonus. Bank of America receives a financial benefit from each dollar charged on a Rewards Card.

57. Bank of America failed to provide the Sign-Up Bonus, in whole or in part, and as a result Plaintiff and members of the Class overpaid Bank of America as part of services they purchased.

58. Bank of America affirmatively misrepresented to Plaintiff and members of the Class that they would receive the full Sign-Up Bonus.

59. Under principles of equity and good conscience, Bank of America should not be permitted to retain the money belonging to Plaintiff and members of the Class because Bank of America failed to provide the Sign-Up Bonus that they paid for but did not receive. Bank of America wrongfully accepted and retained these benefits to the detriment of Plaintiff and members of the Class.

60. Bank of America's enrichment at the expense of Plaintiff and members of the putative Class is and was unjust.

61. As a result of Bank of America's wrongful conduct, as alleged above, Plaintiff and members of the Class are entitled under the unjust enrichment laws of all 50 states to restitution

and disgorgement of all profits, benefits, and other compensation obtained by Bank of America, plus attorneys' fees, costs, and interest thereon.

COUNT III
North Carolina's Unfair & Deceptive Trade Practices Act

62. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs 1 through 39.

63. Application of North Carolina law to the putative Rewards Class with respect to Plaintiff's and the Class's 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 Class.

64. 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.

65. 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 the Sign-Up Bonus. Bank of America's corporate decisions regarding how to misrepresent and withhold the Sign-Up Bonus in whole or in part were made from and in North Carolina.

66. Under choice of law principles, the common law of North Carolina applies to the nationwide common law claims of all 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.

67. As alleged herein, Bank of America violated N.C.G.S. § 75.1-1 *et seq.* when it affirmatively and knowingly misrepresented to Plaintiff that the full Sign-Up Bonus would be received for the Rewards Card. Such misrepresentations misled Plaintiff and Class members into applying for and using the Rewards Card on the promise of the Sign-Up Bonus and are likely to mislead the public.

68. This practice was not only deceptive, but it was also unfair, illegal, and contrary to public policy. *See generally*, Consent Order, Ex. A.

69. Specifically, Plaintiff reasonably relied on Bank of America's misrepresentations regarding its Sign-Up Bonus for Rewards Card practices. Specifically, Plaintiff did not know that he would not receive the full Sign-Up Bonus. If Plaintiff knew he would not receive the Sign-Up Bonus, he would not have signed up for the Rewards Card. Such misrepresentations misled Plaintiff and Class members into applying for and using the Rewards Card on the promise of the Sign-Up Bonus 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.

70. Plaintiff and members of the putative Rewards 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 that they would receive a Sign-Up Bonus if they met the spending requirement. Had Plaintiff and others in the putative Rewards Class been informed by Bank of America that they would not receive the full Sign-Up Bonus, they would not have signed up for the Rewards Card.

71. Plaintiff and members of the putative Rewards Class were actually damaged as the

direct and proximate result of Bank of America's unfair competition and unfair and deceptive trade practices.

72. Plaintiff and Class Members are 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.

PRAYER FOR RELIEF

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

1. Declaring Bank of America's above-delineated policies and practices to be wrongful, unfair, and unconscionable;
2. Restitution of all fees and inflated amounts paid to Bank of America by Plaintiff and the Class, 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 and treble 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: July 27, 2023

Respectfully submitted,

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EXHIBIT C

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING
File No. 2023-CFPB-0007

In the Matter of:

BANK OF AMERICA, N.A.,

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has identified the following violations of law by Bank of America, N.A. (Bank, or Respondent, as defined below): (i) with respect to promotional bonus offers on rewards credit cards, Respondent created the deceptive net impression that bonuses linked to rewards credit cards were available to all consumers when those bonuses were only available to consumers who applied online, and denied bonuses to certain targeted consumers who applied in-person and over the phone; and (ii) with respect to offering consumer credit card accounts, in some instances, Respondent applied for and opened credit cards for consumers without their consent and obtained consumer reports for those consumers without a permissible purpose.

The Bureau has concluded that Respondent's acts or practices violated the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq., and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; the Fair Credit Reporting Act

(FCRA), 15 U.S.C. §§ 1681b(f); and the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536. The Bureau issues this Consent Order under §§ 1053 and 1055 of the CFPA.

I.

Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565.

II.

Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated June 28, 2023 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III.

Definitions

3. The following definitions apply to this Consent Order:

- a. “Account-Opening Affected Consumers” means consumers who may have been negatively impacted by Relevant Account-Opening Practices during the Account-Opening Notice Period and who have not previously received redress.
- b. “Account-Opening Findings Period” is from January 1, 2012, through December 31, 2020.
- c. “Account-Opening Notice Period” is from January 1, 2015, through December 31, 2021.
- d. “Board” means Respondent’s duly-elected and acting Board of Directors or a committee thereof.
- e. “Consumer Financial Product or Service” is defined in 12 U.S.C. § 5481 and means any financial product or service that is described in one or more categories under— (A) paragraph (15) of 12 U.S.C. § 5481 and is offered or provided for use by consumers primarily for personal, family, or household purposes; or (B) clause (i), (v), (vii), (ix), or (x) of paragraph (15)(A) of 12 U.S.C. § 5481, and is delivered, offered, or provided in connection with a consumer financial product or service referred to in 12 U.S.C. § 5481(5)(A).
- f. “Consumer Reporting Agency” means a Consumer Reporting Agency as defined by 15 U.S.C. § 1681a(f).

- g. “Effective Date” means the date on which the Consent Order is entered on the administrative docket.
- h. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.
- i. “Regional Director” means the Regional Director for the Southeast Region for the Office of Supervision for the Consumer Financial Protection Bureau, or his or her delegate.
- j. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.
- k. “Relevant Account-Opening Practices” means submitting applications on behalf of, opening, issuing, activating, or enrolling a consumer in credit cards without the consumer’s consent.
- l. “Remediated Rewards Consumers” means consumers to whom the Bank previously paid or provided approximately \$23 million in redress, in the form of adjustments to their rewards accounts,

statement credits, or refund checks, related to Rewards Card Bonus Practices.

- m. “Respondent” means Bank of America, N.A., and its successors and assigns.
- n. “Rewards Card Bonus Practices” means the advertising or promotion of Rewards Cards and Sign-Up Bonuses in connection with Rewards Cards, representations made about the terms and features of Rewards Cards, enrolling consumers in Rewards Cards, and providing advertised or promised features of Rewards Cards including Sign-Up Bonuses, from January 1, 2012, through February 28, 2021.
- o. “Rewards Cards” means credit card products that provide consumers with cash or points as rewards for using the credit card.
- p. “Rewards Consumers” means consumers who were potentially subjected to Rewards Card Bonus Practices, and are not Remediated Rewards Consumers.
- q. “Sign-Up Bonus” means an additional cash or points bonus for new cardholders who signed up for a Rewards Card and achieved certain spending limits.
- r. “Targeted Consumers” means consumers, beginning in 2013, to whom Respondent offered the opportunity to apply for a Rewards

Card with a Sign-Up Bonus when the consumer called Respondent or visited one of its branches.

IV.

Bureau Findings and Conclusions

The Bureau finds the following:

4. Respondent is a national bank headquartered in Charlotte, North Carolina, with branches and ATMs located in 38 states and the District of Columbia. In September 2022, Respondent had over \$3.1 trillion in total assets, which makes it an insured depository institution with assets greater than \$10 billion within the meaning of 12 U.S.C. § 5515(a).

5. Respondent operates more than 3,900 full-service bank branches nationwide, through which it offers deposit and credit products.

6. Respondent is a “covered person” under 12 U.S.C. § 5481(6).

Respondent’s Violations of Law Regarding Online Advertisements of Rewards Cards and Sign-Up Bonuses

7. From January 1, 2012, through February 28, 2021, Respondent advertised the use of the Rewards Cards by offering a Sign-Up Bonus.

8. At various times from January 1, 2012, through February 28, 2021, Respondent advertised Sign-Up Bonuses on its website. Advertisements in 2019, for example, offered consumers a “\$200 online cash rewards bonus offer” for the “Bank of America Cash Rewards” card; a “50,000 online bonus points offer (a

\$500 value)” for the “Bank of America Premium Rewards” card; and a “25,000 online bonus points offer (a \$250 value)” for the “Bank of America Travel Rewards” card.

9. Some of the website advertisements, including the online terms and conditions, did not expressly state that the Sign-Up Bonus offers were limited to online applications.

10. Some consumers reasonably interpreted the word “online” contained in the advertisements for an “online cash rewards bonus offer” or an “online bonus points offer” to refer only to the fact that the advertisement itself was “online” – and not necessarily that the consumer could only earn a Sign-Up Bonus if he or she applied for a Rewards Card online.

11. Respondent thus created the misleading net impression that the Sign-Up Bonus offers were available to all applicants, including those who applied in-person or via phone call.

12. The promised Sign-Up Bonuses were material to some consumers because these are an important characteristic of the Rewards Card being offered in conjunction with the Sign-Up Bonus.

13. Respondent did not provide Sign-Up Bonuses to some consumers who sought the Sign-Up Bonus, but did not apply for the Rewards Card online.

14. Section 1036(a)(1)(B) of the CFPB prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).

15. These website advertisements created false or misleading net impressions in instances where the Bank did not provide Sign-Up Bonuses to consumers who responded to the advertisement and opened a Rewards Card account over the telephone or in person and thereafter met the spending requirement.

Respondent’s Violations of Law Regarding Targeted Promotions of Rewards Cards and Sign-Up Bonuses

16. In 2013, Respondent began targeting certain consumers to be invited to apply for a Rewards Card with a Sign-Up Bonus when they called Respondent or visited one of its branches.

17. These Targeted Consumers usually received the targeted offer from Respondent’s employees. If the consumer was interested in the offered Rewards Card, Respondent’s associate was required to conduct a multiple-step manual process to allow the consumer to apply for a Rewards Card account with a Sign-Up Bonus.

18. Some consumers who were specifically targeted for a particular Rewards Card with Sign-Up Bonus offer, and signed up in-person or via phone call, were ultimately not given the advertised Sign-Up Bonus because Respondent’s employees did not accurately complete the application process.

19. Respondent was aware that some Targeted Consumers were seeking enrollment in Rewards Cards with Sign-Up Bonuses and that it was simultaneously failing to provide the Sign-Up Bonuses due to the manner in which some employees processed the applications.

20. Some consumers reasonably understood Respondent's oral representations that they were eligible to apply for a Rewards Card with a Sign-Up Bonus to mean that they would receive a Sign-Up Bonus when they signed up for a Rewards Card and met the spending requirements.

21. Respondent's representations were material to some consumers because they were likely to affect a consumer's decision to sign up for the offered Rewards Card.

22. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).

23. Respondent engaged in a deceptive act or practice by promising Sign-Up Bonuses to certain Targeted Consumers who signed up for the Rewards Card, and met the required spending amount, but failing to provide those consumers with the promised Sign-Up Bonus.

Respondent's Violations of Law Regarding Account-Opening Practices

24. During the Account-Opening Findings Period, Respondent offered an array of Consumer Financial Products or Services, including savings and checking accounts (deposit accounts) and credit cards.

25. During the Account-Opening Findings Period, one factor that Respondent considered when evaluating financial center employees' overall performance and incentive compensation was the number of new Consumer Financial Products or Services that were opened and used by the consumer.

26. During the Account-Opening Findings Period, in response to sales pressure or to obtain incentive rewards, Respondent's employees sometimes submitted applications for and issued credit cards without consumers' consent. These acts or practices were contrary to Respondent's policies and procedures and involved a small percentage of Respondent's new accounts.

27. It was Respondent's practice to obtain consumer reports in the course of considering consumers for new credit cards.

28. Respondent used or obtained consumer reports to consider consumers for new credit cards even when the consumers had not applied for or did not want the products and where Respondent did not otherwise have a permissible purpose for the consumer reports.

29. During the Account-Opening Findings Period, Respondent sometimes generated associated fees from credit card accounts opened without consumers' consent.

30. Respondent's acts or practices described herein may have negatively impacted consumers including through fees charged; impacts to consumer credit profiles; the loss of control over personal identifying information; the expenditure of consumer time and effort investigating the facts and seeking closure of unwanted accounts; and the need to monitor and mitigate harm going forward.

31. Respondent has addressed a root cause of Relevant Account-Opening Practices—individual sales goals and sales-based compensation—by eliminating sales goals both for compensation incentives and for performance management for financial center employees primarily responsible for the sale of consumer credit card accounts as of January 1, 2023.

Respondent's Violations of TILA

32. Under TILA, "no credit card shall be issued except in response to a request or application therefor." 15 U.S.C. § 1642. Regulation Z requires that no credit card shall be issued to any person except in response to an oral or written

request or application for the card; or as a renewal of, or substitute for, an accepted credit card. 12 C.F.R. § 1026.12(a).

33. By issuing credit cards to consumers without the consumers' consent and not in response to an oral or written request or application for the card or as a renewal of, or substitute for, an accepted credit card, Respondent violated TILA and Regulation Z, 15 U.S.C. § 1642; 12 C.F.R. § 1026.12(a).

Respondent's Violations of FCRA

34. Section 604(f) of FCRA mandates that consumer reports be used or obtained only for permissible purposes enumerated in the statute. 15 U.S.C. § 1681b(f).

35. Under FCRA, a "person shall not use or obtain a consumer report for any purpose unless—(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished" and one other condition is met. 15 U.S.C. § 1681b(f).

36. The authorized purposes specified in FCRA include consumer reports furnished "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer." 15 U.S.C. § 1681b(a)(3)(A).

37. By using or obtaining consumer reports without a permissible purpose, Respondent violated § 604(f) of FCRA, 15 U.S.C. § 1681b(f).

Respondent's Violations of the CFPA

38. Under § 1036(a)(1)(A) of the CFPA, it is unlawful for covered persons to “offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law.” 12 U.S.C. § 5536(a)(1)(A).

39. By violating TILA, and FCRA, Respondent committed acts or omissions in violation of Federal consumer financial laws. Accordingly, Respondent violated § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

CONDUCT PROVISIONS

V.

Prohibited Conduct

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, that:

40. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, in connection with Rewards Card Bonus Practices (as defined but without regard to a time period limitation), whether acting directly or indirectly, may not violate sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, including by:

- a. Failing to disclose material limitations to the availability or terms and conditions of any Rewards Card; and

b. Failing to provide benefits to consumers as advertised.

41. Respondent and its officers, agents, servants, and employees and attorneys, who have actual notice of this Consent Order, in connection with the Relevant Account-Opening Practices, whether acting directly or indirectly, may not violate sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536; TILA, 15 U.S.C. § 1601 et seq., and its implementing regulation, Regulation Z, 12 C.F.R. part 1026; or FCRA, 15 U.S.C. § 1681b(f) by opening credit cards without the consumer's consent.

Required Conduct

42. Respondent has ceased using sales goals and, for 3 years after the Effective Date, agrees not to use sales goals either for compensation or for performance management to incentivize its financial center employees who are primarily responsible for the opening of consumer credit cards.

43. Respondent must implement, if not already implemented, and maintain policies and procedures that:

- a. Ensure, for all Rewards Card advertisements, adequate disclosure of any limitations on the advertised bonus or reward;
- b. Are designed to accurately and consistently provide rewards program benefits as advertised when enrolling consumers for Rewards Cards;

- c. Collect and retain evidence demonstrating that a consumer has authorized the application, issuance, or opening of any Consumer Financial Product or Service; and
- d. Are designed to ensure that Respondent (i) appropriately handles consumer inquiries or complaints concerning Relevant Account-Opening Practices, (ii) appropriately handles employee inquiries, concerns, or complaints concerning sales pressure or Relevant Account-Opening Practices, (iii) tracks and addresses indicia of Relevant Account-Opening Practices, and (iv) provides employee training reasonably designed to prevent Relevant Account-Opening Practices.

VI.

Compliance Plan

IT IS FURTHER ORDERED that:

44. Within 90 days of the Effective Date, Respondent must draft, implement, and maintain a comprehensive compliance plan designed to ensure that Respondent's conduct regarding applying for and opening credit card accounts and Respondent's advertisement and promotions of Rewards Cards comply with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must include, at a minimum:

- a. detailed steps Respondent has taken or will take to address each action required by this Consent Order;
 - b. a mechanism to ensure that the Board is kept apprised of the status of compliance actions; and
 - c. specific timeframes and deadlines for implementation of the steps described above, if not already implemented.
45. Respondent must provide the Compliance Plan to the Bureau upon request.

VII.

Role of the Board

IT IS FURTHER ORDERED that:

46. Respondent's Board must review all plans, reports, and submissions (including Compliance plans, Compliance reports, programs, policies, and procedures) required by this Consent Order, including prior to submission to the Bureau.

47. The Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with the laws that the Bureau enforces, including Federal consumer financial laws and this Consent Order.

48. In each instance that this Consent Order requires the Board to ensure adherence to, or perform certain obligations of Respondent, the Board must:
- a. Authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;
 - b. Require timely reporting by management to the Board on the status of compliance obligations; and
 - c. Require timely and appropriate corrective action to remedy any material non-compliance with Board directives related to this Section.

MONETARY PROVISIONS

VIII.

Order on Redress and Requiring Audit

IT IS FURTHER ORDERED that:

a. Rewards Consumers

49. Respondent has previously identified and provided redress to Remediated Rewards Consumers.

50. Within 45 days of the Effective Date, Respondent must conduct a comprehensive review to determine (1) whether there are Targeted Consumers who signed up for a Rewards Card, and met the required spending requirement, but did not receive the Sign-Up bonus, and who were not previously remediated, and

(2) the completeness of the redress provided to Remediated Rewards Consumers.

This review may be conducted by Respondent's independent corporate audit function or a third-party consultant.

51. If Respondent identifies additional redress that should be provided to consumers as a result of the review described in paragraph 50 or otherwise, Respondent must provide redress to affected consumers prior to submitting the Remediation Report described in paragraph 52.

52. Within 90 days of the Effective Date, Respondent must submit to the Regional Director a Remediation and Audit Report (Remediation Report) that describes in detail all steps Respondent took or is taking to comply with paragraph 50, including the results of its review and how any additional redress was provided or is being provided as a result of the review(s).

53. To the extent Respondent has already complied with paragraphs 50-52, in whole or in part, no additional action is required with respect to the actions already completed. Respondent may rely on previous materials reported to the Regional Director (and the basis for such materials) to evidence its completion of any of the requirements of paragraphs 50-52.

54. Respondent may not condition the payment of any redress to any Rewards Consumer under this Consent Order on that Rewards Consumer waiving any right.

b. Account-Opening Affected Consumers

55. Within 30 days of the Effective Date, Respondent must submit to the Regional Director for review and non-objection a comprehensive written plan for providing redress to Account-Opening Affected Consumers consistent with this Consent Order (Redress Plan). The Redress Plan must, at a minimum:

- a. Use data analytics and other methods available to reasonably identify Account-Opening Affected Consumers;
- b. Provide redress to Account-Opening Affected Consumers. The Redress Plan must also describe the redress amounts Respondent will provide to Account-Opening Affected Consumers and include and describe procedures for the Respondent to support and provide to the Bureau any determination made by the Respondent that providing redress to particular Account-Opening Affected Consumers is impracticable.
- c. Request deletion of all tradelines associated with the accounts that resulted in individuals being classified as Account-Opening Affected Consumers.
- d. Detail how Respondent will locate Account-Opening Affected Consumers for payment of redress and the steps Respondent will take

with respect to consumers whose redress payments are returned as undeliverable or not cashed within a prescribed time.

- e. Provide the Bureau with a copy of the form of the letter or notice that will be sent to Account-Opening Affected Consumers notifying them of any redress and, if applicable, offering to close the products or end the services without fees or penalties.

56. Within 180 days after completing the Redress Plan, Respondent's internal audit department must review and assess compliance with the terms of the Redress Plan and validate that the Redress Plan has been properly executed and must report the results of the review and assessment in a written submission to the Board and to the Regional Director.

57. Respondent must provide all redress under the Redress Plan within one year of the Regional Director making a determination of non-objection to the Redress Plan, unless the Regional Director grants an extension of that deadline.

58. Respondent may not condition the payment of any redress to any Account-Opening Affected Consumer under this Consent Order on that Account-Opening Affected Consumer waiving any right.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

59. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, Respondent must pay a civil money penalty of \$30,000,000 to the Bureau.

60. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

61. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

62. Respondent, for all purposes, must treat the civil money penalty paid under this Consent Order as a penalty paid to the government. Regardless of how the Bureau ultimately uses those funds, Respondent may not:

- a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
- b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.

63. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled

to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action or because of any payment that the Bureau makes from the Civil Penalty Fund. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

IX.

Additional Monetary Provisions

IT IS FURTHER ORDERED that:

64. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

65. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.

66. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer-identification numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

67. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

COMPLIANCE PROVISIONS

X.

Reporting Requirements

IT IS FURTHER ORDERED that:

68. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not

limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

69. Within 7 days of the Effective Date, Respondent must designate at least one telephone number and email, physical, and postal addresses as points of contact that the Bureau may use to communicate with Respondent.

70. Respondent must report any change in the information required to be submitted under Paragraph 69 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

71. One year after the Effective Date, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board and sworn to under penalty of perjury, which, at a minimum:

- a. lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has

complied with each such paragraph and subparagraph of the Consent Order;

- b. describes in detail the manner and form in which Respondent has complied with the Compliance Plan, Redress Report Plan for Rewards Consumers and Redress Plan for Account-Opening Practices; and
- c. attaches a copy of each Order Acknowledgment obtained under Section XI, unless previously submitted to the Bureau.

XI.

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

72. Within 7 days of the Effective Date, Respondent must submit to the Regional Director an acknowledgment of receipt of this Consent Order, sworn under penalty of perjury.

73. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its Board members and executive officers, as well as to any business leaders and senior managers who have responsibilities related to the subject matter of the Consent Order.

74. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in business structure to any future Board members and executive officers, as well as to any

business leaders and senior managers who have responsibilities related to the subject matter of the Consent Order.

75. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 et seq., within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

76. Ninety days after the Effective Date, Respondent must submit to the Regional Director a list of all persons and their titles to whom this Consent Order was delivered through that date under Paragraphs 73-74 and a copy of all signed and dated statements acknowledging receipt of this Consent Order under Paragraph 75.

XII.

Recordkeeping

IT IS FURTHER ORDERED that:

77. Respondent must create and retain the following business records:
- a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau;

- b. all consumer complaints and refund requests (whether received directly or indirectly, such as through a third party) regarding Respondent's offering of Sign-up Bonuses for the opening of a Rewards Card;
- c. all documents and records pertaining to the Compliance Plan described in Section VI above and the Remediation Report, described in Section VIII above; and
- d. all consumer complaints and refund requests related to the Relevant Account-Opening Practices (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.

78. Respondent must make the documents identified in Paragraph 77 available to the Bureau upon the Bureau's request.

XIII.

Notices

IT IS FURTHER ORDERED that:

79. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* Bank of America, N.A.,"

File No. 2023-CFPB -0007,” and send them by overnight courier or first-class mail to the below address and contemporaneously by email to

Enforcement_Compliance@cfpb.gov:

Regional Director, CFPB Southeast Region
Peachtree Summit Building
401 W. Peachtree Street
Atlanta, GA 30308

XV.

Cooperation with the Bureau

IT IS FURTHER ORDERED that:

80. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Account-Opening Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

XVI.

Compliance Monitoring

IT IS FURTHER ORDERED that:

81. Within 30 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested

information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

82. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview regarding: (a) this matter; (b) anything related to or associated with the conduct described in Section IV; or (c) compliance with the Consent Order. The person interviewed may have counsel present.

83. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XVII.

Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

84. Respondent may seek a modification to non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Regional Director.

85. The Regional Director may, in his or her discretion, modify any non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

ADMINISTRATIVE PROVISIONS

XVIII.

IT IS FURTHER ORDERED that:

86. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau from taking any other action against Respondent, except as described in Paragraph 87. Further, for the avoidance of doubt, the provisions of this Consent Order do not bar, estop, or otherwise prevent any other person or governmental agency from taking any action against Respondent.

87. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

88. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPB, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

89. This Consent Order will terminate on the later of 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent, if such action is initiated within 5 years of the Effective Date. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

90. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted. Deadlines that fall on a weekend or federal holiday shall carry over to the following business day.

91. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition

of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

92. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under §1055(c) of the CFPB, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

93. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

94. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 10th day of July, 2023.

Rohit Chopra

Rohit Chopra
Director
Consumer Financial Protection Bureau