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11 *Pro Hac Vice application to be submitted
12 Attorneys for Plaintiff Rex Lair _____
and the Putative Class
13
14

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 REX LAIR, individually, and on behalf
of all others similarly situated,

19 Plaintiff,

20 v.
21

22 BANK OF AMERICA, N.A., and
DOES 1 through 5, inclusive,

23 Defendant.
24
25
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27
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Case No.: 5:23-cv-1345

COMPLAINT FOR:

1. Breach of Contract
2. Breach of the Implied Covenant of Good Faith and Fair Dealing
3. Unjust Enrichment
4. Money Had and Received
5. Conversion
6. Violation of the California Unfair Competition Law (Cal. Civ. Code §§ 17200, *et seq.*)
7. Violation of California False Advertising Act (Bus. & Prof. Code § 17500)

CLASS ACTION

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1
2 1. Plaintiff Rex Lair, (“Plaintiff”), on behalf of himself and all other similarly
3 situated California residents, brings this lawsuit against Defendant Bank of America,
4 N.A. (“Defendant” or “Bank of America”) on behalf of Bank of America’s customers and
5 the California public because Bank of America has breached its contracts and violated
6 California consumer protection laws. Bank of America does so by charging recipients of
7 wire transfers fees on incoming transfers without properly disclosing such fees, a practice
8 that violates the parties’ contracts, federal law, and state law against unfair and deceptive
9 practices.

10 2. Bank of America is one of the rare banks in the industry that charges
11 incoming wire transfer fees without disclosing such fees in its applicable contracts and
12 disclosures. As such, customers do not know they are going to be charged these fees until
13 after they receive an incoming wire deposit and the fee is assessed. Therefore, they are
14 unable to take these fees into account when deciding how to receive money into their
15 accounts. Bank of America’s wire transfer fee not only breaches its agreements with
16 accountholders, but it is an unfair and deceptive trade practice in the form of a hidden fee
17 that unfairly tilts the competitive playing field to Bank of America’s advantage. As a
18 result, Plaintiff seeks damages, injunctive relief, and other remedies as set forth herein.

19 **I PARTIES**

20 3. Plaintiff Rex Lair is a resident and citizen of Victorville, California, and a
21 Bank of America accountholder at all relevant times to this Complaint.

22 4. Defendant Bank of America, N.A. is a national bank with its headquarters
23 and principal place of business in Charlotte, North Carolina. It provides retail banking
24 services to consumers, including Plaintiff and other similarly situated accountholders.
25 Bank of America has over 6,000 branches spread over 38 states, employing over 200,000
26 individuals and holds over \$3 trillion in assets, the second-largest bank (as measured by
27 asset size) in the United States.
28

1 5. Without limitation, Defendants DOES 1 through 5, include agents, partners,
2 joint ventures, subsidiaries, and/or affiliates of Defendant and, upon information and
3 belief, also own and/or operate Defendant’s branch locations. As used herein, where
4 appropriate, the term “Defendant” is also inclusive of Defendants DOES 1 through 5.

5 6. Plaintiff is unaware of the true names of Defendants DOES 1 through 5.
6 Defendants DOES 1 through 5 are thus sued by fictitious names, and the pleadings will
7 be amended as necessary to obtain relief against Defendants DOES 1 through 5 when the
8 true names are ascertained, or as permitted by law or the Court.

9 7. There exists, and at all times herein mentioned existed, a unity of interest
10 and ownership between the named defendants (including DOES) such that any corporate
11 individuality and separateness between the named defendants has ceased, and that the
12 named defendants are *alter egos* in that they effectively operate as a single enterprise, or
13 are mere instrumentalities of one another.

14 8. At all material times herein, each Defendant was the agent, servant, co-
15 conspirator, and/or employer of each of the remaining defendants; acted within the
16 purpose, scope, and course of said agency, service, conspiracy, and/or employment and
17 with the express and/or implied knowledge, permission, and consent of the remaining
18 defendants; and ratified and approved the acts of the other Defendants. However, each of
19 these allegations are deemed alternative theories whenever not doing so would result in a
20 contradiction with the other allegations.

21 9. Whenever this Complaint references any act, deed, or conduct of Defendant,
22 the allegation means that Defendant engaged in the act, deed, or conduct by or through
23 one or more of its officers, directors, agents, employees, or representatives who was
24 actively engaged in the management, direction, control, or transaction of Defendant’s
25 ordinary business and affairs.

26 10. As to the conduct alleged herein, each act was authorized, ratified, or
27 directed by Defendant’s officers, directors, or managing agents.
28

1 **II JURISDICTION AND VENUE**

2 11. This Court has subject matter jurisdiction over this case pursuant to 28
3 U.S.C. § 1332 under the Class Action Fairness Act of 2005 because: (i) there are 100 or
4 more Class Members, (ii) there is an aggregate amount in controversy exceeding
5 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at
6 least one plaintiff and one defendant are citizens of different States.

7 12. Venue is proper in this District because Defendant maintains a significant
8 physical presence in this District, transacts business in this District, and executed the
9 unlawful policies and practices that constitute the subject of this action in this District.

10 **III BACKGROUND**

11 **A. Bank of America Wire Services**

12 13. One service Bank of America offers accountholders is to send and receive
13 “wire transfers” in and out of their accounts. A wire transfer is an electronic transfer of
14 funds via a specialized network developed and administered by banks around the world.¹
15 Senders generally pay fees to initiate the transaction at the remitting bank and provide the
16 intended recipient’s name, bank account number, and the amount they intend to transfer.²
17 An automatic clearing house processes the resulting transfers, taking as long as two
18 business days to settle.³

19 14. A wire transfer is a relatively safe way to transfer large amounts of money
20 between accounts without the need to handle and exchange cash. The bank acts as an
21 intermediary, ensuring that the funds are sent to the appropriate accountholder at the
22 receiving bank. Given the bank’s intermediary role in the transaction, it is customary and
23 expected for the sender of a wire transfer to pay a fee to the originating bank. Although
24 they often don’t, receiving banks *may* also charge a fee which is deducted from the total
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27 ¹ See [What Is a Wire Transfer? How it Works, Safety, and Fees](https://www.investopedia.com/terms/w/wiretransfer.asp), Kagan Julia, March 31,
2023, <https://www.investopedia.com/terms/w/wiretransfer.asp> (last visited May 2, 2023).

28 ² *Id.*

³ *Id.*

1 amount received by the customer, as long as that fee is disclosed to accountholders. The
2 originating and receiving banks generally disclose those fees to accountholders in a fee
3 schedule, with the amount generally left to the banks' discretion. These fees can be
4 significant, ranging from approximately \$35 for domestic transfers and more for
5 international transfers.⁴ Many times the fees are so significant that accountholders may
6 opt to consider alternative and less costly methods of transferring funds between parties
7 and accounts.

8 **1. Assessment of Wire Transfer Fees**

9 15. Like other banks, Bank of America assesses wire transfer fees pursuant to a
10 standardized agreement with all accountholders called the Deposit Agreement and
11 Disclosures (the "Account Agreement"). The Bank of America Account Agreement
12 provides that the accountholder "agrees to pay for our services in accordance with the
13 fees that apply to your account and your deposit relationship with us."⁵ Further, it states
14 that accounts are "subject to the fees described in the Schedule of Fees that applies to
15 your account."⁶ It also states that the Personal Schedule of Fees is part of the binding
16 contract between customers and the bank.⁷

17 16. As such, Bank of America promised it would only charge disclosed fees in
18 accordance with its contracts and disclosures.

19 17. The Personal Schedule of Fees "lists the fees associated with your account
20 and ways to avoid them when applicable."⁸ The Schedule of Fees instructs
21 accountholders to obtain details about fees from the "account descriptions and Other
22 Account Fees and Services section" of the document.⁹

26 ⁴ *Id.*

27 ⁵ Account Agreement (November 2022), at 17, attached hereto as Exhibit 1.

28 ⁶ *Id.*

⁷ *Id.*

⁸ Personal Schedule of Fees, May 19, 2023, attached hereto as Exhibit 2,

⁹ *Id.*

1 18. With regard to wire transfers “incoming or outgoing,” the Personal Schedule
2 of Fees only states that the “fee varies.”¹⁰ This ambiguity alone renders it meaningless as
3 a contract term.

4 19. Bank of America has yet another contract that applies to accountholders
5 called the Online Banking Service Agreement (“Online Agreement”). The Online
6 Agreement governs the use of Bank of America’s online or mobile banking services. It
7 includes a section on “ACH and Wire Transfers” and states that accountholders may
8 “send and receive the following types of ACH and Wire transfers,” including inbound
9 and outbound ACH transfers and outbound domestic or international wire transfers. The
10 Agreement then lists the specific fee for each service.¹¹ Notably, the fee for all inbound
11 transfers listed is \$0 for consumers, while outbound transfers range from \$3.00 to \$45.00
12 depending on whether the transfer is domestic or international and by ACH or wire.

13 20. Inbound wire transfers are not specifically mentioned in what otherwise
14 appears to be an exhaustive list of fees for transfers. Accordingly, a reasonable customer
15 would not think that an inbound wire transfer would be treated any differently than other
16 inbound transfers that have a \$0 fee for consumers, nor would they have any indication
17 that they need to call the bank to inquire about a fee.¹²

18 21. Compounding the problem even further, Bank of America offers an online
19 FAQ section for consumers wishing to use its wire transfer services.¹³ The website directs
20 that consumers will be able to “review any fees and limits before completing your wire
21 transfer in Online Banking.”¹⁴ Consumers are also directed that “transfer limits are also
22 available” in Bank of America’s Online Banking Service Agreement.¹⁵ The only
23 reasonable interpretation of this language is that consumers will find all necessary
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¹⁰ *Id.*, at 13.

¹¹ *See* Online Banking Service Agreement, May 19, 2023, attached hereto as Exhibit 3.

¹² *Id.*

¹³ *See* Wire Transfer FAQ’s, attached hereto as Exhibit 4.

¹⁴ *Id.*

¹⁵ *Id.*

1 information about wire transfers in the Online Banking Service Agreement, which lists
2 no fee for incoming wire transfers.

3 22. Moreover, consumers would have no reason to assume a fee would be
4 assessed for inbound wire transfers because federal law requires disclosure of all account
5 related fees. Specifically, under Regulation DD, issued by the Consumer Financial
6 Protection Bureau (“CFPB”) to implement the Truth in Savings Act of 1991, a financial
7 institution must disclose “the amount of any fee that may be imposed in connection with
8 the account (or an explanation of how the fee will be determined) and the conditions
9 under which the fee may be imposed.” 12 CFR §1030.4. The purpose of this provision is
10 to “enable consumers to make informed decisions about accounts at depository
11 institutions.” *Id.*, at §1030.1.

12 23. Here, Bank of America has not offered any valid modification of the
13 governing account documents, nor did Plaintiff agree to modify its terms. The first time
14 Plaintiff became aware of the \$15 incoming wire transfer fee was after Bank of America
15 charged the \$15 fee and deducted it from Plaintiff’s account. The governing account
16 documents provided no indication that Bank of America assessed a specific fee for
17 inbound wire transfers or that they would be treated differently than the inbound transfers
18 subject to a \$0 fee as listed in the Online Banking Service Agreement, thus preventing
19 any opportunity for consumers to evaluate whether they wanted to receive funds by wire
20 transfer or another less costly method of transfer.

21 24. Accordingly, under no circumstances can Bank of America justify charging
22 an incoming wire transfer fee without disclosing the same to a recipient of funds by wire
23 transfer. Such an expensive, hidden fee is harmful to the consumer and advances no
24 purpose outside of pure profit motive. The sender of a wire transfer initiates the transfer,
25 and the originating bank facilitates the transfer. The receiving bank simply receives the
26 funds and deposits them in the recipient’s account, without direction from the recipient.

27 25. Therefore, it is not within a reasonable customer’s expectations to incur a fee
28 from receiving wire transferred funds, because the recipient has not requested, initiated,

1 or originated any services. These expectations are ratified by the tangle of agreements
2 described above, none of which provide notice or disclosure that a fee will be charged for
3 incoming wire transfers.

4 **2. Consumer Financial Protection Bureau and Federal Trade Commission**
5 **Warn against Undisclosed “Junk Fees” as an Unfair and Deceptive**
6 **Practice**

7 26. The CFPB has defined junk fees as “exploitative, back-end, hidden, or
8 excessive fees.”¹⁶

9 27. Recently, in an initiative to eliminate these types of unfair fees, the CFPB
10 has noted that:

11 Excessive and exploitative fees, whether predictable and
12 transparent to the customer or not, can add up and pose
13 significant costs to people, especially those with low wealth and
14 income. Many Americans have experienced inflated or surprise
15 fees that, however nominally voluntary, are not meaningfully
16 avoidable or negotiable in the moment. These fees in consumer
17 finance can take many forms: Penalty fees such as late fees,
18 overdraft fees, non-sufficient funds (NSF) fees, convenience
19 fees for processing payments, minimum balance fees, return
20 item fees, stop payment fees, check image fees, fees for paper
21 statements, fees to replace a card, fees for out-of-network
22 ATMs, foreign transaction fees, ACH transfer fees, *wire*
23 *transfer fees*, account closure fees, inactivity fees, fees to
24 investigate fraudulent activity, ancillary fees in the mortgage
25 closing process, and more. (emphasis added),¹⁷

19 28. The Federal Trade Commission (“FTC”) has similarly recognized the
20 unfairness of junk fees, and the lack of correlation to any service that benefits the
21 consumer.

22 29. The FTC defines junk fees as “unnecessary, unavoidable, or surprise
23 charges” and warns that “consumers can experience junk fee shock when companies

27 ¹⁶ Request for Information Regarding Fees Imposed by Providers of Consumer Financial
28 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>.) (last
viewed May 3, 2023).

¹⁷ *Id.*

1 unexpectedly tack on mystery charges they did not know about, consent to, or factor into
2 the purchase.”¹⁸

3 30. The FTC chair has highlighted this problem, stating that, “[i]t’s beyond
4 frustrating to end up spending more than you budgeted because of random, arbitrary
5 fees.”¹⁹

6 31. These undisclosed, hidden fees serve no legitimate economic purpose and
7 simply add to the immense profit that financial institutions are already accumulating.

8 **IV FACTUAL ALLEGATIONS AGAINST DEFENDANT**

9 32. At all times relevant to the allegations, Plaintiff has maintained a personal
10 consumer bank account with Bank of America.

11 33. On May 31, 2023, Plaintiff received an incoming wire transfer into his Bank
12 of America account for \$35,000, originating from Glendale Area Schools Credit Union.
13 Despite being the recipient of the funds and making no request of Bank of America to
14 perform any service, Plaintiff was assessed an undisclosed \$15 fee when Bank of
15 America deposited the funds into his account.

16 34. Plaintiff was unaware of the fee on incoming wire transfers. Plaintiff did not
17 contract with Bank of America to pay such a fee merely on the basis that the sender chose
18 a specific method of transfer.

19 **V CLASS ALLEGATIONS**

20 35. The preceding allegations are incorporated by reference and re-alleged as if
21 fully set forth herein.

22 36. Plaintiff brings this case, and each of the respective causes of action, as a
23 class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

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28 ¹⁸ Federal Trade Commission Explores Rule Cracking Down on Junk Fees, (October 20,
2022) (last viewed May 3, 2023).

¹⁹ *Id.*

1 37. The “Class” is composed of all California Bank of America personal
2 accountholders who, during the applicable statute of limitation period through the date of
3 class certification, were charged fees on incoming wire transfers.

4 38. Excluded from the Classes are: 1) Bank of America, or any entity in which
5 Bank of America has a controlling interest; 2) any parents, subsidiaries, affiliates,
6 officers, or directors of Bank of America; 3) the Court, its employees, and their
7 immediate family members; and 4) all employees of the law firm representing Plaintiff
8 and the Class Members.

9 39. This action has been brought and may be properly maintained on behalf of
10 each member of the Class pursuant to Federal Rules of Civil Procedure, Rule 23(a),
11 (b)(2), and (b)(3).

12 40. **Numerosity** – The Class Members are so numerous that joining them in the
13 same lawsuit would be impracticable. While the exact number of Class Members is
14 presently unknown to Plaintiff and can only be determined through appropriate
15 discovery, Plaintiff expects that the Class likely includes thousands of Bank of America
16 accountholders.

17 41. Bank of America maintains databases, and/or other documentation, of
18 accountholder enrollments and account transactions. Therefore, its existing data can be
19 used to ascertain those accountholders Bank of America has harmed through its practices.

20 42. **Commonality** – This action involves common questions of law and fact.
21 The questions of law and fact common to both Plaintiff and the Class Members include,
22 but are not limited to, the following:

- 23 • Whether Bank of America contracted with accountholders sufficiently to
24 charge a fee for incoming wire transfers.
- 25 • Whether Bank of America breached the implied covenant of good faith and
26 fair dealing by, *inter alia*, charging an undisclosed fee for incoming wire
27 transfers.
- 28 • Whether Bank of America was unjustly enriched.

- 1 • Whether Plaintiff and Class Members are entitled to restitution of funds
- 2 unlawfully obtained.
- 3 • Whether Bank of America exercised unlawful dominion and control over
- 4 funds belonging to Plaintiff and the Class Members.
- 5 • Whether Bank of America’s undisclosed fee on incoming wire transfers is an
- 6 unfair or unlawful practice pursuant to California Business & Professional
- 7 Code Section 17200 (the “UCL”).
- 8 • Whether Bank of America’s undisclosed fee on incoming wire transfers is a
- 9 violation of California False Advertising Act, §§ 17500, *et seq.*
- 10 • Whether Plaintiff and Class Members are entitled to damages, costs, or
- 11 attorneys’ fees from Bank of America.

12 43. **Typicality** – Plaintiff’s claims are typical of the putative Class Members.

13 Bank of America’s wrongful conduct is substantially the same against Plaintiff and all

14 Class Members because Bank of America uses uniform contract documents employing

15 the same terms for all accountholders. Therefore, Bank of America’s common treatment

16 of all accountholders makes this case ripe for class certification.

17 44. **Adequacy** – Plaintiff will fairly and adequately protect the interests of Class

18 Members. Plaintiff has retained competent counsel experienced in class action litigation,

19 and specifically in class action cases against financial institutions. There are no material

20 conflicts between the claims asserted by Plaintiff and the Class Members that would

21 make class certification inappropriate. Assisted by counsel, Plaintiff will vigorously

22 prosecute this action.

23 45. **Predominance and Superiority** – The matter is properly maintained as a

24 class action because common questions of law or fact predominate over questions that

25 may affect only individual Class Members. Further, the class action is superior to all

26 other available methods for the fair and efficient adjudication of this matter. Because the

27 injuries the individual Class Members have suffered are relatively small compared to the

28 cost of potential litigation, the expense and burden of individual litigation would make it

1 virtually impossible to seek individual redress for Bank of America's wrongful conduct.
2 Even if any individual person or group(s) of Class Members could afford individual
3 litigation, it would be unduly burdensome to the courts in which such litigation would
4 proceed. A class action is preferable to individual litigation because it provides the
5 benefits of unitary adjudication, economies of scale, and comprehensive adjudication by
6 a single court. In contrast, the prosecution of separate actions would create the risk of
7 inconsistent or varying adjudications with respect to individual Class Members, which
8 would establish incompatible standards of conduct for Defendant, while leading to
9 repetitious trials involving the same common questions of fact and law. Plaintiff has
10 identified no difficulty that would preclude its maintenance as a class action. Absent a
11 class action, Plaintiff and the Class Members will continue to suffer losses, thereby
12 allowing Bank of America to continue reaping the proceeds of its unlawful actions.

13 46. No Class Member has an identifiable interest in individually controlling a
14 separate action because Plaintiff's claims are typical of Class Members and he will
15 adequately represent the Class. Plaintiff does not foresee significant difficulties in
16 managing the class action because the issues in dispute are susceptible to class proof.

17 47. Plaintiff anticipates issuing notice, setting forth the subject and nature of the
18 instant action, to the proposed Class Members. Defendant's business records should be
19 sufficient to obtain the necessary information for notice to be issued. To the extent that
20 any further notices may be required, Plaintiff anticipates using additional media and/or
21 mailings.

22 48. Without class certification and the Court's determination of declaratory,
23 injunctive, statutory and other legal questions within the class format, prosecution of
24 separate actions by individual Class Members will risk:

- 25 • inconsistent or varying adjudications with respect to individual Class
26 Members, in turn establishing incompatible standards of conduct for
27 Defendant; or
28

- as a practical matter, adjudication with respect to individual Class Members would be dispositive to the claims of other accountholders, and thus substantially impair or impede their ability to protect their interests.

49. Bank of America has acted or refused to act on grounds generally applicable to Class Members, thereby making appropriate final declaratory and injunctive relief with respect to the Class as a whole under Federal Rules of Civil Procedure, Rule 23(b)(2).

FIRST CAUSE OF ACTION

(Breach of Contract)

50. The preceding allegations are incorporated by reference and re-alleged as if fully set forth herein.

51. Plaintiff and the Class Members entered into the governing account documents with Bank of America, including the Account Agreement, the Personal Fee Schedule, and the Online Banking Services Agreement. Bank of America drafted each of these uniform agreements, and they are binding on the parties.

52. Bank of America did not contract with Plaintiff to permit assessment of an incoming wire transfer fee. At best, Bank of America only contracted to assess accountholders a fee when they initiated wire transfers from Bank of America to another bank as described in the Online Banking Services Agreement.

53. The Account Agreement states that Bank of America will charge fees consistent with the Personal Fee Schedule. But the Personal Fee Schedule does not disclose a specific fee charge on incoming wire transfers.

54. Further, Bank of America's Online Banking Service Agreement includes a section on "ACH and Wire Transfers" and states that accountholders may "send and receive the following types of ACH and Wire transfers," including inbound and outbound ACH transfers and outbound domestic and international wire transfers. In that document, Bank of America charges no fees to consumers for inbound ACH transfers and offers no disclosure at all of any inbound wire transfer fees.

1 55. As such, there is no contractual basis for the \$15 incoming wire transfer fee
2 Bank of America charged to Plaintiff's account.

3 56. Bank of America has not legally modified or otherwise changed the
4 governing account documents so as to incorporate the \$15 incoming wire transfer fee.

5 57. Plaintiff (and the Class Members) have performed all conditions, covenants,
6 and promises they are required to perform in accordance with the terms and conditions of
7 the account agreements, except for those they were prevented from performing, or which
8 were waived or excused by Bank of America's uniform misconduct.

9 58. Bank of America breached the terms of the governing account documents
10 by, *inter alia*, assessing undisclosed wire transfer fees against the recipients of wire
11 transfer funds.

12 59. As a proximate result of Bank of America's breach, Plaintiff and the Class
13 Members have been damaged in an amount equaling \$15 (or any other amount charged
14 by Bank of America) for each unlawfully assessed fee on an inbound wire transfer,
15 amounting to a sum to be proven at trial.

16 SECOND CAUSE OF ACTION

17 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

18 60. The preceding allegations are incorporated by reference and re-alleged as if
19 fully set forth herein.

20 61. Plaintiff and each of the Class Members entered into governing account
21 documents, including an Account Agreement, Personal Fee Schedule, and Online
22 Banking Services Agreement, with Bank of America. The uniform governing account
23 documents were drafted by Bank of America and are binding on all parties.

24 62. Good faith is an element of every contract. Whether by common law or
25 statute, all contracts impose upon each party a duty of good faith and fair dealing. Good
26 faith and fair dealing, in connection with executing contracts and discharging
27 performance and other duties according to their terms, means preserving the spirit—not
28 merely the letter—of the bargain. Thus, the parties to a contract are mutually obligated to

1 comply with the substance of their contract in addition to its form. Evading the spirit of
2 the bargain and abusing the power to specify terms, constitute examples of bad faith in
3 the performance of contracts.

4 63. The material terms of the governing account documents therefore included
5 the implied covenant of good faith and fair dealing, whereby Bank of America
6 covenanted that it would, in good faith and in the exercise of fair dealing, deal with
7 Plaintiff and each Class Member fairly and honestly and do nothing to impair, interfere
8 with, hinder, or potentially injure Plaintiff's and the Class Members' rights and benefits
9 under the contracts.

10 64. Plaintiff and the Class Members have performed all conditions, covenants,
11 and promises required by each of them on their part to be performed in accordance with
12 the terms and conditions of the contracts, except for those they were prevented from
13 performing or which were waived or excused by Bank of America's misconduct.

14 65. Bank of America has breached the implied covenant of good faith and fair
15 dealing by, *inter alia*, charging undisclosed incoming wire transfer fees to Plaintiff and
16 the Class Members.

17 66. As a proximate result of Bank of America's breach of the implied covenant
18 of good faith and fair dealing, Plaintiff and the Class Members have been damaged in an
19 amount to be proven at trial.

20 **THIRD CAUSE OF ACTION**

21 **(Unjust Enrichment)**

22 67. The preceding allegations are incorporated by reference and re-alleged as if
23 fully set forth herein.

24 68. As a result of the wrongful misconduct alleged above, Bank of America
25 unjustly received profits at the expense of Plaintiff and the Class Members.

26 69. Because Plaintiff and the Class Members paid incoming wire transfer fees
27 assessed by Bank of America, Plaintiff and the Class Members have conferred a benefit
28 upon Bank of America, albeit undeservingly. Bank of America has knowledge of this

1 benefit, as well as the wrongful circumstances under which it was conveyed, and yet has
2 voluntarily accepted and retained the benefit conferred. Should it be allowed to retain
3 such funds, Bank of America would be unjustly enriched. Therefore, Plaintiff and the
4 Class Members seek relief as set forth in the Prayer below.

5 **FOURTH CAUSE OF ACTION**

6 **(Money Had and Received)**

7 70. The preceding allegations are incorporated by reference and re-alleged as if
8 fully set forth herein.

9 71. Bank of America has obtained money from Plaintiff and the Class Members
10 by the exercise of undue influence, menace or threat, compulsion or duress, and/or
11 mistake of law and/or fact.

12 72. As a result, Bank of America has in its possession money which, in equity,
13 belongs to Plaintiff and the Class Members, and thus, this money should be refunded to
14 Plaintiff and the Class Members. Therefore, Plaintiff and the Class Members seek relief
15 as set forth in the Prayer below.

16 **FIFTH CAUSE OF ACTION**

17 **(Conversion)**

18 73. The preceding allegations are incorporated by reference and re-alleged as if
19 fully set forth herein.

20 74. As a result of the wrongful misconduct alleged above, Bank of America
21 received profits to which it was not entitled at the expense of Plaintiff and the Class
22 Members.

23 75. By retaining these profits for itself, Bank of America has maintained
24 wrongful possession and control over Plaintiff's and the Class Members' property,
25 inconsistent with their rights.

26 76. The exact amounts to which Plaintiff and Class Members are entitled to are
27 specific and identifiable.

28

1 77. Plaintiff and the Class Members have been harmed by Bank of America’s
2 wrongful exercise and dominion over their personal property.

3 **SIXTH CAUSE OF ACTION**

4 **(Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code**
5 **§§ 17200, *et seq.*)**

6 78. The preceding allegations are incorporated by reference and re-alleged as if
7 fully set forth herein.

8 79. Bank of America’s conduct as described herein violates the UCL, codified at
9 California Business and Professions Code § 17200, *et seq.* The UCL prohibits, and
10 provides civil remedies for unfair competition. Its purpose is to protect both consumers
11 and competitors by promoting fair competition in commercial markets for goods and
12 services. In service of that purpose, the California Legislature framed the UCL’s
13 substantive provisions in broad, sweeping language. By defining unfair competition to
14 include any “any unlawful, unfair or fraudulent business act or practice,” the UCL
15 sweeps within its scope acts and practices that either violate state law, or may not be
16 specifically proscribed by law but unfairly impact market competition for either
17 competitors or consumers.

18 80. The UCL expressly provides for injunctive relief to protect the public. A
19 private litigant may also obtain restitution of money paid because of the unfair acts
20 alleged in the complaint.

21 81. Bank of America’s conduct violates the UCL’s “unlawful” prong, insofar as
22 Bank of America has violated the California False Advertising Act, Business &
23 Professions Code § 17500. Section 17500 prohibits anyone from making a statement
24 about goods or services that is “untrue or misleading, and which is known, or which by
25 the exercise of reasonable care should be known, to be untrue or misleading.” Here, Bank
26 of America provided misleading information to Plaintiff and Class Members regarding its
27 true fee practices. Bank of America’s misrepresentations and omissions about its fee
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1 policies related to incoming wire transfers would have been misleading to the reasonable
2 consumer.

3 82. Bank of America's conduct also violates the "unlawful" prong, insofar as
4 Bank of America has violated 12 CFR § 1030.4, which requires disclosure of "the
5 amount of any fee that may be imposed in connection with the account (or an explanation
6 of how the fee will be determined) and the conditions under which the fee may be
7 imposed." Bank of America both fails to disclose the amount of the incoming wire
8 transfer fee or the conditions under which the fee is imposed in its contracts in violation
9 of this provision.

10 83. As further alleged herein, Bank of America's conduct also violates the
11 UCL's "unfair" prong. Bank of America's conduct violates the UCL, insofar as Bank of
12 America's misrepresentations and omissions regarding its fees on incoming wire transfers
13 have no legitimate business or economic need or rationale.

14 84. The harm and adverse impact of Bank of America's conduct on the Class
15 Members and the general public was neither outweighed nor justified by legitimate
16 reasons, justifications, or motives. The harm to Plaintiff and Class Members arising from
17 Bank of America's unfair practices outweighs the utility, if any, of its practices.

18 85. Bank of America's unfair business practices are immoral, unethical,
19 oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff and
20 the Class Members, and the general public. Its conduct was substantially injurious
21 because it has forced consumers to pay improper, abusive, and/or unconscionable fees.

22 86. As a direct and proximate result of Bank of America's UCL violations,
23 Plaintiff and Class Members have been assessed unfair, improper, and illegal incoming
24 wire transfer fees with those funds removed from their account, and Bank of America has
25 received, or will receive, income, profits, and other benefits, which it would not have
26 received if it had not engaged in these violations.

27 87. Absent public injunctive relief prohibiting Bank of America from assessing
28 such fees and/or misrepresenting and omitting material information concerning its fee

1 policies, Plaintiff, Class Members, future accountholders, and the general public will
2 continue to suffer as a result of Bank of America's conduct.

3 88. Plaintiff requests that he be awarded all other relief as may be available by
4 law, pursuant to California Business & Professions Code § 17203. In restitution, Plaintiff
5 seeks the return of all improperly charged incoming wire transfer fees within the statute
6 of limitations period. Plaintiff further seeks a public injunction enjoining Bank of
7 America from charging similar fees to other accountholders.

8 SEVENTH CAUSE OF ACTION

9 (Violation of California False Advertising Act, §§ 17500, *et seq.*)

10 89. The preceding allegations are incorporated by reference and re-alleged as if
11 fully set forth herein.

12 90. Bank of America has violated the California False Advertising Act, §§
13 17500, *et seq.*

14 91. Section 17500 prohibits anyone from making a statement about goods or
15 services that is "untrue or misleading, and which if known, or which by the exercise of
16 reasonable care should be known, to be untrue or misleading."

17 92. Bank of America misrepresented its true fee policies and failed to
18 accurately disclose that Plaintiff and Class Members could be charged \$15 fees for
19 incoming wire transfers.

20 93. These misrepresentations were uniformly disseminated to Plaintiff and the
21 Class Members through Bank of America's contracts and other disclosures.

22 94. Bank of America's misrepresentations and omissions about its true fee
23 policies related to incoming wire transfers would have been misleading to the reasonable
24 consumer, and were misleading to Plaintiff and the Class Members.

25 95. As a direct and proximate result of Bank of America's misrepresentations
26 regarding its true fee policies, including fees related to incoming wire transfers, Plaintiff
27 and the Class Members have paid and/or will pay fees on incoming wire transfers, and
28 thereby have suffered actual loss of money and may similarly suffer in the future if the

1 actions are allowed to continue. Furthermore, absent injunctive relief forcing Bank of
2 America to disgorge itself of its ill-gotten gains, Plaintiff and the Class Members will
3 continue to suffer from and be exposed to Bank of America's conduct.

4 **VI PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff and the Class pray for judgment as follows:

- 6 a. for an order certifying this action as a class action;
7 b. for damages as a result of the breach of contract;
8 c. for an order requiring Bank of America to disgorge, restore, and
9 return all monies wrongfully obtained together with interest calculated at the
10 maximum legal rate;
11 d. for injunctive relief barring Bank of America from continuing to
12 charge incoming wire transfer fees;
13 e. for civil penalties and statutory damages, as appropriate;
14 f. for costs;
15 g. for pre-judgment and post-judgment interest as provided by law;
16 h. for attorneys' fees under the common fund doctrine and all other
17 applicable law; and
18 i. for such other relief as the Court deems just and proper.

19
20 Dated: July 10, 2023

Respectfully Submitted,

21 **McCUNE LAW GROUP, APC**

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27 **Pro Hac Vice* application to be submitted

28 Attorneys for Plaintiff Rex Lair
and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiff and the Class Members demand a trial by jury on all issues so triable.

Dated: July 10, 2023

McCUNE LAW GROUP, APC

/s/ Richard D. McCune

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**Pro Hac Vice* application to be submitted

Attorneys for Plaintiff Rex Lair
and the Putative Class

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