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12 Attorneys for Plaintiffs

13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 14 COUNTY OF LOS ANGELES

16 AMERICA AGUILAR, an individual;
 ALEXIS BELL, an individual; DINA
 17 WARD, an individual; LAKYRA
 TURNER, an individual; and JONATHAN
 18 FLINKER, an individual, on behalf of
 themselves and all others similarly situated,

No. **23STCV28855**

19 Plaintiffs,

CLASS ACTION COMPLAINT

20 v.

JURY TRIAL DEMANDED

21 U.S. BANK NATIONAL ASSOCIATION,
 22 a national association; U.S. BANCORP
 INVESTMENTS, INC., a Delaware
 23 corporation, and DOES 1 through 100,
 inclusive,

24 Defendants.

1 COMPLAINT

2 Plaintiffs America Aguilar; Alexis Bell; Dina Ward; Lakyra Turner; and Jonathan Flinker,
3 by and through their undersigned counsel, on their own behalf and on behalf of all other persons
4 similarly situated (residents of California only) (collectively, “Plaintiffs”), sue U.S. Bank National
5 Association, U.S. Bancorp Investments, Inc., (collectively “U.S. Bank”) and DOES 1 through 100
6 (“Doe Defendants”) (U.S. Bank and Doe Defendants are collectively referred to herein as the
7 “Defendants”) and for this Complaint, allege upon information and belief, and based on the
8 investigation to date of their counsel, as follows:

9 INTRODUCTION

10 1. This is a class action brought for the benefit and protection of Plaintiffs, and all other
11 similarly situated consumers who are residents of California and who used or accessed the digital
12 financial services through at least one of the websites or mobile applications operated by U.S. Bank,
13 including without limitation, usbank.com (the “Websites”) and U.S. Bank’s mobile Android/IOS
14 applications (the “Applications”) (the Websites and Applications are collectively referred to herein
15 as the “Platforms”).

16 2. By way of this action, Plaintiffs, and all others similarly situated, seek damages,
17 restitution, injunctive relief, public injunctive relief, and other relief necessitated by Defendants’
18 unlawful and unfair actions in violation of California Civil Code section 1670.8 and California
19 Business and Professions Code section 17200. Plaintiffs on behalf of themselves and all others
20 similarly situated seek an order permanently enjoining Defendants from engaging in these ongoing
21 unlawful and unfair practices, and civil penalties and damages available under California law.

22 3. Because of the current power of the internet and social media platforms to publicize
23 a company’s offerings of goods or services—and the potential harm to corporate interests when
24 negative consumer statements “go viral”—Defendants have a significant incentive to minimize the
25 negative publicity they receive, including in the form of negative online reviews and comments.
26 Some companies have gone so far as to attempt to prohibit customers and potential customers from
27 making negative statements about the goods or services they offer, to the detriment of consumers,
28 potential consumers, and the public of the State of California. Fortunately, California Civil Code

1 section 1670.8 was enacted to protect the right of California consumers to voice their opinions,
2 observations, and experiences about the products or services delivered or offered to California
3 consumers, as well as the citizens of the State of California. The California Legislature reasonably
4 and correctly determined that such freedom is important to keep the public informed and keep large
5 corporations honest about the quality of the goods or services they offer to consumers.

6 4. Section 1670.8(a) provides as follows: “(1) **A contract or proposed contract** for
7 the sale or lease of consumer goods or services **may not include a provision waiving the**
8 **consumer’s right to make any statement** regarding the seller or lessor or its employees or agents,
9 or concerning the goods or services” and “(2) **It shall be unlawful to threaten or seek to enforce**
10 **a provision made unlawful under this section, or to otherwise penalize a consumer for making**
11 **any statement protected under this section.**” Section 1670.8’s protections are so important that
12 the statute expressly provides that “**any waiver of the provisions of this section is contrary to**
13 **public policy, and is void and unenforceable.**”

14 5. In order to use and benefit from the U.S. Bank Platforms, Platform visitors, or users,
15 are informed that they must agree to U.S. Bank’s Digital Services Agreement (the “Terms”). In
16 fact, U.S. Bank asserts that simply by accessing or using the Platforms, users have agreed to be
17 bound by the Terms—regardless of whether users are simply visiting the Platforms or are actual
18 purchasers or registered members of the Platforms. The Terms provide “by using [the] Digital
19 Services, you agree to the most recent version of [the Terms].”

20 6. While conducting substantial business with California consumers, the Terms
21 Defendants impose upon U.S. Bank’s customers and prospective customers clearly violate Section
22 1670.8. Pursuant to the Terms that Defendants impose upon their customers for the privilege of
23 accessing the services offered and promoted on the Platforms, U.S. Bank requires users to agree
24 that in using the Platforms, they must not make any statement or comment that “poses a threat to...
25 the reputation of [U.S. Bank] or any Service Provider.” Defendants’ Terms further threaten that if
26 Defendants believe that a user’s conduct in using the Platforms in any way “poses an imminent or
27 actual threat to us or any Service Provider . . . (including regulatory investigation, inquiry, or
28 penalty) . . . you agree that we or any other Service Provider may suspend any and all use of [the

1 Platforms] without notice.” Defendants’ Terms also threaten that “[w]e reserve the right to
2 terminate. . . your use of any or all Digital Services for any reason and at any time without prior
3 notice. . .[and] [y]ou agree that you will immediately stop using Digital Services upon our request.”
4 Among other things, these Terms brazenly prohibit any statement, and threaten to punish any party
5 making such a statement, that might subject U.S. Bank to regulatory investigation.

6 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed
7 to stifle California consumers’ right to free speech, and the right of the California public to hear
8 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be
9 intentionally exercised to protect Defendants’ self-promoting public image for commercial and
10 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
11 increase its consumers and prop up its stock price, all while denying public, consumers, and
12 potential consumers accurate information so that they may make informed decisions as consumers.

13 8. By way of these provisions, U.S. Bank seeks to have users waive their right as
14 consumers to make negative statements regarding U.S. Bank or its employees, agents, goods or
15 services, and further threatens to penalize consumers for making such statements. These unlawful
16 restrictions—imposed by Defendants against their own customers and prospective customers—is
17 an important component of U.S. Bank’s business strategy, which relies upon the popularity of its
18 product offerings nationwide to generate significant revenues and profits. But Defendants’ efforts
19 to silence their customers and prospective customers is clearly prohibited by California law, thereby
20 subjecting Defendants to significant penalties, as described herein.

21 JURISDICTION AND VENUE

22 9. This Court has jurisdiction over the claims and causes of action asserted herein
23 because such claims arise solely and specifically out of Defendants’ unlawful business practices
24 within the State of California, and relate to at least one statute—California Civil Code section
25 1670.8—that was designed to protect California’s citizens, the application of which is exclusively
26 a matter for the courts of this State.

27 10. Venue is proper in this Court because: Defendants transact business in California
28 and in the County of Los Angeles based on Plaintiffs’ use of the Platforms in this County;

1 Defendants have committed unlawful acts in the County by and through the Platforms and
2 associated business transactions within the County; and a substantial part of the events giving rise
3 to the claims alleged herein occurred in this County, where at least one of the Plaintiffs resides.

4 **THE PARTIES**

5 11. At all relevant times, Plaintiff America Aguilar was and has been a citizen of the
6 State of California and a resident of Los Angeles County. Aguilar is an individual who accessed
7 and used the Platforms within the applicable limitations period in Los Angeles County in the State
8 of California.

9 12. At all relevant times, Plaintiff Alexis Bell was and has been a citizen of the State of
10 California and a resident of Los Angeles County. Bell is an individual who accessed and used the
11 Platforms within the applicable limitations period in Los Angeles County in the State of California

12 13. At all relevant times, Plaintiff Dina Ward was and has been a citizen of the State of
13 California. Ward is an individual who accessed and used the Platforms within the applicable
14 limitations period in the State of California

15 14. At all relevant times, Plaintiff Lakyra was and has been a citizen of the State of
16 California. Turner is an individual who accessed and used the Platforms within the applicable
17 limitations period in the State of California.

18 15. At all relevant times, Plaintiff Jonathan Flinker was and has been a citizen of the
19 State of California. Flinker is an individual who accessed and used the Platforms within the
20 applicable limitations period in the State of California.

21 16. Defendant U.S. Bank is an entity that transacts business in the State of California
22 with California citizens. U.S. Bank markets, sells, and provides a wide variety of financial services,
23 including without limitation bank accounts, credit cards, investments, and loans. U.S. Bank
24 generates sales through the Platforms.

25 17. The true names and/or capacities, whether individual, corporate, partnership,
26 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
27 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
28 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a

1 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
2 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
3 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
4 this Complaint to allege the true names and capacities of said Doe Defendants when that same is
5 ascertained.

6 **FACTS COMMON TO ALL CLASS MEMBERS**

7 18. At all relevant times, U.S. Bank was and currently is in the business of advertising,
8 promoting, marketing, selling, and distributing consumer financial products and services through
9 the Platforms, which Platforms are targeted to, and accessible by, the citizenry of California.

10 19. U.S. Bank is well-aware that its public image is vital to maintaining and gaining
11 customers. If the public sees content posted by users that may pose a threat to the reputation of
12 U.S. Bank and/or any of its partners, and/or any its employees, and/or concerning any of its services,
13 then its current customers and/or prospective customers may shift to a competitor, ultimately
14 resulting in loss of business and loss of revenue.

15 20. Thus, in order to maintain a positive public image, U.S. Bank has engaged in an
16 intentional business strategy to silence each and every customer or potential customer who visits
17 its Platforms by purporting to bind users to its Terms—immediately upon accessing any of its
18 Platforms.

19 21. Specifically, U.S. Bank’s Terms provide that “[b]y using the [Platforms], you
20 agree...that if we or any other Service Provider reasonably believes your conduct in using the
21 [Platforms]... poses a threat to...the reputation of us or any Service Provider, we or any such Service
22 Provider may provide you with a notice to cease the [conduct].”

23 22. U.S. Bank’s Terms, moreover, threaten to penalize users for making any statement
24 or comment that it deems, in its sole discretion, “poses an imminent or actual threat to us or any
25 Service Provider . . . you agree that we or any other Service Provider may suspend any and all use
26 of [the Platforms] without notice.” Terms further threaten that “[w]e reserve the right to terminate.
27 . . . your use of any or all Digital Services for any reason and at any time without prior notice. . .
28 [and] [y]ou agree that you will immediately stop using Digital Services upon our request.”

1 23. U.S Bank has sold and continues to sell and provide a wide range of financial
2 services to consumers across the nation, including California.

3 24. U.S. Bank purports to forbid any consumers who have purchased, will purchase, or
4 are even considering purchasing services from U.S. Bank through its Platforms from making any
5 statement or comment that “poses a threat” to the reputation of U.S Bank itself, any of its partners,
6 any of its employees, any of its agents, and any of its services.

7 25. In doing so, U.S Bank has and continues to engage in unlawful and unfair conduct,
8 that is contrary to public policy and in violation of California Civil Code section 1670.8 and
9 California Business and Professions Code section 17200.

10 26. Each of the Plaintiffs specifically identified herein, and millions more similarly
11 situated persons in the State of California, have visited the Platforms—either as consumers or
12 potential consumers—and thus have been subjected to the unlawful Terms.

13 **CLASS ACTION ALLEGATIONS**

14 27. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
15 class action on their own behalf and on behalf of all other similarly situated consumers in California.
16 The proposed class is defined as follows:

17 a. During the fullest period allowed by law, all persons residing in California who accessed
18 or used the Platforms for online banking services (the “Class”).

19 28. Like Plaintiffs, all Class members are California residents who used the Platforms
20 for online banking services or to complete transactions with U.S. Bank and who were subject to the
21 Terms that limit their right as consumers to make statements regarding U.S Bank or its employees,
22 agents, and services.

23 29. Excluded from the Class are assigned judges and members of their families within
24 the first degree of consanguinity; Defendants; and Defendants’ subsidiaries, affiliates, officers, and
25 directors.

26 30. The requirements of Code of Civil Procedure section 382 are satisfied for the
27 proposed Class.

28 31. The proposed Class is so numerous that individual joinder of all the members is

1 impracticable because members of the Class number in at least the tens or hundreds of thousands.
2 The precise number of Class members and their identities are unknown to Plaintiffs at this time but
3 are objectively ascertainable and will be determined through appropriate discovery and other
4 readily available means.

5 32. Defendants possess objective evidence as to the identity of each Class member and,
6 to a reasonable degree of certainty, the harm suffered by each Class member, including without
7 limitation web and mobile data evidencing access to and use of the Platforms, sales receipts, phone
8 numbers, names, rewards accounts data, credit card data, customer service complaint
9 forms/emails/date, and other evidence which objectively identifies class members.

10 33. Class members may be notified of the pendency of this action by mail, publication
11 and/or through the records of Defendants.

12 34. There are common questions of law and fact affecting Plaintiffs and Class members.
13 Common legal and factual questions include, but are not limited to:

14 a. Whether each imposition of Defendants' Terms upon members of the Class constitutes a
15 violation of the provisions of California Civil Code section 1670.8 and, if so, whether each such
16 violation is a "willful, intentional, or reckless" violation;

17 b. Whether Defendants' Terms are unlawful, contrary to public policy, void and/or
18 unenforceable;

19 c. Whether by the misconduct set forth in this Complaint, Defendants engaged and continue
20 to engage in unfair, fraudulent, or unlawful business practices;

21 d. Whether the Class is entitled to recover statutory attorney's fees;

22 e. Whether Class members are entitled to civil penalties; and

23 f. Whether, as a result of Defendants' misconduct alleged herein, Plaintiffs and Class
24 members are entitled to restitution, injunctive, public injunctive, and/or monetary relief and, if so,
25 the amount and nature of such relief.

26 35. Plaintiffs' claims are typical of the claims of the proposed Class because the rights
27 of Plaintiffs and Class members were violated in the same manner by the same conduct.

28 36. Plaintiffs and Class members are all entitled to recover statutory penalties and other

1 relief arising out of Defendants' violations of statutory law alleged herein.

2 37. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

3 38. Plaintiffs' interests do not conflict with the interests of the Class they seek to
4 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,
5 and Plaintiffs intend to vigorously prosecute this action.

6 39. The class mechanism is superior to other available means for the fair and efficient
7 adjudication of the claims of Plaintiffs and Class members.

8 40. Given the relative value of statutory penalties available to any of the individual Class
9 members, individual litigation is not practicable.

10 41. Individual Class members will not wish to undertake the burden and expense of
11 individual cases.

12 42. In addition, individualized litigation increases the delay and expense to all parties
13 and multiplied the burden on the judicial system. Individualized ligation also presents the potential
14 for inconsistent or contradictory judgments.

15 43. In contrast, the class action device presents far fewer management difficulties and
16 provides the benefits of single adjudication, economy of scale, and comprehensive supervision by
17 a single court.

18 44. Questions of law and fact common to all Class members predominate over any
19 questions affecting only individual Class members. Injuries sustained by Plaintiffs and Class
20 members flow, in each instance, from a common nucleus of operative facts as set forth above.

21 45. In each case, Defendants' actions caused harm to all Class members as a result of
22 such conduct. The resolution of these central issues will be the focus of the litigation and
23 predominate over any individual issues.

24 46. Proposed Class counsel possesses the knowledge, experience, reputation, ability,
25 skill, and resources to represent the Class and should be appointed lead counsel for the Class.

26 **COUNT I— VIOLATION OF CIVIL CODE SECTION 1670.8**

27 47. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 46 of their
28 Complaint. Plaintiffs assert this first cause of action on behalf of themselves and all other similarly

1 situated persons residing in California who accessed or used the Platforms for online banking
2 services.

3 48. Defendants are in the business of selling and providing financial goods and services.

4 49. Plaintiffs and Class members accessed or used the Platforms for online banking
5 services.

6 50. Pursuant to the Terms on the Platforms, Defendants told Plaintiffs and the Class
7 members that they must not make statements or comments that threaten to damage the reputation
8 of U.S Bank.

9 51. By simply accessing or using these Platforms, Defendants purport to have charged
10 Plaintiffs and Class members with having agreed to be bound by the Terms.

11 52. By way of this restriction, Defendants intentionally, willfully, or recklessly seek to
12 have Plaintiffs and the Class members waive their right as consumers to make statements regarding
13 U.S Bank or its employees, agents, and goods or services, which restriction is prohibited under
14 California Civil Code section 1670.8 and is contrary to public policy.

15 53. Defendants have repeatedly violated California Civil Code section 1670.8 in relation
16 to each of the Plaintiffs and Class members and their respective transactions.

17 54. Defendants' conduct has caused Plaintiffs and Class members to suffer harm.

18 55. Plaintiffs and Class members are entitled to restitutionary and injunctive relief,
19 including public injunctive relief.

20 56. Plaintiffs and Class members are also entitled to civil penalties for Defendants'
21 violations of Civil Code section 1670.8.

22 **COUNT II—VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

23 57. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 56 of their
24 Complaint. Plaintiffs assert this second cause of action on behalf of themselves and all other
25 similarly situated persons residing in California who accessed or used the Platforms for online
26 banking services.

27 58. By engaging in the above-described conduct, Defendants, and each of them, acted
28 in a manner that is unlawful and unfair—including by virtue of the fact that their conduct violates

1 California Civil Code section 1670.8—and have thus engaged in unfair business practices to the
2 extreme detriment of Plaintiffs, which conduct is prohibited under California Business &
3 Professions Code sections 17200, et seq.

4 59. Defendants’ unlawful and unfair conduct has allowed for Defendants to enrich
5 themselves at the expense of Plaintiffs, including through Plaintiffs’ payment of monies to
6 Defendants, including without limitation through the mobile and online banking transactions
7 completed on the Platforms.

8 60. Plaintiffs are thus entitled to restitutionary and injunctive relief, including without
9 limitation public injunctive relief and disgorgement of any unlawful gains that Defendants obtained
10 as a result of their unlawful and unfair conduct at the expense of Plaintiffs.

11 **PRAYERS FOR RELIEF**

12 **WHEREFORE**, Plaintiffs, on behalf of themselves and the putative Class members, pray
13 for judgment as follows:

14 a. Determining that this action is a proper class action and certifying the Class, as defined
15 herein;

16 b. Appointing Plaintiffs as Class representatives;

17 c. Appointing the undersigned as Class counsel;

18 d. Finding Defendants liable to Plaintiffs and Class members for damages in such amount(s)
19 as the Court or Jury may determine;

20 e. Awarding statutorily provided damages to Plaintiffs and Class members as appropriate;

21 f. Awarding restitutionary disgorgement and all other forms of equitable monetary relief to
22 Plaintiffs and Class members;

23 h. Awarding pre- and post-judgment interest;

24 i. Awarding injunctive relief, including public injunctive relief, as claimed herein or as the
25 Court may deem proper;

26 j. Awarding Plaintiffs and Class members attorney fees and all litigation costs as allowed
27 by law; and

28 k. Awarding such other and further relief as may be just and proper.

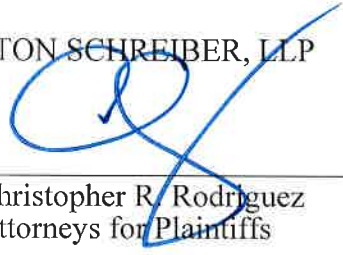
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

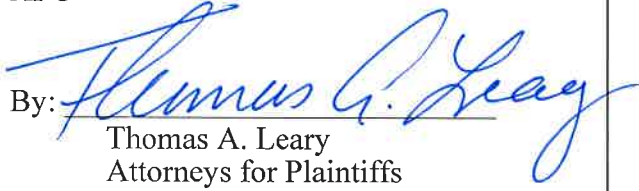
Dated: November 21, 2023

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