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Electronically FILED by
 Superior Court of California,
 County of Los Angeles
 11/21/2023 8:01 PM
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 Executive Officer/Clerk of Court,
 By G. Carini, Deputy Clerk

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12 Attorneys for Plaintiffs

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

16 FRANCISCO ROLDAN, III, an
 17 individual; KIENSANG HUYNH, an
 individual; ROGELIO RAMIREZ, an
 18 individual; MIKHAIL GERSHZON, an
 individual; VISHAL SHAH, an individual;
 19 and PATRICIA COBARRUVIAZ, an
 individual, on behalf of themselves and all
 20 others similarly situated,

21 Plaintiffs,

22 v.

23 BANK OF AMERICA, N.A., a national
 association; and DOES 1 through 100,

24 Defendants.

No. **23STCV28840**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 COMPLAINT

2 Plaintiffs Francisco Roldan, III; Kiensang Huynh; Rogelio Ramirez; Mikhail Gershzon;
3 Vishal Shah; and Patricia Cobarruviaz, by and through their undersigned counsel, on their own
4 behalf and on behalf of all other persons similarly situated (residents of California only)
5 (collectively, “Plaintiffs”), sue Bank of America, N.A. (“Bank”) and DOES 1 through 100 (“Doe
6 Defendants”) (Bank and Doe Defendants are collectively referred to herein as the “Defendants”)
7 and for this Complaint, allege upon information and belief, and based on the investigation to date
8 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 have used any online or
12 mobile banking services maintained by Bank and accessible through bankofamerica.com, or any
13 mobile banking application of Bank, to obtain financial products and services, access and view
14 account information, and, for certain accounts, move money electronically and perform authorized
15 transactions (the “Services”).

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 and 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 Services, users of the Services are informed that
15 they must agree to the Bank’s Online Banking Service Agreement (the “Agreement”). In fact, the
16 Bank asserts that whenever a user applies for, enrolls in, activates, downloads, or uses any of the
17 Services, they are deemed to have agreed to be bound by the Agreement.

18 6. While conducting substantial business with California consumers, the Agreement’s
19 terms that Defendants imposed upon their customers and prospective customers clearly violate
20 Section 1670.8. Pursuant to the Agreement that Defendants impose upon their customers for the
21 privilege of accessing the goods and/or services offered, Defendants require users to agree that they
22 shall not make any statements “that expose [Defendants] . . . to liability, reputational harm or brand
23 damage” and further threaten to suspend or terminate a user’s access to the Services if user does
24 so. Defendants maintain that they possess sole discretion to determine what user conduct amounts
25 to reputational harm or brand damage.

26 7. Defendants’ conduct is unlawful, including among other reasons, because it is aimed
27 to stifle California consumers’ right to free speech, and the right of the California public to hear
28 lawful discourse. Defendants’ strong-arm tactics to silence injured parties were and continue to be

1 intentionally exercised to protect Defendants’ self-promoting public image for commercial and
2 other benefits. Defendants’ unlawful business practices, purposefully designed to maintain and
3 increase their consumers and prop up their stock price, all while denying the public, consumers,
4 and potential consumers accurate information so that they may make informed decisions as
5 consumers.

6 8. By way of these provisions, Defendants seek to have users waive their right as
7 consumers to make negative statements regarding Defendants or their goods or services, and further
8 threaten to penalize consumers for making such statements. These unlawful restrictions—imposed
9 by Defendants against their own customers and prospective customers—is an important component
10 of Defendants’ business strategy, which relies upon the popularity of their product offerings
11 nationwide to generate significant revenues and profits. But Defendants’ efforts to silence their
12 customers and prospective customers is clearly prohibited by California law, thereby subjecting
13 Defendants to significant penalties, as described herein.

14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over the claims and causes of action asserted herein
16 because such claims arise solely and specifically out of Defendants’ unlawful business practices
17 within the State of California, and relate to at least one statute—California Civil Code section
18 1670.8—that was designed to protect California’s citizens, the application of which is exclusively
19 a matter for the courts of this State.

20 10. Venue is proper in this Court because: Defendants transact business in California
21 and in the County of Los Angeles based on Plaintiffs’ use of the Services in this County; Defendants
22 have committed unlawful acts in the County by and through the Services and associated business
23 transactions within the County; and a substantial part of the events giving rise to the claims alleged
24 herein occurred in this County, where at least one of the Plaintiffs resides.

25 **THE PARTIES**

26 11. At all relevant times, Plaintiff Francisco Roldan, III was and has been a citizen of
27 the State of California and a resident of Los Angeles. Roldan, III is an individual who applied for,
28 enrolled in, activated, downloaded, or used any of the Services within the applicable limitations

1 period in Los Angeles County in the State of California.

2 12. At all relevant times, Plaintiff Kiensang Huynh was and has been a citizen of the
3 State of California. Huynh is an individual who applied for, enrolled in, activated, downloaded, or
4 used any of the Services within the applicable limitations period in the State of California.

5 13. At all relevant times, Plaintiff Rogelio Ramirez was and has been a citizen of the
6 State of California. Ramirez is an individual who applied for, enrolled in, activated, downloaded,
7 or used any of the Services within the applicable limitations period in the State of California.

8 14. At all relevant times, Plaintiff Mikhail Gershzon was and has been a citizen of the
9 State of California. Gershzon is an individual who applied for, enrolled in, activated, downloaded,
10 or used any of the Services within the applicable limitations period in the State of California.

11 15. At all relevant times, Plaintiff Vishal Shah was and has been a citizen of the State
12 of California. Shah is an individual who applied for, enrolled in, activated, downloaded, or used
13 any of the Services within the applicable limitations period in the State of California.

14 16. At all relevant times, Plaintiff Patricia Cobarruviaz was and has been a citizen of the
15 State of California. Cobarruviaz is an individual who applied for, enrolled in, activated,
16 downloaded, or used any of the Services within the applicable limitations period in the State of
17 California.

18 17. Defendant Bank is an entity that transacts business in the state of California with
19 California citizens. The Bank develops, markets, and sells a variety of goods or services, including
20 financial services. Defendant Bank operates in California and generates sales through the Services.

21 18. The true names and/or capacities, whether individual, corporate, partnership,
22 associate, governmental, or otherwise, of the Doe Defendants, inclusive, and each of them, are
23 unknown to Plaintiffs at this time, who therefore sues said Doe Defendants by such fictitious names.
24 Plaintiffs are informed and believe, and thereon allege, that each defendant designated herein as a
25 Doe Defendant caused injuries and damages proximately thereby to Plaintiffs as hereafter alleged,
26 and that each Doe Defendant is liable to Plaintiffs for the acts and omissions alleged herein below,
27 and the resulting injuries to Plaintiffs, and damages sustained by Plaintiffs. Plaintiffs will amend
28 this Complaint to allege the true names and capacities of said Doe Defendants when that same is

1 ascertained.

2 **FACTS COMMON TO ALL CLASS MEMBERS**

3 19. At all relevant times, Defendants were and currently are in the business of designing,
4 researching, manufacturing, testing, advertising, promoting, marketing, selling, and distributing
5 consumer financial products and services through the Services, which are targeted to, and
6 accessible by, the citizenry of California.

7 20. Defendants are well-aware that their public image is vital to maintaining and gaining
8 customers. If the public sees content posted by users that may be insulting to the Bank, and/or
9 concerning any of its goods or services, and/or any of the Defendants, then current customers and/or
10 prospective customers may shift to a competitor, ultimately resulting in loss of business and loss of
11 revenue. The need for financial institutions, like the Bank, to maintain a positive public image
12 has grown exponentially more important since the 2008 financial crisis and corresponding public
13 distrust of financial institutions.

14 21. Thus, in order to maintain a positive public image, Defendants have engaged in an
15 intentional business strategy to silence each and every customer or potential customer who uses
16 their Services by purporting to bind users to the Agreement—immediately upon accessing any of
17 the Services. Specifically, the Agreement provides that by applying for, activating, downloading,
18 or using any of the Services, users are deemed to have agreed to be bound by the Agreement,
19 including the provision prohibiting users from using the Services in any manner that exposes
20 Defendants to “liability, reputational harm or brand damage.” Defendants maintain that they
21 possess sole discretion to determine what user conduct amounts to reputational harm or brand
22 damage.

23 22. The Agreement, moreover, threatens to penalize users for making any statements
24 that Defendants consider to be “reputationally harmful” or “brand damaging” in providing that
25 Defendants will “suspend or terminate” users’ use of the Services.

26 23. Defendants have sold and continue to sell millions of financial products and services
27 to California consumers through the Services.

28 24. Defendants purport to forbid any California consumers who have used, will use, or

1 are even considering using financial products and services from Defendants through the Services
2 from making any so-called “reputationally harmful” or “brand damaging” statements about the
3 Bank, Defendants themselves, or any of their goods or services.

4 25. In doing so, Defendants have and continue to engage in unlawful and unfair conduct,
5 that is contrary to public policy and in violation of California Civil Code section 1670.8 and
6 California Business and Professions Code section 17200.

7 26. Each of the Plaintiffs specifically identified herein, and millions more similarly
8 situated persons in the State of California, have used the Services—either as consumers or potential
9 consumers—and thus have ostensibly been subjected to the unlawful Agreement.

10 **CLASS ACTION ALLEGATIONS**

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

14 a. During the fullest period allowed by law, all persons residing in California who applied
15 for, enrolled in, activated, downloaded, or used any of the Services (“Class”).

16 28. Like Plaintiffs, all Class members are California residents who used the Services
17 and who were subject to the Agreement that limits their right as consumers to make statements
18 regarding Bank, or any of the Defendants, or their goods or services.

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

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

24 31. The proposed Class is so numerous that individual joinder of all the members is
25 impracticable because members of the Class number in at least the tens of thousands or hundreds
26 of thousands. The precise number of Class members and their identities are unknown to Plaintiffs
27 at this time but are objectively ascertainable and will be determined through appropriate discovery
28 and other readily available means.

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

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

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

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

13 b. Whether Defendants' Agreement is unlawful, contrary to public policy, void and/or
14 unenforceable;

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

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

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

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

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

24 36. Plaintiffs and Class members are all entitled to recover statutory penalties and other
25 relief arising out of Defendants' violations of statutory law alleged herein.

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

27 38. Plaintiffs' interests do not conflict with the interests of the Class they seek to
28 represent. Plaintiffs have retained counsel competent and experienced in prosecuting class actions,

1 and Plaintiffs intend to vigorously prosecute this action.

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

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

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

8 42. In addition, individualized litigation increases the delay and expense to all parties
9 and multiplies the burden on the judicial system. Individualized litigation also presents the potential
10 for inconsistent or contradictory judgments.

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

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

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

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

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

23 47. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 46 of their
24 Complaint. Plaintiffs assert this first cause of action on behalf of themselves and all other similarly
25 situated persons residing in California who used the Services to complete transactions.

26 48. Defendants are in the business of selling consumer financial goods or services.

27 49. Plaintiffs and Class members accessed, and/or used, and/or purchased goods or
28 services from Defendants via the Services.

1 50. Pursuant to the Agreement that Defendants impose upon their customers for the
2 privilege of accessing the goods and/or services offered, Defendants require users to agree that they
3 shall not make any statements “that expose [Defendants] . . . to liability, reputational harm or brand
4 damage” and further threaten to suspend or terminate a user’s access to the Services if user does
5 so. Defendants maintain that they possess sole discretion to determine what user conduct amounts
6 to reputational harm or brand damage.

7 51. By simply accessing or using the Services, Defendants purport to have charged
8 Plaintiffs and Class members with having read, understood, and agreed to be bound by the
9 Agreement’s terms.

10 52. By way of this restriction, Defendants intentionally, willfully, or recklessly seek to
11 have Plaintiffs and the Class members waive their right as consumers to make statements regarding
12 Defendants and/or punish consumers for making such statements, which restrictions are prohibited
13 under California Civil Code 1670.8 and are contrary to public policy.

14 53. Defendants have repeatedly violated California Civil Code 1670.8 in relation to each
15 of the Plaintiffs and Class members and their respective online or mobile banking transactions.

16 54. Defendants’ conduct has caused Plaintiffs and Class members to suffer harm.

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

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

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

22 57. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 56 of their
23 Complaint. Plaintiffs assert this second cause of action on behalf of themselves and all other
24 similarly situated persons residing in California who used the Services.

25 58. By engaging in the above-described conduct, Defendants, and each of them, acted
26 in a manner that is unlawful and unfair—including by virtue of the fact that their conduct violates
27 California Civil Code section 1670.8—and have thus engaged in unfair business practices to the
28 extreme detriment of Plaintiffs, which conduct is prohibited under California Business &

1 Professions Code sections 17200, et seq.

2 59. Defendants' unlawful and unfair conduct has allowed for Defendants to enrich
3 themselves at the expense of Plaintiffs, including through Plaintiffs' payment of monies to
4 Defendants, including without limitation through the mobile and online banking transactions.

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

8 **PRAYERS FOR RELIEF**

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

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

13 b. Appointing Plaintiffs as Class representatives;

14 c. Appointing the undersigned as Class counsel;

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

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

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

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

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

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

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

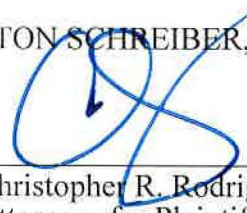
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27 **DEMAND FOR JURY TRIAL**

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

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Dated: November 21, 2023

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