

KAZEROUNI LAW GROUP, APC

Abbas Kazerounian, Esq. (SBN: 249203)

ak@kazlg.com

245 Fischer Avenue, Suite D1

Costa Mesa, CA 92626

Telephone: (800) 400-6808

KALIELGOLD PLLC

Sophia G. Gold (CA Bar No. 307971)

sgold@kalielgold.com

950 Gilman Street, Suite 200

Berkeley, CA 94710

Telephone: (202) 350-4783

[Additional Counsel on Signature Page]

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

**NATALIE TRISTAN,
AVANTIKA AHUJA, and
PHILLIP MYERS, Individually
and On Behalf of All Others
Similarly Situated,**

Plaintiffs,

v.

**BANK OF AMERICA, N.A.; and
EARLY WARNING SERVICES,
LLC D/B/A ZELLEPAY.COM,**

Defendants.

Case No.: 8:22-cv-01183-DOC-ADS
Consolidated with Case No.: 2:22-cv-
02313-DOC-ADS

**CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT
FOR:**

- 1) BREACH OF CONTRACT;**
- 2) UNJUST ENRICHMENT;**
- 3) NEGLIGENCE;**
- 4) VIOLATIONS OF THE
ELECTRONIC FUND
TRANSFER ACT (“EFTA”);**
- 5) VIOLATIONS OF THE
CALIFORNIA’S UNFAIR
COMPETITION LAW (“UCL”);**
- 6) VIOLATIONS OF
CALIFORNIA’S FALSE
ADVERTISING LAW (“FAL”);**

**7) VIOLATIONS OF NEVADA'S
DECEPTIVE TRADE
PRACTICES ACT**

JURY TRIAL DEMANDED

Plaintiffs Natalie Tristan ("Tristan"), Avantika Ahuja ("Ahuja"), and Phillip Myers ("Myers") (together the "Plaintiffs") bring this complaint, by and through their attorneys and on behalf of all others similarly situated, against Defendants Bank of America, N.A. ("Bank of America," "BOA" or the "Bank") and Early Warning Services, LLC d/b/a Zellepay.com ("Zelle") (together the "Defendants") and allege upon information and belief as follows:

INTRODUCTION

1. The Zelle money transfer system is rife with fraud—fraud that places all Zelle users at an acute and immediate risk. Billions of dollars of fraudulent transactions are processed by the service each year. Victims of Zelle fraud, like Plaintiffs, are often left devastated by such fraud, which can drain hundreds or thousands of dollars from their bank accounts.

2. But when Zelle fraud victims turn to Bank of America for help, the Bank has a simple, repeated, bad faith response: it is your fault, you are on your own, and we will not help.

3. The Bank's corporate policy of "blaming the victim" is good business for the Bank. As a partial owner of Zelle (along with several other of America's largest banks), the Bank has a huge incentive to get as many of its customers as possible to sign up for and use Zelle for payments and money transfers: the more accountholders it can persuade to use Zelle, the more money the Bank saves by avoiding transaction payments to *other* payment networks. Accordingly, the Bank works with Zelle to aggressively market the Zelle service to its accountholders, urging accountholders

1 to sign up for Zelle every time they log in to online banking or use the Bank's mobile
2 app.

3 4. But the marketing of Zelle by Defendants, including during the quick, rushed
4 sign up process for Zelle in the Bank's mobile app or website, contains materially
5 deceptive representations that Zelle is "safe", while omitting any warnings regarding
6 the acute and immediate risk of fraud. Those representations and omissions, which
7 Plaintiffs relied upon, are false and misleading.

8 5. Zelle too knows that fraud on its service is rampant and it is on notice of
9 consumers' claims, but consumers are similarly left without recourse from Zelle, just
10 like Bank of America.

11 6. Unlike other commonly used consumer payment systems—credit cards, debit
12 cards, even PayPal—***Zelle has no consumer fraud protections, money transfers are***
13 ***immediate and irrevocable, and the Bank will provide no help in the case of fraud.***
14 These essential, material facts about Zelle are omitted from marketing about Zelle
15 promulgated by Defendants, for a simple reason: no reasonable consumer would sign
16 up for and use the service if these facts were fairly disclosed.

17 7. Having lured Bank of America accountholders to sign up for and use the Zelle
18 service with deceptive and incomplete marketing promises, Defendants fail victims
19 of Zelle fraud in two distinct ways.

20 8. First, for victims of Zelle fraud who had their access devices (phones or
21 computers) stolen and used by fraudsters, the Bank maintains a massive bureaucratic
22 apparatus designed to make it impossible for victims to lodge a successful fraud
23 claim. When such victims make a claim for fraud, the Bank denies the claim without
24 conducting a full investigation and blames fraud victims for the fraud. As occurred
25 with Plaintiff Ahuja, both the Bank and Zelle summarily rejected fraud claims
26 without explanation or recourse.

27 9. Second, for victims of Zelle fraud who were tricked into making fraudulent
28 transfers to fraudsters, the Bank has adopted a practice wherein any and all such

1 fraud reimbursement claims are denied in their entirety—another instance of the
2 Bank’s “blame the victim” corporate policy.

3 10. Common to both circumstances is that the consumer, not Bank of America or
4 Zelle, is left without recourse following the fraud or unauthorized transaction by a
5 third-party.

6 11. These policies and practices contradict Defendants’ marketing promises.

7 12. These policies and practices also violate the Electronic Fund Transfer Act
8 (“EFTA”) a statute with the purpose of “provid[ing] a basic framework establishing
9 the rights, liabilities, and responsibilities of participants in electronic fund and
10 remittance transfer systems.” *Id.* § 1693(b). “The primary objective of [the EFTA]
11 is the provision of individual consumer rights.” *Id.*

12 13. These policies and practices also breach contractual promises the Bank made
13 and violate the duty of care owed, as discussed in detail below.

14 14. Plaintiffs and the Class members have been injured by signing up for and
15 using Zelle. Plaintiffs bring this action on behalf of themselves, and the putative
16 Classes, because Plaintiffs should not be left “holding the bag” for fraudulent
17 transactions.

18 15. Plaintiffs seek actual damages, punitive damages, restitution, and an
19 injunction on behalf of the general public to prevent Bank of America and Zelle from
20 continuing to engage in their illegal practices as described herein.

21 JURISDICTION AND VENUE

22 16. Original subject matter jurisdiction is valid in the U.S. District Court pursuant
23 to 28 U.S.C. § 1331 because this case arises out of violations of federal law under
24 the EFTA, 15 U.S.C. §§ 1693, *et seq.* Jurisdiction of this Court arises pursuant to 28
25 U.S.C. §§ 1331 and 1367 for supplemental jurisdiction over the California state law
26 claims.

27 17. The Court also has jurisdiction pursuant to the Class Action Fairness Act, 28
28 U.S.C. § 1332(d)(2) because (i) there is minimal diversity; (ii) Defendants are not

1 government entities against whom the District Court may be foreclosed from
2 ordering relief; (iii) there are more than one hundred (100) people in the putative
3 classes; and (iv) the amount in controversy exceeds \$5,000,000, exclusive of interest
4 and costs.

5 18. Venue is proper pursuant to 28 U.S.C. § 1391(b) because: (1) Defendants
6 transact business within this judicial district and because Plaintiffs Ahuja and Tristan
7 were and are, residents of Woodland Hills and Orange County, California,
8 respectively, at all times relevant to these claims such that a substantial part of the
9 events giving rise the Plaintiff Tristan and Ahuja's causes of action against
10 Defendants arise in this judicial district; and (2) Defendants' contacts with this
11 District are sufficient to subject them to personal jurisdiction within this judicial
12 district for Plaintiffs' causes of action. Additionally, there is at least pendent personal
13 jurisdiction over Defendants for Plaintiff Myers's causes of action.

14 **PARTIES**

15 19. Plaintiff Tristan is, and at all times mentioned herein a natural person,
16 individual citizen and resident of California, County of Orange, in this judicial
17 district.

18 20. Plaintiff Ahuja is, and at all times mentioned herein a natural person,
19 individual citizen and resident of California, County of Los Angeles, in this judicial
20 district. Plaintiff Myers is, and at all times mentioned herein a natural person,
21 individual citizen and resident of Nevada, County of Clark.

22 21. Upon information and belief, Bank of America is a nationally-chartered bank
23 with its principal place of business in Charlotte, North Carolina.

24 22. Plaintiffs are informed and believe, and thereon allege, that Zelle is a limited
25 liability company established under the laws of Delaware with its principal place of
26 business in the State of Arizona.

23. Zelle is a money payment platform (“MPP”) that facilitates peer-to-peer (“P2P”) instant payment services. Zelle is owned by seven of America’s largest banks, which includes Defendant Bank of America.

24. Upon information and belief, Zelle earns money for its owners and saves participating banks money by minimizing the fees the banks are charged for competitor P2P payment transactions.

ZELLE – THE FAVORITE APP OF FRAUDSTERS

25. Created in 2017 by America’s largest banks¹ to enable digital money transfers, Zelle comes embedded in banking apps and is now America’s most widely used money transfer service, outpacing its closest rival (Venmo) by \$260 billion in transfers in 2021.²

26. About 1.8 billion payments—totaling \$490 billion—were sent by consumers and businesses through the Zelle Network in 2021, according to the Early Warning Services. Total dollars transferred were up 59% from 2020.³

27. Nearly 18 million people have been victims of “widespread fraud” on money transfer apps, according to a letter sent in late April of 2022 to Zelle by U.S. Senators Elizabeth Warren of Massachusetts, Robert Menendez of New Jersey and Jack Reed of Rhode Island.⁴

¹ Bank of America, Capital One, JPMorgan Chase, PNC, BB&T (now Truist), U.S. Bank and Wells Fargo.

² Cowley, Stacy & Nguyen, Lananh, “Fraud is Flourishing on Zelle. The Banks Say It Is Not Their Problem,” *New York Times* (March 6, 2022), <https://www.nytimes.com/2022/03/06/business/payments-fraud-zelle-banks.html> (last visited September 13, 2022).

³ ZellePay.com, *Nearly Half a Trillion Dollars Sent by Consumers and Businesses with Zelle in 2021* (February 02, 2022), <https://www.zellepay.com/press-releases/nearly-half-trillion-dollars-sent-consumers-and-businesses-zelle-2021> (last visited September 21, 2022).

⁴ Letter from Elizabeth Warren, Robert Menendez, Jack Reed, Sen., U.S. Cong., to Al Ko, CEO, Early Warning Services (April 2, 2022).

1 28. “Zelle’s biggest draw—the immediacy of its transfers—also makes scams
2 more effective and ‘a favorite of fraudsters,’ as consumers have no option to cancel
3 a transaction even moments after authorizing it,” the letter stated.

4 29. The 1500 banks and credit unions who are members of the Zelle network,
5 including BOA, know full well that they have a widespread fraud problem on their
6 hands, but have misrepresented and failed to take steps to warn their accountholders
7 of these risks—or to protect their accountholders who fall prey to fraud.

8 30. Nowhere in Defendants’ marketing do they warn potential Zelle users of the
9 risks of being scammed by persons impersonating their banks. Consumers are not
10 aware that money transfer transactions with Zelle differ from other similar platforms.

11 31. In short, and unbeknownst to average Zelle users, the Zelle network has
12 become a preferred tool for fraudsters like romance scammers, cryptocurrency con
13 artists, landlord impersonators, and those who use social media sites to advertise
14 fake concert tickets, used cars, and purebred puppies—or simply for those who steal
15 phones, computers, and user data and then use their access to drain money from
16 accounts via Zelle.

17 32. Fraudsters and scammers have turned to Zelle as their favorite service because
18 transfers are immediate and unrecoverable. There is an additional design feature of
19 Zelle that makes it a fraudster’s favorite: one can become a Zelle user and recipient
20 without revealing their true identity.

21 33. Led by Idaho Attorney General Lawrence Wasden and Oregon Attorney
22 General Ellen Rosenblum, a bipartisan coalition of thirty-three (33) attorneys
23 general wrote the Consumer Financial Consumer Protection Bureau (“CFPB”),
24 calling for stronger consumer safeguards for money sharing platforms and apps like
25 Zelle. The letter, written in response to the CFPB’s request for comments on its
26 inquiry into “Big Tech Payment Platforms,” noted a rise in complaints against
27 popular payment apps including Zelle. The letter highlighted that: “[m]any
28 consumers have been scammed out of hundreds or thousands of dollars by other

1 users of these payment platforms [like Zelle]. ***Scammers are attracted to real-time***
2 ***payment platforms, in large part, because they do not need to reveal their true***
3 ***identity to set up an account***” (emphasis added).

4 34. As a result, crooks are using Zelle to rob consumers when listing fake puppies
5 to sell, advertising phony apartments or homes to rent, threatening utility service cut-
6 off without immediate transfer of money, or offering extra income for wrapping a
7 personal car in an advertisement.⁵

8 35. A common version of the utility scam involves fraudsters, posing as utility
9 company employees, initially contacting customers via text message, then by phone
10 call and asking them to make missed payments via a website.

11 36. Another common scam: a prospective buyer supposedly wants to buy an item
12 listed on Facebook Marketplace but then claims that the seller needs to upgrade their
13 Zelle app to accept money from their “business account” for the big-ticket purchase
14 to go through, according to a June 2022 alert by the Better Business Bureau. The
15 scammer supposedly puts up \$300 and sends you screenshots of their Zelle app as
16 proof. Then, the scammer pressures you into paying them back.⁶

17 37. “Scammers go where it’s easy to get the money. Zelle is their current
18 mechanism to drain consumer accounts,” warned Ed Mierzewski, PIRG Education
19 Fund’s senior director of federal consumer programs. “The scammers are taking
20 advantage of consumers because the banks are letting them,” Mierzewski said. “My
21 basic advice is don’t use these apps.”⁷

22 ⁵ Letter from Ellen F. Rosenblum Oregon Attorney General, and Lawrence
23 Wasden, Idaho Attorney General to Rohit Chopra, Director, Consumer Financial
24 Protection Bureau (December 20, 2021), [https://www.doj.state.or.us/wp-](https://www.doj.state.or.us/wp-content/uploads/2021/12/State-Attorneys-General-Comment-on-CFPBs-Inquiry-into-Big-Tech-Payment-Platforms-2021.pdf)
25 [content/uploads/2021/12/State-Attorneys-General-Comment-on-CFPBs-Inquiry-](https://www.doj.state.or.us/wp-content/uploads/2021/12/State-Attorneys-General-Comment-on-CFPBs-Inquiry-into-Big-Tech-Payment-Platforms-2021.pdf)
into-Big-Tech-Payment-Platforms-2021.pdf (last accessed September 21, 2022).

26 ⁶ Better Business Bureau, *BBB Scam Alert: Crafty New Scam Targeting*
27 *Facebook Marketplace Sellers* (June 24, 2022),
28 [https://www.bbb.org/article/scams/27212-scam-alert-how-to-spot-shady-buyers-](https://www.bbb.org/article/scams/27212-scam-alert-how-to-spot-shady-buyers-on-facebook-marketplace)
on-facebook-marketplace (last accessed September 21, 2022).

⁷ Tompor, Susan, *DTE Impersonators Drained Rochester Hills Woman’s*

1 38. The fraud risk is so acute and immediate that if consumers do use Zelle, PIRG
2 recommends that consumers maintain a separate bank account to link to Zelle
3 accounts.

4 39. Scams like these are rampant on the Zelle network precisely because of the
5 design and architecture of the network, specifically that money transfer is
6 instantaneous and unrecoverable. Indeed, there is virtually no recourse for
7 consumers to recoup losses due to fraud, unlike other payment methods commonly
8 used by American consumers—debit cards, credit cards, and even Venmo.

9 40. The unique, misrepresented, and undisclosed architecture of the Zelle
10 payment system, the financial relationship between BOA, and BOA's own policies
11 specific to Zelle transactions means—again, unlike other payment options
12 commonly used by American consumers—that virtually any money transferred for
13 any reason via Zelle is gone forever, without recourse, or reimbursement protection
14 for victimized accountholders.

15 41. Defendants did nothing to stop the problem or sufficiently warn users of the
16 problem prior to the lawsuits filed by Plaintiffs, for fear of suppressing new users
17 and use of the service by existing users, and because of Defendants' financial
18 interests.

19 42. After these lawsuits were filed, and as a result of these lawsuits, BOA for the
20 first time began providing warnings prior to Zelle transfers to its accountholders
21 regarding the risks of using the service and regarding common scams to be on alert
22 for. But BOA provided none of these warnings in its Zelle marketing, much less
23 prior to each Zelle transfer, prior to these lawsuits.

24 43. Moreover, Defendants' warnings are still inadequate to protect consumers, in
25 part because Defendants continue to market Zelle as safe and secure.

26 *Checking Accounting Using Zelle App*, Detroit Free Press (June 30, 2022),
27 [https://www.freep.com/story/money/personal-finance/susan-](https://www.freep.com/story/money/personal-finance/susan-tompor/2022/06/30/utility-shutoff-scam-stole-cash-via-zelle/7714138001/)
28 [tompor/2022/06/30/utility-shutoff-scam-stole-cash-via-zelle/7714138001/](https://www.freep.com/story/money/personal-finance/susan-tompor/2022/06/30/utility-shutoff-scam-stole-cash-via-zelle/7714138001/) (last
accessed Sept. 21, 2022).

**THE FALSE AND MISLEADING ZELLE SIGN-UP PROCESS LURES
ACCOUNTHOLDERS TO SIGN UP FOR AND USE ZELLE**

44. It is free to sign up with Zelle, and Zelle is integrated into BOA’s websites and mobile app.

45. Accountholders sign up for Zelle after they have already become Bank of America accountholders—often, years later.

46. During the Zelle sign-up process, users are not affirmatively provided with agreements or disclosures previously provided at the time they opened their Bank of America account.

47. Bank of America’s mobile app and online banking website feature numerous invitations and advertisements to sign up for the Zelle service. Upon information and belief, such marketing is jointly designed and promulgated by Defendants.

48. In its marketing about Zelle and during the Zelle signup process within the Bank’s mobile app or website, the Bank makes repeated promises that Zelle is a “fast, **safe** and easy way to send and receive money” (emphasis added).

49. It also promises: “Move money in the moment. It’s simple and **secure** – with lots of people you know” (emphasis added),

50. Prior to the fraudulent losses incurred by Plaintiffs and the Class Members, at no time had the Bank’s marketing or during the Bank’s sign-up process warned Plaintiffs and the Class Members of the true security risks of using the Zelle service—including the immediate and acute risk of fraud, the dangerous architecture of the system and the risk that fraudulent losses will never be reimbursed by Defendants.

51. The Bank misrepresents (and omits facts about) the true nature, benefits, and risks of the Zelle service, which means that users are at risk of fraud when using Zelle. Had Plaintiffs been adequately informed of these risks, they would not have signed up for or used Zelle.

52. Defendants’ marketing representations about Zelle—including within its app and website—misrepresent and never disclose these risks and material facts, instead luring accountholders to sign up for and use the service with promises of ease, safety and security.

53. These representations—which all users view during the sign-up process—are false and contain material omissions.

54. Defendants misrepresent the true nature, benefits and risks of the service, which burdens users with the risk of use of Zelle causing losses due to fraud. Plaintiffs would not have used Zelle if they had been adequately informed of the risks.

55. Defendants’ misrepresentations and omissions are especially pernicious because Defendants alone know material facts regarding Zelle—including knowledge of the rampant fraud and theft of accountholders’ money, and the fact that fraud-induced Zelle transfers will almost never be reimbursed by Defendants.

FALSE AND MISLEADING ZELLE MARKETING

56. Zelle advertises its money transfer services to consumers by claiming that it is “a fast, safe and easy way to send and receive money.” It also urges consumers to use Zelle to “[s]afely send money to friends and family, no matter where they bank⁸.”

57. Zelle encourages consumers to “pay it safe” by “look[ing] for Zelle in your banking app[.]”⁹

58. Defendants tout Zelle to accountholders as a secure, free and convenient way to make money transfers. However, the marketing (including during the sign-up process) misrepresents and omits a key fact about the service: that there is virtually no recourse for consumers to recoup losses due to fraud. Indeed, unlike virtually

⁸ “See ZellePay.com, *How Zelle Works*, <https://www.zellepay.com/how-it-works> (last visited August 17, 2022).

⁹ See ZellePay.com, *How to Pay it Safe with Zelle* <https://www.zellepay.com/financial-education/pay-it-safe> (last visited August 17, 2022).

1 every other payment method commonly used by American consumers—debit cards,
2 credit cards, and even PayPal—there is a no protection for accountholders who are
3 victims of fraud, and virtually no recourse for accountholders attempting to recoup
4 losses due to fraud.

5 59. The unique, misrepresented, and undisclosed architecture of the Zelle
6 payment system means—again, unlike other payment options commonly used by
7 American consumers—that virtually any money transferred for any reason via Zelle
8 is gone forever, without recourse, reimbursement or protection. This too is omitted
9 from all marketing, including during the sign-up process.

10 60. Worse, the Bank misrepresents and omits the truth about a practice it has
11 adopted: it does not and will not reimburse its accountholders for losses when users
12 are tricked into making Zelle transfers due to fraud, and will almost never reimburse
13 accountholders for losses when their phones or other access devices are stolen and
14 their Zelle accounts preyed upon by fraudsters—even where those losses are timely
15 reported by accountholders.

16 61. Defendants were required to accurately represent the unique features of the
17 Zelle service in their marketing about it and in contractual representations. But they
18 failed to do so.

19 62. As a result, users like Plaintiffs signed up for and used the Zelle service
20 without the benefit of accurate information regarding that service, and later ended
21 up with huge, unreimbursed losses due to fraud. Such users never would have signed
22 up for Zelle if they had known the extreme risks of using the service.

23 63. The acute and immediate risks described above are well known to Defendants
24 but were omitted from all of their Zelle marketing to Plaintiffs and the Class
25 Members.

26 64. On information and belief, the Bank uses Zelle, which it owns in part, to
27 insulate itself from financial liability for fraudulent and unauthorized transactions.
28

DEFENDANTS HAVE IGNORED REGULATORY GUIDANCE

65. Recent CFPB guidance on unauthorized Electronic Fund Transfers (“EFTs”) indicates P2P payments are EFTs, such as transactions made with Zelle, and trigger “error resolution obligations” to consumers to protect them from situations where they are fraudulently induced and requested by a third party to provide their account information that results in authorized debits from their accounts.¹⁰

66. Additionally, the Federal Deposit Insurance Corporation (“FDIC”) issued a report in March 2022 finding that Regulation E’s “liability protections for unauthorized transfers apply even if a consumer is deceived into giving someone their authorization credentials.”¹¹ Further, the FDIC stated that “[c]onsumer account disclosures cannot limit protections provided for in the regulation.”¹² The FDIC stated that both the banks and MPPs are considered “financial institutions” under Regulation E, and as such have investigative and error resolution obligations under Regulation E.

67. Even so, Defendants have not changed course and provided protections for fraud.

68. On information and belief, Defendants do not reimburse consumers for losses from unauthorized EFTs due to Zelle fraud, even where the losses are timely reported by consumers.

69. On information and belief, the Bank has notified Zelle of each loss sustained by each of the Plaintiffs and the putative class members, but Zelle has not

¹⁰ Consumer Financial Protection Bureau, *Electronic Fund Transfers FAQs*, <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/#financial-institutions-2> (last visited August 17, 2022).

¹¹ FDIC, *Consumer Compliance Supervisory Highlights Federal Deposit Insurance Corporation* (March 2022), <https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2022.pdf> (last accessed Sept. 21, 2022).

¹² *Id.*

1 investigated any of the unauthorized EFTs, has not complied with its “error
2 resolution” obligations, and has failed to reimburse any of the unauthorized EFTs.

3 **BANK OF AMERICA BREACHES CONTRACT PROMISES**
4 **AND THE IMPLIED COVENANT**

5 70. The Bank’s Deposit Agreement & Disclosures (“the Agreement”) applicable
6 to consumer accounts repeatedly promise users that, if they timely report fraud, such
7 fraud will be fairly investigated and accountholders will not be liable for fraudulent
8 transfers.

9 71. Zelle is never mentioned by name, not even a single time, in the Agreement
10 that accountholders receive when opening a Bank of America account.

11 72. With respect to transactions *not* governed by Regulation E, the Agreement
12 states:

13 Review Statements and Report Suspected Problems Immediately

14 You must promptly review the notices, statements and other
15 communications, along with any accompanying checks and other items, we
16 send you. You must also report problems or **unauthorized transactions** to
17 us immediately, by calling the number for customer service on your
statement.

18 *See Agreement*, at 40 (emphasis added).

19 73. The Agreement further indicates:

20 What Are Problems and Unauthorized Transactions

21 Problems and **unauthorized transactions include suspected fraud**; missing
22 deposits; **unauthorized electronic transfers**; missing, stolen, or
23 unauthorized checks or other withdrawal orders; checks or other withdrawal
24 orders bearing an unauthorized signature, endorsement or alteration; illegible
images; encoding errors made by you or us; and counterfeit checks. This is
not a complete list.

25 *Id.*, at 42 (emphasis added).

26 74. The Agreement further states:

27 Except as otherwise expressly provided elsewhere in this agreement, if you
28 fail to notify us in writing of suspected problems or **unauthorized**

1 **transactions** within 60 days after we make your statement or items available
 2 to you, you agree that: • you may not make a claim against us relating to the
 3 unreported problems or **unauthorized transactions**, regardless of the care or
 lack of care we may have exercised in handling your account;

4 [..]

5
 6 If you report to us that **an unauthorized transaction has occurred on your**
 7 **account, we may require you to confirm your report in writing.** We may
 8 also require that you give us a statement, under penalty of perjury, about the
 9 facts and circumstances relating to your report and provide such other
 10 information and proof as we may reasonably request. If you assert a claim
 11 regarding a problem, you must cooperate with us in the investigation and
 12 prosecution of your claim and any attempt to recover funds. You also agree to
 13 assist us in identifying and in seeking criminal and civil penalties against the
 14 person responsible. You must file reports and complaints with appropriate law
 enforcement authorities. If you fail or refuse to do these things, we will
 consider your failure or refusal to be your ratification of the defect in the
 statement or item, unauthorized transaction or other problem and your
 agreement that we can charge the full amount to your account.

15 *See Agreement*, at 43.

16 75. With respect to transactions *governed by Regulation E*, the Agreement
 17 provides:

18 **Consumer's Liability for Unauthorized Transfers**

19 Tell us AT ONCE if you believe your card or your personal
 20 identification number (PIN) or other code has been lost or stolen. Also,
 21 tell us AT ONCE if you believe that an electronic fund transfer has been
 22 made without your permission using information from your check. The
 23 best way to keep your possible losses down is to call us immediately.
 24 Your losses could include all of the money in your account plus, if you
 have an overdraft protection plan linked to your account, any transfers
 from another account or any advances on a credit line.

25 [. . .]

26 If you tell us within two business days after you learn of the loss or theft
 27 of your card or code, you can lose no more than \$50 if someone uses
 28 your card without your permission.

1 If you do NOT tell us within two business days after you learn of the
2 loss or theft of your card or code, and we can prove we could have
3 stopped someone from using your card or code without your permission
if you had told us, you could lose as much as \$500.

4 Also, if your statement shows transfers that you did not make, including
5 those made by card, code or other means, tell us at once. If you do not
6 tell us in writing within 60 days after the statement was mailed to you,
7 you may not get back any money you lost after the 60 days if we can
8 prove that we could have stopped someone from taking the money if
you had told us in time. If a good reason (such as a long trip or hospital
stay) kept you from telling us, we will extend the time periods.

9 ***Note:** These liability rules are established by Regulation E, which does
10 not apply to business deposit accounts. For personal deposit accounts,
11 our liability policy regarding unauthorized debit card or ATM card
12 transactions, and unauthorized Online Banking transactions may give
13 you more protection, provided you report the transactions promptly.
14 Please see the agreement you receive with your ATM or debit card and
the Online Banking agreement.*

15 [...]

16 **Contact in Event of Unauthorized Transfer; and Lost or Stolen**
17 **Card, PIN or Other Code**

18 If you believe your card, PIN or other code is lost or stolen, or learned
19 by an unauthorized person, or that someone has transferred or may
20 transfer money from your account without your permission, notify us
immediately by calling the number listed below.

21 Telephone: 1.800.432.1000

22 You can also write to us at: Bank of America, P.O. Box 53137, #7405,
23 Phoenix, AZ 85072-3137

24 You should also call the number or write to the address listed above if
25 you believe a transfer has been made using the information from your
check without your permission.

26 If unauthorized activity occurs, you agree to cooperate during the
27 investigation and to complete a Lost/Stolen Card and Fraud Claims
28 Report or similar affidavit.

1 [...]

2

3 **In Case of Errors or Questions about your Electronic Transfers You**
 4 **May Sign into Online Banking to Report the Error Promptly, or**
 5 Call or write us at the telephone number or address below, as soon as
 6 you can, if you think your statement or receipt is wrong, or if you need
 7 more information about a transfer listed on the statement or receipt.

8 Call us at 1.800.432.100 during normal Claims Department business
 9 hours or write us at Bank of America, P.O. Box 53137, #7405, Phoenix,
 10 AZ 85072-3137.

11 We MUST hear from you NO LATER than 60 days after we sent you
 12 the FIRST statement on which the error or problem appeared... We will
 13 determine whether an error occurred within 10 business days after we
 14 hear from you and will correct any error promptly. If we need more
 15 time, however, we may take up to 45 days to investigate your complaint
 16 or question... For errors involving new accounts, point of sale, or
 17 foreign-initiated transfers transactions, we may take up to 90 days
 18 (instead of 45) to investigate your complaint or question... We will tell
 19 you the results within 3 business days after completing our
 20 investigation. If we decided that there was no error, we will send you a
 21 written explanation. You may ask for copies of the documents that we
 22 used in our investigation.

23 *Id.*, at 60–61.

24 76. The Agreement never mentions Zelle transfers, and never specifies whether
 25 Zelle transfers are governed by Regulation E. Accordingly, the Agreement, and no
 26 correspondence by Zelle or the Bank to consumers, informs consumers of Zelle’s
 27 obligation as a “financial institution” under Regulation E.

28 77. As alleged with specificity herein, Bank of America breached the Agreement.
 Bank of America adopted an unreasonable and unfair understanding of the
 Agreement’s term “unauthorized.”

78. The term “unauthorized” reasonably encompasses all transactions occurring
 as a result of fraud. In other words, no fraud-induced transaction can reasonably be
 considered “authorized.”

79. The Bank unfairly and improperly considers Zelle transactions induced by

1 fraud to be “authorized,” thus shirking fraud protection promises it otherwise makes
2 in the Agreement.

3 80. Moreover, and with respect to users like Plaintiff Ahuja, whose access device
4 was taken by a third party without permission and then used by the fraudster for
5 fraudulent transactions, the Bank has adopted an investigation practice that almost
6 always rejects valid claims, in breach of the implied covenant.

7 **PLAINTIFF TRISTAN’S FACTUAL ALLEGATIONS**

8 81. When Plaintiff Tristan signed up for Zelle she was not informed that Zelle’s
9 service had a significant “catch” and that significant monetary losses could result
10 from signing up for the service—or that those losses almost never are reimbursed
11 by Defendants.

12 82. For example, on November 11, 2021, a fraudster transferred \$2,150 from
13 Plaintiff Tristan’s personal bank accounts using the Zelle service.

14 83. Plaintiff Tristan is a young, college student who was searching for rental
15 apartments online.

16 84. In November 2021, Plaintiff Tristan was searching for rental apartments and
17 believed she found a potential unit to lease online from a fraudster who went by the
18 name of Orlin Aguilera.

19 85. Plaintiff Tristan was interested in the purported rental unit and began
20 communicating with the fraudster who informed her to submit a rental application
21 and fees to be screened for approval as a tenant.

22 86. As the fraudster requested, Plaintiff Tristan transferred \$150 via Zelle for
23 application fees. Shortly thereafter, the fraudster informed Plaintiff Tristan that her
24 application was “approved” and to finalize obtaining the apartment, she needed to
25 also transfer via Zelle the security deposit of \$800 and first-month’s rent of \$1,200.
26 Eager to secure the rental, Plaintiff Tristan used Zelle to transfer an additional
27 \$2,000 to the fraudster.

28 87. Afterwards, Plaintiff Tristan and the fraudster coordinated a day and time for

1 her to move-in and collect the keys. However, on the purported move-in day,
2 Plaintiff Tristan arrived at the apartment but Orlin Aguilera, the fraudster, was
3 nowhere to be found. The fraudster repeatedly called Plaintiff Tristan with excuses
4 for his tardiness and reassured Plaintiff that he would be arriving promptly with the
5 keys, but he never showed.

6 88. At this point, Plaintiff Tristan determined she had been a victim of fraud and
7 demanded her money be returned. Despite Plaintiff Tristan's demand, the fraudster
8 did not return the money and ceased all communications with Plaintiff.

9 89. Plaintiff Tristan timely informed the Bank of the fraud, but the Bank refused
10 to reimburse her for the losses.

11 90. Specifically, Plaintiff Tristan immediately notified the Bank once she
12 realized the fraud. Initially, the Bank informed Plaintiff Tristan that she would be
13 protected from the fraud and should expect a full reimbursement of the funds.
14 Ultimately, however, the Bank denied the claim and refused to reimburse Plaintiff
15 her loss.

16 91. On information and belief, Zelle was already on notice of Plaintiff Tristan's
17 claim based on information provided by the Bank.

18 **PLAINTIFF AHUJA'S FACTUAL ALLEGATIONS**

19 92. On February 7, 2022, Plaintiff Ahuja misplaced her cell phone in her
20 apartment complex while doing laundry.

21 93. When Plaintiff Ahuja found her phone, she received emails that she had sent
22 \$3,500 through Zelle from her Bank of America account.

23 94. Plaintiff Ahuja never authorized such a transfer of funds. Plaintiff Ahuja also
24 did not, and does not, know the identity of the recipients.

25 95. Thereafter, Plaintiff Ahuja received a call from a person named "Ryan" who
26 indicated that if she wanted her money back she would have to go to a store and
27 engage in "cryptocurrency transactions."

28 96. Plaintiff Ahuja immediately filed a police report with the Los Angeles Police

1 Department and submitted a dispute to the Bank.

2 97. After calling the Bank, Plaintiff Ahuja was transferred to a representative for
3 Zelle who, after hearing Plaintiff Ahuja's explanation of the unauthorized charges,
4 informed her that she would not receive a refund.

5 98. The Bank itself also denied her claim, despite the detailed dispute report filed
6 by Plaintiff Ahuja and the Bank's prior knowledge of scams involving the Zelle
7 mobile application.

8 99. Plaintiff Ahuja called the Bank and asked them to reconsider the denial and
9 to recover the funds that were transferred from her account without her
10 authorization.

11 100. On March 11, 2022, the Bank sent a letter to Plaintiff Ahuja stating that:
12 "[w]e completed a re-evaluation of your claim and unfortunately, we're unable to
13 credit your account."

14 101. Even though Plaintiff Ahuja did not authorize any such transfer of funds from
15 her account, the Bank would still not approve her claim because it opined: (i) "[o]ur
16 investigation found that the transaction in question was completed using a device
17 that is consistent with previous valid account activity; (ii) our investigation found
18 that the transaction in question was validated using an authentication code sent to a
19 valid phone number belonging to a signer on the account; and (iii) our investigation
20 found that the transaction in question was confirmed by your via (SMS/MMS) text
21 message response or speaking directly with Fraud Detection employee."

22 102. Like other customers that have had their accounts debited (and in some cases
23 drained) by imposters and scam artists, the Bank denied Plaintiff Ahuja's claim
24 seeking reversal of the unauthorized transaction(s) stating that these victims had
25 authorized the payments and were responsible for the loss.

26 103. After the Bank denied Plaintiff Ahuja's claim, the Bank directed Plaintiff
27 Ahuja to make a claim with Zelle and connected Plaintiff to Zelle via telephone.

28 104. Zelle told Plaintiff Ahuja, "sorry, you're not getting your money back" and

1 refused to reverse funds or reimburse Plaintiff Ahuja for her loss.

2 105. On information and belief, Zelle was separately on notice of Plaintiff Ahuja's
3 claim based on information provided by the Bank.

4 106. Though Plaintiff Ahuja was the victim of fraud, Zelle, like the Bank rejected
5 Plaintiff Ahuja's claim without further investigation.

6 **PLAINTIFF MYERS' FACTUAL ALLEGATIONS**

7 107. On or about April 2022, Plaintiff Myers noticed a fraudulent charge on his
8 credit card from Amazon.com. He proceeded to google Amazon's customer service
9 line which he then called and spoke to a representative who advised him to
10 download an app on his phone which would allow the representative to review his
11 account and refund the charge.

12 108. Unbeknownst to Plaintiff Myers, an elderly 74-year-old, this number was a
13 fraudulent line and the representative he spoke to was a fraudster.

14 109. The fraudster proceeded to access Plaintiff Myers' Bank of America account
15 and on or about April 26, 2022, the fraudster transferred \$1,709 from Plaintiff
16 Myers' personal bank accounts using the Zelle service.

17 110. Plaintiff Myers called the Bank and spoke to a representative who told him
18 they were informed of his problem happening with other customers but that there
19 was nothing they could do.

20 111. The Bank has yet to reimburse Plaintiff Myers for his loss.

21 112. On information and belief, Zelle was already on notice of Plaintiff Myer's
22 claim based on information provided by the Bank.

CLASS ALLEGATIONS

113. Plaintiffs bring this action on behalf of themselves and on behalf of all other persons similarly situated.

114. Plaintiffs are members of and seek to represent a Nationwide Class, pursuant to Fed. R. Civ. P. 23(b)(2) and/or (b)(3), defined as:

All Bank of America customers within the United States whose bank accounts with Bank of America were debited via one or more transactions using the Bank of America and/or Zelle mobile application and were not permanently credited by Defendant/s in full within 45 days of a dispute by the customer and/or their authorized representative concerning the transaction(s).

115. Plaintiff Tristan and Plaintiff Ahuja are members of and seek to represent a California Sub-Class, pursuant to Fed. R. Civ. P. 23(b)(2) and/or (b)(3), defined as:

All Bank of America customers residing in California whose bank accounts with Bank of America were debited via one or more transactions using the Bank of America and/or Zelle mobile application and were not permanently credited by Defendant/s in full within 45 days of a dispute by the customer and/or their authorized representative concerning the transaction(s).

117. Plaintiff Myers is a member of and seeks to represent a Nevada Sub-Class, pursuant to Fed. R. Civ. P. 23(b)(2) and/or (b)(3), defined as:

All Bank of America customers residing in Nevada whose bank accounts with Bank of America were debited via one or more transactions using the Bank of America and/or Zelle mobile application and were not permanently credited by Defendant/s in full within 45 days of a dispute by the customer and/or their authorized representative concerning the transaction(s).

118. Excluded from the Nationwide Class and Sub-Classes are Defendants' officers, directors, and employees; any entity in which Defendants have a controlling

1 interest; and the affiliates, legal representatives, attorneys, successors, heirs, and
2 assigns of Defendants. Further excluded from the Nationwide Class and Sub-Classes
3 are members of the judiciary to whom this case is assigned, their families, and
4 members of their staff.

5 119. Plaintiffs reserve the right to modify the proposed class definitions, including
6 but not limited to expanding the class to protect additional individuals and to assert
7 additional sub-classes as warranted by additional investigation.

8 120. The proposed Nationwide Class and Sub-Classes meet the criteria for
9 certification under Rule 23(a), (b)(2) and/or (b)(3).

10 121. Numerosity: The members of the Nationwide Class and Sub-Classes are so
11 numerous that joinder of all of them is impracticable. While the exact number of
12 Class Members is unknown to Plaintiffs at this time, on information and belief, the
13 Nationwide Class and Sub-Classes consists of thousands of individuals nationwide.

14 122. Commonality: There are questions of law and fact common to the Nationwide
15 Class and Sub-Classes, which predominate over any questions affecting only
16 individual Class Members. These common questions of law and fact include,
17 without limitation:

- 18 a. Whether Plaintiffs and the Class Members lost money that was
19 transferred from their account via Zelle;
- 20 b. Whether Plaintiffs and the Class Members were customers of Zelle at the
21 time of the fraudulent or unauthorized transactions;
- 22 c. Whether Plaintiffs and the Class Members were customers of BOA at the
23 time of the fraudulent or unauthorized transactions;
- 24 d. Whether Defendants violated EFTA by failing to adequately investigate
25 the fraudulent or unauthorized transactions of Plaintiffs and the Class
26 Members;
- 27 e. Whether Defendants violated EFTA by failing to correct errors on the
28 accounts of Plaintiff and the Class Members within 45 days of the

transaction being disputed;

f. Whether the transactions at issue were unauthorized EFTs, by way of a third party fraudulently obtaining access to Plaintiffs' and the Class Members' accounts through fraudulent inducement, making them errors subject to EFTA's remedial provisions, including Regulation E;

g. Whether Plaintiffs and the Class Members are entitled to maximum statutory damages, costs, and fees under EFTA;

h. California Sub-Class: Whether the conduct of Defendants was "unlawful" as that term is defined in the UCL;

i. California Sub-Class: Whether the conduct of Defendants was "unfair" as that term is defined in the UCL;

j. California Sub-Class: Whether Defendants' advertising was untrue or misleading as those terms are defined in the FAL;

k. Nevada Sub-Class: Whether the conduct of Defendants was a "deceptive trade practice" as that term is defined the Nevada DTPA;

l. Whether Defendants were negligent in their actions or omissions;

m. Whether Defendants have been conferred an enrichment by keeping funds that they were obligated to replace pursuant to Regulation E's error resolution obligations;

n. Whether Bank of America breached its contract; and

o. Whether Plaintiffs and the Classes are entitled to injunctive relief.

123. Typicality: Plaintiffs' claims are typical of those of other members of the Nationwide Class and Sub-Classes because Plaintiffs were victims of the Zelle scam by a third party who caused a withdrawal funds from their BOA account to occur through the BOA/Zelle mobile application. After disputing that unauthorized transaction, Plaintiffs were informed by Defendants that the unauthorized transaction would ultimately not be reversed.

124. Adequacy of Representation: Plaintiffs will fairly and adequately represent

1 and protect the interests of members of the Nationwide Class and Sub-Classes.
2 Plaintiffs' Counsel are competent and experienced in litigating consumer class
3 actions.

4 125. Predominance: Defendants have engaged in a common course of conduct
5 toward Plaintiffs as well as the members of the Nationwide Class and Sub-Classes,
6 in that all were induced into allowing a third party to make unauthorized
7 withdrawals on their BOA accounts using Zelle. The common issues arising from
8 Defendants' conduct affecting members of the Nationwide Class and Sub-Classes
9 set out above predominate over any individual issues. Adjudication of these
10 common issues in a single action has important and desirable advantages of judicial
11 economy.

12 126. Superiority: A class action is superior to other available methods for the fair
13 and efficient adjudication of the controversy. Class treatment of common questions
14 of law and fact is superior to multiple individual actions or piecemeal litigation.
15 Absent a Class action, most members of the Nationwide Class and Sub-Classes
16 would likely find that the cost of litigating their individual claims is prohibitively
17 high and would therefore have no effective remedy. The prosecution of separate
18 actions by individual members of the Nationwide Class and Sub-Classes would
19 create a risk of inconsistent or varying adjudications with respect to individual
20 members of the Nationwide Class and Sub-Classes, which would establish
21 incompatible standards of conduct for Defendants. In contrast, the conduct of this
22 action as a Class action presents far fewer management difficulties, conserves
23 judicial resources and the parties' resources, and protects the rights of each Class
24 Member.

25 127. Defendants have acted on grounds that apply generally to the Nationwide
26 Class and Sub-Classes, so that class certification is appropriate.

27 128. All Members of the proposed Nationwide Class and Sub-Classes are readily
28 ascertainable. Defendants have access to consumer reporting of fraudulent and/or

1 unauthorized transactions on their books and records. Using this information, Class
 2 Members can be identified and ascertained for the purpose of providing notice.

3 129. Notice: Plaintiffs anticipate providing direct notice to the members of the
 4 Nationwide Class and Sub-Classes for purposes of class certification, via U.S. Mail
 5 and/or email, based upon Defendants' and/or Defendants' agents' records.

6 FIRST CAUSE OF ACTION

7 **BREACH OF CONTRACT INCLUDING BREACH OF THE COVENANT** 8 **OF GOOD FAITH AND FAIR DEALING**

9 **(Asserted on Behalf of All Plaintiffs and the Nationwide Class, and the**
 10 **California and Nevada Sub-Classes Against Bank of America)**

11 130. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

12 131. Plaintiffs and members of the Nationwide Class contracted with BOA for
 13 checking account services, as embodied in the Agreement.

14 132. BOA breached the terms of its contract with consumers when as described
 15 herein, BOA failed to refund fraudulent or unauthorized transactions on the Zelle
 16 money transfer service and failed to reimburse accountholders for fraud-induced
 17 losses incurred using the Zelle service.

18 133. Further, under the law of each of the states where BOA does business, an
 19 implied covenant of good faith and fair dealing governs every contract. The covenant
 20 of good faith and fair dealing constrains Defendant BOA's discretion to abuse self-
 21 granted contractual powers.

22 134. This good faith requirement extends to the manner in which a party employs
 23 discretion conferred by a contract.

24 135. Good faith and fair dealing, in connection with executing contracts and
 25 discharging performance and other duties according to their terms, means preserving
 26 the spirit—not merely the letter—of the bargain. Put differently, the parties to a
 27 contract are mutually obligated to comply with the substance of their contract in
 28 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.

1 136. Subterfuge and evasion violate the obligation of good faith in performance
 2 even when an actor believes his conduct to be justified. A lack of good faith may be
 3 overt or may consist of inaction, and fair dealing may require more than honesty.
 4 Other examples of violations of good faith and fair dealing are willful rendering of
 5 imperfect performance, abuse of a power to specify terms, and interference with or
 6 failure to cooperate in the other party's performance.

7 137. Defendant BOA breached the covenant of good faith and fair dealing when
 8 they failed to fairly investigate reported fraudulent transactions on the Zelle money
 9 transfer service, failed to reimburse accountholders for fraud-induced losses incurred
 10 using the Zelle service, and adopted an unfair and unreasonable definition of the
 11 term "unauthorized transaction."

12 138. Each of Defendants' actions were done in bad faith and were arbitrary and
 13 capricious.

14 139. Plaintiffs and members of the Nationwide Class have performed all of the
 15 obligations imposed on them under the contract.

16 140. Plaintiffs and members of the Nationwide Class have sustained monetary
 17 damages as a result of BOA's breaches of the Agreement and covenant of good faith
 18 and fair dealing.

19
 20 **SECOND CAUSE OF ACTION**
 21 **UNJUST ENRICHMENT**

22 **(On Behalf of All Plaintiffs and the Nationwide Class Against Bank of**
 23 **America (In the Alternative to Breach of Contract))**

24 141. Plaintiffs reallege and incorporate herein by reference the allegations
 25 contained in all preceding paragraphs, and further allege as follows, in the alternative
 26 to the breach of contract cause of action:

27 142. BOA has been conferred the benefit or enrichment by keeping funds that they
 28 are otherwise obligated to replace for Plaintiff and Nationwide Class Members
 pursuant to Regulation E's error resolution obligations.

1 143. BOA knew and appreciated this benefit or enrichment and the detriment or
2 impoverishment to Plaintiffs and Nationwide Class Members.

3 144. It is inequitable for BOA to retain the benefit or enrichment of keeping these
4 funds when they know that, as financial institutions, they are obligated to comply
5 with Regulation E and credit Plaintiffs' and Nationwide Class Members' accounts
6 for the amounts taken.

7 145. Plaintiffs and Nationwide Class Members have sustained a detriment or an
8 impoverishment from BOA's failure to remedy this inequity and are entitled to
9 restitution for the unjust enrichment to BOA.

10 146. Plaintiffs and Nationwide Class Members are entitled to restitution and
11 disgorgement of the funds unjustly retained by BOA in the absence of any legal
12 relief.

13 **THIRD CAUSE OF ACTION**
14 **NEGLIGENCE**

15 **(On Behalf of All Plaintiffs, the Nationwide Class, and the California and**
16 **Nevada Sub-Classes Against All Defendants)**

17 147. Plaintiffs reallege and incorporate herein by reference the allegations
18 contained in all preceding paragraphs, and further allege as follows:

19 148. BOA owed Plaintiffs, the Nationwide Class, and the California and Nevada
20 Sub-Classes at least a duty to take reasonable steps to safeguard their financial
21 information and protect their financial accounts from malicious third parties, to
22 adequately warn of known risks and/or dangers associated with the Zelle mobile
23 application, and to properly investigate disputed transactions initiated and
24 consummated through the BOA and/or Zelle app.

25 149. Zelle owed Plaintiffs, the Nationwide Class, and the California and Nevada
26 Sub-Classes at least a duty to take reasonable steps to adequately warn of known
27 risks and/or dangers associated with the BOA/Zelle app, and to take appropriate
28

1 steps in response to a known scam involving the app to protect consumers from
2 malicious third parties.

3 150. Defendants breached their obligations to Plaintiffs, the Nationwide Class, and
4 the California and Nevada Sub-Classes and were otherwise negligent and/or reckless
5 by at least:

- 6 a. Failing to maintain adequate data security measures to prevent or reduce
7 the risk of disclosure of the names, phone numbers, and bank affiliation
8 of Plaintiffs, the Nationwide Class, and the California and Nevada Sub-
9 Classes to malicious third parties;
- 10 b. Failing to adequately protect the private information of Plaintiffs and the
11 California and Nevada Sub-Classes;
- 12 c. Failing to properly warn Plaintiffs, the Nationwide Class, and the
13 California and Nevada Sub-Classes of the risks and/or dangers associated
14 with the BOA/Zelle mobile app or informing consumers about the Zelle-
15 related scams;
- 16 d. Failing to adequately investigate and document findings from the
17 investigations of fraud-related EFT disputes of the unauthorized
18 transactions made on the accounts of Plaintiffs, the Nationwide Class,
19 and the California and Nevada Sub-Classes using the BOA/Zelle
20 payment platform;
- 21 e. Failing to take appropriate steps to avoid unauthorized transactions
22 through the BOA/Zelle mobile application in response to known scams
23 and continuing with business as normal;
- 24 f. Failing to implement appropriate and sufficient safeguards against scams
25 of the nature alleged in the Consolidated Amended Complaint in light of
26 the knowledge that those scams have been rampant across the country;
- 27 g. Failing to review account agreements and disclosures to ensure they do
28 not attempt to diminish or limit consumers' rights under Regulation E;

h. Permitting scammers to use Zelle's member banks to siphon funds from the accounts of Plaintiffs, the Nationwide Class, and the California and Nevada Sub-Class Members using the BOA/Zelle payment platform;

i. Failing to reverse unauthorized transactions pursuant to Regulation E error resolution requirements following disputes of Plaintiffs, the Nationwide Class, and the California and Nevada Sub-Classes despite Defendants' knowledge that said transactions were unauthorized as part of a scam that is well-known to Defendants; and

j. Failing to permanently reverse unauthorized transactions upon a sufficient showing by Plaintiffs, the Nationwide Class, and the California and Nevada Sub-Classes that said transactions were unauthorized.

151. As a direct and proximate result of Defendants' breach, Plaintiffs, the Nationwide Class, and the California and Nevada Sub-Classes lost funds from their BOA bank accounts.

152. Plaintiffs, the Nationwide Class, and the California and Nevada Sub-Classes are entitled to damages for their continuing and increased risk of fraud and their loss of money.

FOURTH CAUSE OF ACTION

VIOLATION OF THE ELECTRONIC FUND TRANSFER ACT ("EFTA"), 15 U.S.C. §§ 1693, *ET SEQ.*

(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)

153. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

154. The Electronic Fund Transfer Act ("EFTA") and Regulation E apply to electronic fund transfers that authorize a financial institution to debit or credit a consumer's account. 12 C.F.R. 1005.3(a).

1 155. The primary objective of EFTA is “the protection of individual consumers
2 engaging in electronic fund transfers and remittance transfers.” 12 C.F.R.
3 § 1005.1(b).

4 156. Financial institutions have error resolution obligations pursuant to Regulation
5 E in the event that a consumer notifies the financial institution of an error. 12 C.F.R.
6 § 1005.11.

7 157. The Bank is a financial institution. 12 C.F.R. § 1005.2(i).

8 158. Zelle is an MPP and financial institution, as the applicable code, 12 C.F.R. §
9 1005.2(i), is interpreted by the CFPB and the FDIC, because it issues an access
10 device and agrees with a consumer to provide electronic fund transfer services.

11 159. “If a financial institution, within sixty days after having transmitted to a
12 consumer pursuant to [15 U.S.C.] § 1693d(a), (c), or (d) of this title or notification
13 pursuant to [15 U.S.C.] § 1693(d) of this title, receives oral or written notice in
14 which the consumer[:] (1) sets forth or otherwise enables the financial institution to
15 identify the name and the account number of the consumer; (2) indicates the
16 consumer’s belief that the documentation, or, in the case of notification pursuant to
17 [15 U.S.C.] § 1693d(b) of this title, the consumer’s account, contains an error and
18 the amount of such error; and (3) sets forth the reasons for the consumer’s belief
19 (where applicable) that an error has occurred,” the financial institution is required to
20 investigate the alleged error. 15 U.S.C. § 1693f(a).

21 160. After said investigation, the financial institution must determine whether an
22 error has occurred and report or mail the results of such investigation and
23 determination to the consumer within ten (10) business days. *Id.*

24 161. A financial institution that provisionally recredits the consumer’s account for
25 the amount alleged to be in error pending an investigation, however, is afforded
26 forty-five (45) days after receipt of notice of error to investigate. *Id.* § 1693f(c).

27 162. Pursuant to the EFTA, an error includes “an unauthorized electronic fund
28 transfer.” *Id.* § 1693f(f).

1 163. An Electronic Fund Transfer (“EFT”) is any transfer of funds that is initiated
2 through an electronic terminal, telephone, computer, or magnetic tape for the
3 purpose of ordering, instructing, or authorizing a financial institution to debit or
4 credit a consumer’s account. 12 C.F.R. 1005.3(b)(1). Accordingly, Regulation E
5 applies to any P2P or mobile payment transactions that meet the definition of EFT.
6 12 C.R.F. 1005.3(b)(1)(v); *id.*, Comment 3(b)(1)–1ii.

7 164. Unauthorized EFTs are EFTs from a consumer’s account initiated by a person
8 other than the consumer without actual authority to initiate the transfer and from
9 which the consumer receives no benefit. 12 C.F.R. 1005.2(m).

10 165. According to the CFPB and FDIC, when a third party fraudulently induces a
11 consumer into sharing account access information that is used to initiate an EFT
12 from the consumer’s account, that transfer meets Regulation E’s definition of an
13 unauthorized EFT.¹³

14 166. In particular, Comment 1005.2(m)–3 of Regulation E explains that an
15 unauthorized EFT includes a transfer initiated by a person who obtained the access
16 device from the consumer through robbery or fraud. As such, when a consumer is
17 fraudulently induced into sharing account access information with a third party, and
18 a third party uses that information to make an EFT from the consumer’s account, the
19 transfer is an unauthorized EFT under Regulation E.¹⁴

20 167. Here, Plaintiffs and Nationwide Class Members were fraudulently induced by
21 third party fraudsters purporting to be the Bank to share Zelle account information,
22 personal information, login credentials and/or authorization codes.

23 168. The third-party scammers then used the information fraudulently obtained
24 from Plaintiffs and Nationwide Class Members to make unauthorized EFTs from
25 Plaintiffs and Nationwide Class Members’ BOA bank accounts.

26
27
28 ¹³ *See supra*, notes 6 and 7.

¹⁴ *Ibid.*

1 169. After the unauthorized EFTs were made, the EFTs appeared on the bank
2 statements of Plaintiffs and Nationwide Class Members.

3 170. Plaintiffs and Nationwide Class Members notified the Bank of these errors
4 within sixty (60) days of their appearances on the accounts of Plaintiffs and
5 Nationwide Class Members.

6 171. The Bank notified Zelle of Plaintiffs' claims and of the unauthorized
7 transactions.

8 172. After receiving notice of the unauthorized EFTs on Plaintiffs' and other
9 Nationwide Class Members' accounts, the Bank erroneously concluded that the
10 unauthorized EFTs were "completed using a device that is consistent with previous
11 valid account activity; (ii) . . . validated using an authentication code sent to a valid
12 phone number belonging to a signer on the account; and (iii) . . . confirmed valid by
13 your via (SMS/MMS) text message response or speaking directly with Fraud
14 Detection employee," or made substantially similar conclusions reflected in written
15 correspondence.

16 173. As a direct and proximate result of the conduct of the Bank, Plaintiffs and
17 Nationwide Class Members were unable to reclaim funds that were fraudulently
18 taken from their accounts within the authorized period for error resolution.

19 174. Upon information and belief, Defendants knowingly and willfully failed to
20 fulfill their obligations to investigate Plaintiffs' unauthorized transactions and
21 instead summarily concluded that the transfers of funds via Zelle on accounts of
22 Plaintiffs and Nationwide Class Members were not in error when such conclusions
23 could not reasonably have been drawn from the evidence available to the financial
24 institutions at the time of the investigation. 15 U.S.C. § 1693f(e)(2).

25 175. Upon information and belief, the Bank intentionally determined that the
26 unwanted transfer of funds via Zelle on accounts of Plaintiffs and Nationwide Class
27 Members were not in error due to, at least in part, the Bank's financial self-interest
28

1 as a stakeholder in Zelle, and for both Defendants, to avoid their liability to Plaintiffs
2 and other Class members for the unauthorized transfers pursuant to Regulation E.

3 176. Upon information and belief, Zelle was informed of Plaintiffs' claims, as well
4 as that of Nationwide Class Members, but Zelle took no reimbursement actions.

5 177. Defendants refuse to completely reverse or refund funds to Plaintiffs and
6 Nationwide Class Members consistent with their obligations under Regulation E,
7 § 1005.6.

8 178. As such, Plaintiffs and Nationwide Class Members are each entitled to (i)
9 actual damages; (ii) treble damages; (iii) the lesser of \$500,000.00 or one percent
10 (1%) of the net worth of BOA and Zelle; and (iii) reasonable attorneys' fees and
11 costs. *Id.* §§ 1693f(e)(2), 1693m(a)(2)(B)–(3).

12
13 FIFTH CAUSE OF ACTION
14 CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"),
15 CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*

16 (On Behalf of Plaintiff Tristan and Plaintiff Ahuja and
17 California Sub-Class Against All Defendants)

18 179. Plaintiff Ahuja and Plaintiff Tristan reallege and incorporate herein by
19 reference the allegations contained in all preceding paragraphs, and further allege as
20 follows:

21 180. The UCL defines "unfair business competition" to include any "unlawful,
22 unfair, or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
23 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

24 181. The UCL imposes strict liability. Plaintiffs need not prove that Defendants
25 intentionally or negligently engaged in unlawful, unfair, or fraudulent business
26 practices—but only that such practices occurred.

27 ***"Deceptive Prong"***

28 182. A business act or practice is "fraudulent" under the UCL if it is likely to
deceive members of the public.

1 183. Defendants’ practices, as described herein, constitute “fraudulent” business
2 practices in violation of the UCL because, among other things, Defendants’
3 marketing regarding Zelle indicates the Bank will protect against fraudulent losses
4 incurred using the Zelle service.

5 184. Defendants also concealed the security risks of using the Zelle service,
6 including the risk of fraud and the risk that fraudulent losses will not be reimbursed
7 by BOA as a matter of practice, which is a practice that is likely to deceive a
8 consumer acting reasonably under the circumstances, to the consumer’s detriment.

9 ***“Unfair” Prong***

10 185. A business practice is “unfair” under the UCL if it offends an established
11 public policy or is immoral, unethical, oppressive, unscrupulous or substantially
12 injurious to consumers, and that unfairness is determined by weighing the reasons,
13 justifications and motives of the practices against the gravity of the harm to the
14 alleged victims.

15 186. Defendants’ actions constitute “unfair” business practices because, as alleged
16 above, they declined to reverse fraudulent charges on the accounts of Plaintiffs
17 Tristan and Ahuja and California Sub-Class Members, despite marketing
18 representations, contract promises, and statutory obligations pursuant to EFTA.

19 187. The harm to Plaintiff Tristan and Plaintiff Ahuja and California Sub-Class
20 Members grossly outweighs the utility of Defendants’ practices as there is no utility
21 to the practices of Defendants.

22 ***“Unlawful” Prong***

23 188. A business act or practice is “unlawful” under the UCL if it violates any other
24 law or regulation.

25 189. Defendants’ acts and practices alleged above constitute unlawful business acts
26 or practices as they have violated the plain language of EFTA as described in
27 Plaintiffs’ First Cause of Action above.

190. The violation of any law constitutes as “unlawful” business practice under the UCL.

191. These acts and practices alleged were intended to or did result in violations of EFTA.

192. Defendants have and will continue to unlawfully deny the transaction disputes of Plaintiff Tristan and Plaintiff Ahuja, the California Sub-Class, and the public by claiming that said disputed transactions are “authorized,” even though said transactions are actually “unauthorized,” as that term is defined by EFTA and applicable regulations. Consequently, the practices of BOA constitute unfair and unlawful business practices within the meaning of the UCL.

193. Pursuant to the UCL, Plaintiff Tristan and Plaintiff Ahuja and the California Sub-Class are entitled to preliminary and permanent injunctive relief, and Defendants should be ordered to cease this unfair and unlawful competition, as well as disgorgement and restitution to Plaintiffs and the Class of all the revenues associated with this unfair and unlawful competition, or such portion of said revenues as the Court may find applicable.

194. Pursuant to the UCL, Plaintiff Tristan and Plaintiff Ahuja and the California Sub-Class are entitled to preliminary and permanent injunctive relief and an order requiring Defendants to cease this unfair and unlawful competition, as well as disgorgement and restitution to Plaintiff Tristan and Plaintiff Ahuja and the California Sub-Class of all revenues associated with this unfair and unlawful competition, or such portion of said revenues as the Court may find applicable.

SIXTH CAUSE OF ACTION
**VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW (“FAL”)
 CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.***

**(Asserted on Behalf of Plaintiff Tristan and Plaintiff Ahuja and the
 California Sub-Class against All Defendants)**

195. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

1 196. California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500,
2 states that “[i]t is unlawful for any ... corporation ... with intent ... to dispose of ...
3 personal property ... to induce the public to enter into any obligation relating thereto,
4 to make or disseminate or cause to be made or disseminated ... from this state before
5 the public in any state, in any newspaper or other publication, or any advertising
6 device, or by public outcry or proclamation, or in any other manner or means
7 whatever, including over the Internet, any statement...which is untrue or misleading
8 and which is known, or which by the exercise of reasonable care should be known,
9 to be untrue or misleading....”

10 197. Defendants’ material misrepresentations and omissions alleged herein violate
11 Bus. & Prof. Code § 17500.

12 198. Defendants knew or should have known that their misrepresentations and
13 omissions were false, deceptive, and misleading.

14 199. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff
15 Tristan and Plaintiff Ahuja and the members of the California Sub-Class, on behalf
16 of the general public, seek an order of this Court enjoining Defendants from
17 continuing to engage, use, or employ their practice of misrepresenting the Zelle
18 service.

19 200. Further, Plaintiff Tristan and Plaintiff Ahuja and the members of the
20 California Sub-Class seek an order requiring Defendants to disclose such
21 misrepresentations, and additionally request an order awarding restitution of the
22 money wrongfully acquired by Defendants by means of said misrepresentations.

23 201. Additionally, Plaintiff Tristan and Plaintiff Ahuja and the members of the
24 California Sub-Class seek an order requiring Defendants to pay attorneys’ fees
25 pursuant to Cal. Civ. Code § 1021.5.
26
27
28

SEVENTH CAUSE OF ACTION
VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
NEV. REV. STAT. § 598.0903, *ET SEQ.* (NEVADA DTPA)

(On Behalf of Plaintiff Myers and Nevada Sub-Class Against All Defendants)

202. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

203. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”) broadly prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0903, *et seq.*

204. Nev. Rev. Stat. § 598.0915(15) defines deceptive trade practices to include “knowingly mak[ing] any other false representation in a transaction.” In addition, Nev. Rev. Stat. § 598.0923(1) prohibits “knowingly... (2) fail[ing] to disclose a material fact in connection with the sale or lease of goods or services.”

205. Defendants’ material misrepresentations and omissions alleged herein violate Nev. Rev. Stat. § 598.0903, *et seq.*

206. Defendants knew or should have known that their misrepresentations and omissions were false, deceptive, and misleading.

207. Plaintiff Myers and the Nevada Sub-Class seek an order enjoining Defendants’ unfair and deceptive acts or practices in violation of the Nevada DTPA and awarding restitution, treble damages, costs, attorneys’ fees, and any other just and proper relief available under the Nevada DTPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against Defendants, and each of them, as follows:

- Class certification of this action;
- Appointment of Plaintiffs as Class Representatives;
- Appointment of Plaintiffs’ attorneys as Class Counsel;
- An award of actual damages, in an amount to be determined at trial;

- An award of treble damages against Defendants pursuant to the EFTA and Nevada DTPA;
- An award of the lesser of \$500,000.00 or one percent (1%) of the net worth of Defendants;
- Injunctive and other equitable relief against Defendants as necessary to protect the interests of Plaintiffs and other Class and Sub-Class Members, and an order prohibiting Defendants from engaging in unlawful and/or unfair acts described above, including public injunctive relief;
- Disgorgement;
- An order of restitution from BOA for unjust enrichment;
- An order declaring Defendants' conduct as unlawful;
- Costs of Suit;
- Pre and post-judgment interest;
- An award of reasonable attorneys' fees pursuant to, *inter alia*, 15 U.S.C. § 1693m(a)(2)(B)–(3), Cal. Civ. Code § 1021.5, Nev. Rev. Stat. § 598.920(2), and the common fund doctrine; and
- Any other relief the Court may deem just and proper, including interest.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated, hereby demand a jury trial on all claims so triable.

Dated: September 23, 2022

Respectfully submitted,

EDELSBERG LAW, P.A.

By: /s/ Scott Edelsberg
 Scott Edelsberg, (CA Bar # 330090)

scott@edelsberglaw.com
 1925 Century Park East, Suite 1700
 Los Angeles, CA 90067
 Tel: 305-975-3320

ATTORNEY FOR PLAINTIFFS

ADDITIONAL PLAINTIFFS' COUNSEL

KAZEROUNI LAW GROUP, APC

Jason A. Ibey, Esq. (SBN: 284607)

jason@kazlg.com

321 N Mall Drive, Suite R108

St. George, Utah 84790

Telephone: (800) 400-6808

KAZEROUNI LAW GROUP, APC

Ross H. Schmierer, Esq. (*pro hac vice forthcoming*)

ross@kazlg.com

3000 Atrium Way, Suite 200

Mt. Laurel, NJ 08057

Telephone: (732) 588-8688

KAZEROUNI LAW GROUP, APC

Pamela E. Prescott, Esq. (328243)

pamela@kazlg.com

Gil Melili, Esq. (SBN: 337116)

gil@kazlg.com

245 Fischer Avenue Suite D1

Costa Mesa, CA 92626

Telephone: (800) 400-6808

KELLER ROHRBACK L.L.P.

Laura R. Gerber (*pro hac vice*)

lgerber@kellerrohrback.com

Derek W. Loeser (*pro hac vice*)

dloeser@kellerrohrback.com

Nathan L. Nanfelt (*pro hac vice*)

nnanfelt@kellerrohrback.com

1201 Third Avenue, Suite 3200

Seattle, Washington 98122

Telephone: (206) 623-1900

KALIELGOLD PLLC

1 Jeffrey D. Kalief (CA Bar No. 238293)
2 jkalief@kaliepllc.com
3 1100 15th Street NW, 4th Floor
4 Washington, D.C. 20005
5 Telephone: (202) 350-4783
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28