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 10 *the Proposed Class*

11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 **JENNIFER YICK**, on behalf of herself
 and all others similarly situated,

14 Plaintiff,

15 v.

17 **BANK OF AMERICA, N.A.**, and
 DOES 1-20, inclusive,

18 Defendants.
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Case No.

CLASS ACTION COMPLAINT:

1. **Violations of California Consumer Privacy Act**
2. **Violations of California Unfair Competition Law**
3. **Violations of Electronic Funds Transfer Act (15 U.S.C. § 1693 *et seq.*)**
4. **Negligence**
5. **Negligent Performance of Contract**
6. **Negligent Failure to Warn**
7. **Breach of Contract**
8. **Breach of Implied Contract**
9. **Breach of the Implied Covenant of Good Faith and Fair Dealing**
10. **Breach of Contract (Third-Party Beneficiaries)**

DEMAND FOR JURY TRIAL

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1 Plaintiff Jennifer Yick (“Ms. Yick” or “Plaintiff”), on behalf of herself and all others similarly
2 situated, alleges the following facts and claims against Defendant Bank of America, N.A. (“Bank of
3 America” or “Defendant”), relating to the company’s administration of California unemployment
4 insurance and other benefits. The allegations pertaining to Ms. Yick are based on personal
5 knowledge, and the allegations pertaining to all other matters are based on information and belief,
6 including investigations by her counsel and information learned from news reports. Plaintiff’s
7 investigation into the matters alleged herein is ongoing, and many relevant facts are known only to
8 Defendant and/or are exclusively within Defendant’s custody and control. Plaintiff believes that
9 substantial additional evidentiary support will exist for the allegations set forth herein after a
10 reasonable opportunity for discovery.

11 **I. INTRODUCTION**

12 1. Faced with the economic devastation of the Covid-19 pandemic, millions of
13 Californians now rely on unemployment insurance and other benefits issued by the California
14 Employment Development Department (“EDD”). For unemployed Californians struggling to
15 survive, these EDD benefits provide a lifeline that allow them to pay for basic necessities until they
16 find that next job. Despite the critical importance of EDD benefits, the financial institution with the
17 exclusive contract to administer them—**Bank of America**—is either unwilling or unable to stop
18 criminals from breaching Bank of America’s systems and controls, and from siphoning off millions
19 of dollars of EDD benefits one account at a time. Day after day, there are new stories of yet another
20 EDD benefits recipient with a Bank of America EDD prepaid debit card (an “EDD cardholder”)
21 who went to use their card only to discover that all
22 the money in their Bank of America EDD account
23 (“EDD account”)—oftentimes, the only money
24 that they had to survive—was suddenly gone.

25 2. Many defrauded EDD cardholders
26 have called Bank of America customer service,
27 desperate to figure out what is going on and how



1 they can get the money credited back to their account ASAP. But “ASAP” is not how Bank of
2 America customer service operates—at least not for EDD cardholders. In the words of one EDD
3 cardholder and a victim of the fraud:

4 *“It’s kind of like a nightmare. . . . Every day I’m wondering what’s more*
5 *important. Do I get on the phone with the bank and try again so I have a place to*
6 *sleep tomorrow, or do I just accept that I’m going to be on the street and focus*
on my job search? Because you can’t do both.”

7 – EDD cardholder and fraud victim¹

8 3. Even Bank of America’s own customer service representatives have voiced
9 frustration at being unable to tell defrauded EDD cardholders that help is on the way. As one
10 customer service agent recently stated:

11 *We’re actually no longer allowed to tell them [defrauded EDD cardholders] a*
12 *timeframe, because we have no clue Every day, I talk to 30 people with the*
13 *same story. I just pray for them after my shift, honestly.*

14 – Bank of America customer service representative²

15 And so defrauded EDD cardholders wait and they wait on Bank of America. And when they run out
16 of money, they just have to wait some more.

17 4. According to its own EDD cardholder agreement, Bank of America has a “**Zero**
18 **Liability**” policy for cardholders in precisely this kind of situation. But contrary to that binding
19 policy, Bank of America has failed to assist or even communicate with many of the countless
20 defrauded EDD cardholders. Bank of America’s ineffectual response to the rampant fraud has taken
21 various forms, including not answering the customer service phone lines it advises EDD debit
22 cardholders to call; opening claims and then closing them so soon thereafter such that a full review
23 could not have been done; crediting funds and then later debiting them without notice to the EDD
24 cardholder; failing to extend provisional credit to EDD cardholders as required by law; and freezing

25 _____
26 ¹ Lauren Hepler & Stephen Council, “How Bank of America Helped Fuel California’s
27 Unemployment Meltdown,” *CalMatters* (Nov. 20, 2020), available at <https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/>.

28 ² *Id.*

1 EDD accounts unaffected by fraud. Pursuant to its exclusive agreement with the State of California,
2 Bank of America is solely responsible for the administration of EDD benefits, and the EDD has no
3 ability to intervene in the company’s procedures.

4 5. As many people familiar with the situation say, the widespread fraud could easily
5 have been prevented if Bank of America had acted according to industry security standards by
6 securing the private financial information of EDD cardholders and accounts, and by issuing EDD
7 cards with “EMV chips,”³ rather than issuing cards with only outdated, fraud-prone “magnetic
8 stripe” technology. Since 2014 Bank of America has used the small, metallic EMV chips in its
9 consumer debit cards, touting the technology as “an important tool in increasing card security.”

10 Rather than using chips in its EDD cards, however,
11 Bank of America opted to issue hundreds of thousands
12 of EDD cards with magnetic stripe technology, which
13 when used at payment terminals openly transmit
14 sensitive card and account information and leave
15 cardholders vulnerable to fraud.



16 6. By failing to safeguard state benefits from fraud, failing to detect the fraud as it was
17 happening, and failing so spectacularly at resolving the issues caused by these failures, Bank of
18 America has violated the California Consumer Privacy Act, California’s Unfair Competition Law,
19 and Regulation E of the federal Electronic Funds Transfer Act; has breached its contract with EDD
20 cardholders; has negligently failed to warn EDD cardholders about the risks associated with its EDD
21 cards and accounts; and has negligently performed its contract with the California EDD, among
22 other violations of law. Bank of America’s unlawful conduct has resulted in significant harm to
23 recipients of EDD benefits, depriving them of their financial lifeline in the midst of a pandemic and
24 full-blown economic crisis.

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28 ³ “EMV” stands for Europay, Mastercard, and Visa, after the companies that created the technology.

1 **II. JURISDICTION AND VENUE**

2 7. This Court has subject matter jurisdiction over this action pursuant to each of the
3 following: (a) 28 U.S.C. § 1332(d) because this is a class action in which the amount in controversy
4 for the Class exceeds \$5,000,000 exclusive of interest and costs, there are more than 100 putative
5 Class members as defined below, and minimal diversity exists because the majority of putative Class
6 members are citizens of a state different than that of Bank of America; (b) 28 U.S.C. § 1332(a)
7 because Plaintiff and Class members are citizens of California, Bank of America is incorporated
8 under the laws of Delaware and has its principal place of business in North Carolina, and the amount
9 in controversy exceeds \$75,000 exclusive of interests and costs; and (c) 28 U.S.C. § 1331 with
10 respect to the cause of action arising under federal Electronic Funds Transfer Act (15 U.S.C. § 1693,
11 *et seq.*), and 28 U.S.C. § 1367 with respect to the causes of action arising under state law.

12 8. This Court has specific personal jurisdiction over Bank of America because Bank of
13 America has sufficient minimum contacts with California, has purposely availed itself of the
14 benefits and protection of California law, and does a substantial amount of business in and with the
15 State of California (including contracting with the State of California to provide services to
16 California citizens), such that the Court's exercise of personal jurisdiction accords with due process.

17 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial
18 portion of the acts or omissions giving rise to the claims in this Complaint occurred in this District,
19 and because Defendant is subject to the Court's personal jurisdiction with respect to this action.

20 **III. PARTIES**

21 **A. Plaintiff**

22 10. Plaintiff Jennifer Yick is a person residing in San Francisco, California. She is a real
23 estate professional who found herself out of work during the Covid-19 pandemic. She applied for
24 and received EDD unemployment benefits; soon thereafter, she received a Bank of America EDD
25 Visa debit card with a magnetic stripe (no EMV chip) to access her benefits; she was then the victim
26 of unauthorized transactions on her card that emptied her account of her last \$400; and despite its
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1 “Zero Liability” policy and Plaintiff’s repeated requests for help, Bank of America has been either
2 unwilling or unable to restore the missing funds to her account.

3 **B. Defendant**

4 11. Defendant Bank of America, N.A., is one of the largest banking associations in the
5 United States. It is incorporated in the state of Delaware and, as set forth below, does significant
6 business in California through, among other things, its exclusive contract with the State of California
7 to administer EDD benefits.

8 **C. Doe Defendants**

9 12. The true names and capacities of Defendants DOES 1–20, inclusive, are currently
10 unknown to Plaintiff. Accordingly, Plaintiff sues each and every DOE Defendant by such fictitious
11 names. Each DOE Defendant, individually and collectively, is responsible in some manner for the
12 unlawful acts alleged herein. Plaintiff will seek leave of this Court to amend this Complaint to
13 reflect the true names and capacities of the DOE Defendants when their identities become known.

14 **D. Aiding and Abetting, Concert of Action**

15 13. Plaintiff alleges that at all times relevant to the events giving rise to this action, each
16 and every Defendant was acting as an agent or employee of each of the other Defendants. Plaintiff
17 further alleges that at all times relevant to those events, each and every Defendant was acting within
18 the course and scope of that agency or employment at the direction of or with the full knowledge,
19 permission, or consent of each and every other Defendant. In addition, each of the acts or omissions
20 of each and every Defendant was made known to, and ratified by, each of the other Defendants.

21 **IV. FACTUAL ALLEGATIONS**

22 **A. Bank of America’s Contract with EDD**

23 14. EDD issues a variety of benefits to California residents, including but not limited to
24 unemployment insurance benefits, disability insurance benefits, paid family leave benefits,
25 pandemic unemployment assistance benefits, and pandemic emergency unemployment
26 compensation benefits (collectively, “EDD benefits”).
27
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1 15. In 2010, Defendant entered into an exclusive contract with California EDD to issue
2 debit cards through which individuals entitled to EDD benefits could access their funds, replacing
3 distribution of EDD benefits through paper checks. EDD chose to contract with Bank of America,
4 in part, because it promised the EDD “best-in-class” fraud monitoring.⁴

5 16. In July 2011, EDD began distributing benefits through the Bank of America cards as
6 the default option for EDD benefits recipients.

7 17. In its successful 2015 proposal to EDD seeking to extend its exclusive contract, Bank
8 of America represented that, as part of its contract with EDD, it “fully intend[s] to apply the most
9 rigorous fraud detection procedures,” including “employ[ing] the highest level of security and fraud
10 safeguards” based on “multiple layers of extensive security” and a “multi-faceted approach to
11 combat fraud.” The proposal specifically promises that Bank of America would provide “fraud
12 monitoring” for all EDD cards and accounts, and to employ technology that Bank of America stated
13 would provide “immediate response to emerging fraud trends” and allow fraudulent transactions to
14 be “declined in real time.”

15 18. Under the contract, Bank of America retains exclusive control over fund processing,
16 account management, and fraud detection for EDD cards and accounts. Even if EDD were to
17 determine that an instance of fraud occurred, it has no authority to direct Bank of America to refund
18 the victim.

19 **B. Bank of America’s Failure to Secure EDD Account Information**

20 19. Upon information and belief, Bank of America has failed to store or transfer EDD
21 cardholder and account information in a secure manner, resulting in a massive security breach that
22 has resulted in millions of dollars stolen from EDD through unauthorized transactions.

23 20. For example, some EDD cardholders who have had money stolen from their EDD
24 account through unauthorized transactions report **never having used their EDD card**. Upon
25

26 _____
27 ⁴ Lauren Hepler & Stephen Council, “How Bank of America Helped Fuel California’s
28 Unemployment Meltdown,” *CalMatters* (Nov. 20, 2020), available at <https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/>.

1 information and belief, such unauthorized transactions could only have occurred if Bank of America
2 failed to store or transfer EDD cardholder and account information in a secure manner.

3 21. The large proportion of EDD cardholders whose accounts have been subject to
4 fraudulent transactions also strongly indicates a wide-scale security breach of EDD cardholder and
5 account information in Bank of America’s possession, custody, and control, and which Bank of
6 America had a duty to secure.

7 **C. Bank of America’s Use of Outdated, Vulnerable Magnetic Stripe Technology**

8 22. To access their EDD benefits with a Bank of America card, a cardholder must send
9 the information on their card through a processing network operated by Visa. The first step in that
10 process occurs at the point of sale, where the cardholder either swipes or inserts their card into a
11 card reader. The reader obtains data from the card and transmits that data to the financial services
12 provider through a computer network, either at the time of the transaction or at a later time in a
13 “batch” of other transactions. The cardholder’s personal data is stored on the card.

14 23. From the 1960s through the last decade, magnetic stripes were the standard for
15 storing consumer information on debit and credit cards in the United States. A magnetic stripe
16 contains static data about the cardholder including their name, account number, and the card’s
17 expiration date. This sensitive data is printed directly on the outside of the card and recorded on the
18 magnetic stripe. When swiped through a reader, this data is collected and transmitted as part of the
19 transaction process.

20 24. But because the data on a magnetic stripe are static and easily readable, magnetic
21 stripe cards are highly susceptible to fraud. One common method of stealing information from
22 magnetic stripe cards is called “skimming,” a process by which a wireless transmitter
23 affixed to a card reader collects the information on the magnetic stripe and sends it to a nearby
24 computer. The recipient can then use the information to easily clone the consumer’s card, access
25 the consumer’s bank account, and perform online transactions.

26 25. Personal data on magnetic stripe cards can also be captured by hackers on a large
27 scale. For example, in 2013, hackers infiltrated the retailer Target’s payment terminals and
28

1 systematically captured the information of every swiped card for weeks, ultimately gathering card
2 information for tens of millions of people.⁵ Card data collected in this manner can be sold on an
3 underground market, where the stolen data can be used to make fraudulent purchases.

4 26. Over the past decade, in an effort to stem the consumer fraud enabled by magnetic
5 stripes, the financial services industry in the United States has adopted EMV chip technology as the
6 industry standard. While magnetic stripes are “static,” with the same card-identifying information
7 provided for every transaction, EMV chips are “dynamic,” meaning the data they contain can be
8 interacted with, altered, and updated. An EMV chip creates a unique electronic signature for each
9 transaction, making data from past EMV chip card purchases useless to would-be thieves, and
10 thereby significantly reducing the risk of fraudulent, unauthorized transactions.

11 27. In 2011, the same year it began issuing EDD debit cards, Bank of America
12 announced it would offer EMV chip corporate credit cards to a subset of U.S. business customers
13 who regularly traveled outside the United States.

14 28. On September 30, 2014, Bank of America announced that it would include chip
15 technology on “**all new and reissued**” consumer debit cards. When announcing this shift, a Bank
16 of America executive stated that “chip technology is an important tool in increasing card security,
17 and we want our customers to have the best possible experience when using their payment cards.”
18 The executive added that the “new chip-enabled cards will improve security of customers’
19 transactions.”⁶

20 29. In 2015, card issuers and processors began a nationwide shift to EMV chip cards.
21 By 2017, an estimated 855 million EMV chip cards had been issued to U.S. consumers, and today
22 such cards are standard in the industry.

23
24 _____
25 ⁵ Elise Hu, *Target Hack a Tipping Point in Moving Away from Magnetic Stripes*, NPR (Jan. 23,
26 2014), available at <https://www.npr.org/sections/alltechconsidered/2014/01/23/264910138/target-hack-a-tipping-point-in-moving-away-from-magnetic-stripes>.

27 ⁶ Bank of America Press Release, “Bank of America Begins Rollout of Chip Debit Cards” (Sept. 30,
28 2014), available at <https://www.businesswire.com/news/home/20140930005292/en/Bank-of-America-Begins-Rollout-of-Chip-Debit-Cards> (attached here as **Exhibit A**).

1 30. Also in 2015, card-issuing banks and payment networks collectively stopped
2 absorbing liability for fraudulent transactions. On October 1, 2015, merchants who did not have
3 certified EMV chip readers became liable for the fraudulent transactions if the consumer presented
4 an EMV chip card. In essence, this meant liability for consumer card fraud would fall on either the
5 retailer or card issuer, whichever was the least compliant with EMV protocol.

6 31. As stated on Bank of America’s own website, EMV chip technology “has been
7 around for over 20 years and is the credit and debit card **security standard** in many countries around
8 the world. When purchases are made using the chip feature at chip-enabled terminals, the
9 **transaction is more secure** because of the process used to determine if the card is authentic. This
10 makes the card **more difficult to counterfeit or copy.**” Bank of America also assures its account
11 holders on its website that “whether you use the magnetic stripe or the chip to make your purchase,
12 **you can have confidence in the protection and security features we provide for all credit and**
13 **debit accounts.**”

14 32. Despite the fact that Bank of America was well aware that EMV chip cards are
15 significantly more secure than magnetic stripe cards, the company chose to issue EDD debit cards
16 using old, vulnerable stripe technology to hundreds of thousands of the most financially vulnerable
17 Californians. Bank of America did so notwithstanding its announcement that it would include chip
18 technology on all consumer debit cards. Predictably, the unsecure cards led to rampant fraud,
19 resulting in the ongoing loss of millions of dollars in benefits that EDD has issued to assist
20 Californians who lost their jobs, including during the Covid-19 pandemic.

21 **D. Bank of America’s Promise of “Zero Liability” and “24/7” Customer Service**

22 33. Bank of America represents to EDD benefits recipients that they will not be
23 responsible for unauthorized transactions. On a webpage listing FAQs about its EDD cards, Bank
24 of America responds to the question “Am I responsible for transactions that I did not make?” by
25 explaining that its “**Zero Liability**” policy “protects you against fraudulent transactions.” In the
26 “Quick Reference Guide” EDD cardholders receive with their card, Bank of America prominently
27
28

1 states: “Zero liability: If your card is stolen, **Bank of America will reimburse you for any**
 2 **unauthorized card transactions** subject to certain terms and conditions.”

3 34. In its California Employment Development Department Debit Card Account
 4 Agreement (“Agreement”) (attached here as **Exhibit B**), to which all EDD cardholders must agree,
 5 Bank of America sets forth these promises in greater detail. The Agreement states: “Under the Bank
 6 of America ‘zero liability’ policy, you may incur **no liability for unauthorized use** of your Card
 7 up to amount of the unauthorized transaction, provided you notify us within a reasonable time”
 8 The Agreement advises the cardholder to “contact us at the number listed below AT ONCE if you
 9 believe your Card has been lost or stolen or if you believe that someone may use of has used your
 10 PIN assigned to your card without your permission. Telephoning is the best way of keeping your
 11 possible losses down.” The Agreement requires that cardholders call or write to report an
 12 unauthorized transaction “no later than 60 days” after Bank of America sent the statement on which
 13 the error appeared.

14 35. The Agreement promises that Bank of America “will determine whether an error
 15 occurred within 10 business days” after an
 16 unauthorized transaction is reported. The
 17 Agreement reserves the right to “take up to 45 days
 18 to investigate” if the company “need[s] more
 19 time.” However, Bank of America promises, in
 20 that event, “**we will credit your Account within**
 21 **10 business days** for the amount you think is in
 22 error, so that you will have the money during the
 23 time it takes us to complete our investigation.”

24 36. Bank of America also represents to
 25 EDD cardholders that the company’s customer service is continuously available to assist with
 26 suspected fraud. On Bank of America’s EDD card FAQ webpage, in response to the question “What
 27 are the Bank of America EDD Debit Card Customer Service hours?” Bank of America claims that
 28

Quick Reference Guide

For your EDD Debit Card



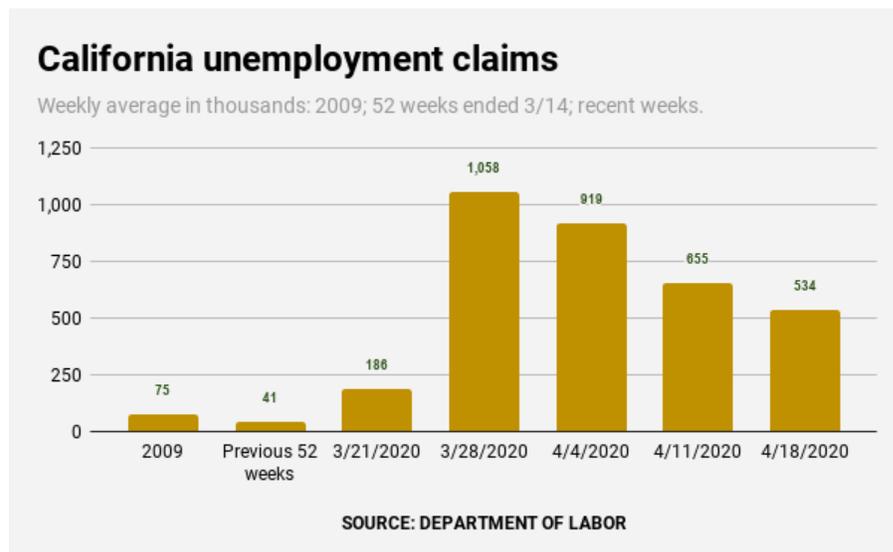
Balance information and
customer service is available 24/7.

1 “[f]or your convenience,” Bank of America’s “dedicated **customer service representatives are**
 2 **available 24 hours [a] day, 7 days a week**” by phone. The webpage further explains that customer
 3 service representatives can help with the following: “Resolve a question about your account
 4 statement,” “Investigate transactions,” “Process lost/stolen/damaged card reports,” “Request an
 5 emergency cash transfer.” The reference guide which accompanies EDD debit cards likewise claims
 6 that “customer service is available 24/7.” In the Agreement, Bank of America advises EDD
 7 cardholders that “Telephoning is the best way of keeping your possible losses down.”

8 **E. Economic Devastation and Unemployment During the Covid-19 Pandemic**

9 37. In Spring of 2020, the Covid-19 pandemic devastated California’s economy, and
 10 millions of workers lost their jobs due to business closures and mass layoffs. The state’s
 11 unemployment rate skyrocketed from 3.9% in January 2020 to 16.4% in April 2020, following the
 12 closure orders issued by Governor Gavin Newsom. Industries such as hospitality, food service,
 13 retail trade, and educational services have been especially hard hit.

14 38. As a result, millions of Californians turned to the EDD unemployment benefits
 15 programs administered by Bank of America to pay their bills. Since the start of the Covid-19
 16 pandemic in March 2020, EDD has received at least 18.5 million claims for various unemployment
 17 benefits. In the first week of December 2020, EDD received 341,813 claims, a 600% increase from
 18 December 2019.



1 **F. Rampant Fraud on EDD Cards and Accounts**

2 39. In recent months, “**an epidemic of hack attacks**” on Bank of America EDD cards
3 have been reported.⁷ Countless EDD cardholders have each reported hundreds and thousands of
4 dollars stolen through unauthorized use of their Bank of America EDD debit cards. These
5 unauthorized transactions have taken various forms—including massive ATM withdrawals in
6 distant states and countries,⁸ thousand-dollar charges at luxury vendors, and repeated transactions
7 with food delivery services. Regardless of how or where the fraud has been carried out, Bank of
8 America’s prepaid EDD debit cards have proven highly susceptible to unauthorized use.

9 40. After criminals exploit the security vulnerabilities of Bank of America’s EDD cards
10 and accounts and misappropriate account information, that information can be sold on the dark web,
11 allowing the buyer to engage in unauthorized use of EDD accounts.⁹

12 41. In December 2020, for example, Plaintiff was surprised when her EDD card was
13 declined at a grocery store. She subsequently viewed her EDD account statement and discovered
14 that her account balance, which she knew should have been over \$400, had been drained to 70 cents
15 as a result of four unauthorized transactions with Doordash, a food delivery service, for deliveries
16 from restaurants in Texas, New York, and Southern California. Plaintiff lives in San Francisco and
17 does not have a Doordash account.

18 42. Inexplicably, Plaintiff did not receive a notification about these highly unusual
19 transactions, indicating that Bank of America failed to detect the instances of fraud. This is
20 surprising considering Bank of America’s representation to the State in its contract proposal that it
21 “fully intend[s] to apply the most rigorous fraud detection procedures,” including “employ[ing] the

22 _____
23 ⁷ Kenny Choi, “Victims of Bank of America EDD Debit Card Fraud Tell Stories of Fake Charges,
24 Long Waits, Closed Claims,” *KPIX–CBS SF Bay Area* (Dec. 22, 2020), available at [https://
25 sanfrancisco.cbslocal.com/2020/12/22/victims-of-bank-of-america-edd-debit-card-fraud-tell-stories-
of-closed-claims-frustration-loss/](https://sanfrancisco.cbslocal.com/2020/12/22/victims-of-bank-of-america-edd-debit-card-fraud-tell-stories-of-closed-claims-frustration-loss/).

26 ⁸ See, e.g., CBSLA Staff, “Bank of America Freezes EDD Accounts of Nearly 350,000
27 Unemployed Californians for Suspected Fraud,” *CBS Los Angeles* (Oct. 29, 2020), available at
[https://losangeles.cbslocal.com/2020/10/29/bank-of-america-freezes-edd-accounts-of-nearly-
350000-unemployed-californians-for-suspected-fraud/](https://losangeles.cbslocal.com/2020/10/29/bank-of-america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/).

28 ⁹ See *id.*

1 highest level of security and fraud safeguards” based on “multiple layers of extensive security” and
2 a “multi-faceted approach to combat fraud.” The proposal specifically promises that Bank of
3 America would provide “fraud monitoring” for all EDD cards and accounts, and to employ
4 technology that Bank of America stated would provide “immediate response to emerging fraud
5 trends” and allow fraudulent transactions to be “declined in real time.”

6 43. Yet Bank of America’s “rigorous” procedures somehow failed to detect the
7 suspicious transactions in Plaintiff’s account, which were spread out over thousands of miles and
8 clearly bore the hallmarks of fraud.

9 44. Countless EDD cardholders have similarly reported not receiving any notification or
10 communication from Bank of America regarding fraudulent transactions in their accounts, and
11 instead discovered it themselves. Bank of America’s fraud monitoring and controls have proven—
12 in direct contradiction to its representations to the State—completely inadequate and ineffectual.

13 **G. Bank of America’s Evasive and Ineffective Response**

14 45. Over the course of more than a month, Plaintiff has repeatedly sought assistance
15 through Bank of America’s fraud telephone hotline to no avail. She has repeatedly waited on hold
16 before being disconnected from the line; waited to speak to someone only to be told to call back
17 later; been transferred to various departments to no apparent end; been sent to voicemail; dealt with
18 unhelpful automated agents; and unsuccessfully attempted to reach Bank of America by email. To
19 date, Plaintiff has not been reimbursed for the unauthorized transactions on her EDD debit card, nor
20 has Bank of America provisionally credited her account.

21 46. The EDD has stated that the responsibility to prevent fraud and address claims of
22 unauthorized transactions lies entirely with Bank of America, clarifying on October 29 that **EDD**
23 **“has no direct access to debit funds on any accounts”** and that those impacted by card issues
24 should contact Bank of America.¹⁰ The agency has clarified that it has no means to intervene in
25 Bank of America’s procedures.

26 _____
27 ¹⁰ Matt Fountain, “Bank of America Froze SLO County Residents’ Unemployment Benefits
28 Because of Fraud,” *San Luis Obispo Tribune* (Dec. 17, 2020), available at <https://www.sanluisobispo.com/news/local/article247729155.html>.

1 47. In October 2020, Bank of America made the unprecedented decision to freeze an
2 estimated 350,000 EDD accounts, preventing those EDD cardholders from accessing their benefits.
3 As of late November, less than eight percent of the frozen accounts had been reactivated.

4 48. There have been numerous reports of individuals who have discovered unauthorized
5 transactions on their cards and sought assistance from Bank of America to no avail. Despite Bank
6 of America's purported "Zero Liability" policy regarding fraudulent charges, Bank of America has
7 been unhelpful and largely ineffective in its response. EDD cardholders often spend hours on hold
8 with customer service, despite Bank of America having represented to EDD cardholders in the
9 account Agreement that "[t]elephoning is the best way of keeping your possible losses down."
10 Defrauded EDD cardholders have been forced to wait weeks or longer without any access to their
11 EDD benefits because Bank of America makes it unreasonably difficult to file their claims, which
12 (even if filed) can languish before the claim's investigation ever occurs.

13 49. Bank of America's inadequate response to EDD cardholders' issues with fraud on
14 their EDD accounts makes eminently clear that it has failed to adequately staff its customer service
15 and fraud investigation departments.

16 50. Bank of America's ineffective response to the rampant fraud has taken various forms,
17 including not answering the customer service phone lines it advises EDD debit cardholders to call;
18 opening claims and then closing them so soon thereafter that a full review could not have been done;
19 crediting funds and then later debiting them without notice to the EDD cardholder; failing to extend
20 provisional credit to EDD cardholders; and freezing EDD cardholder accounts unaffected by fraud.¹¹

21 51. In short, as has been widely reported, many EDD cardholders have been forced to
22 undertake an "unofficial full-time job trying to get the money back."¹²

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24 ¹¹ Kenny Choi, "Victims of Bank of America EDD Debit Card Fraud Tell Stories of Fake Charges,
25 Long Waits, Closed Claims," *KPIX-CBS SF Bay Area* (Dec. 22, 2020), available at [https://
26 sanfrancisco.cbslocal.com/2020/12/22/victims-of-bank-of-america-edd-debit-card-fraud-tell-stories-
of-closed-claims-frustration-loss/](https://sanfrancisco.cbslocal.com/2020/12/22/victims-of-bank-of-america-edd-debit-card-fraud-tell-stories-of-closed-claims-frustration-loss/).

27 ¹² Lauren Hepler & Stephen Council, "How Bank of America Helped Fuel California's
28 Unemployment Meltdown," *CalMatters* (Nov. 20, 2020), available at [https://calmatters.org/
/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/](https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/).

1 52. As one defrauded EDD cardholder reported: “It’s kind of like a nightmare Every
2 day I’m wondering what’s more important. **Do I get on the phone with the bank and try again so
3 I have a place to sleep tomorrow, or do I just accept that I’m going to be on the street and
4 focus on my job search?** Because you can’t do both.”¹³

5 53. A Bank of America customer service worker, addressing the company’s response to
6 the influx of EDD debit card fraud, reported: “**We’re actually no longer allowed to tell them a
7 timeframe, because we have no clue Every day, I talk to 30 people with the same story. I
8 just pray for them after my shift, honestly.**”¹⁴

9 54. Bank of America’s disregard for EDD cardholders experiencing issues with fraud is
10 particularly astonishing in light of the representations it made to the State in its proposal to
11 administer EDD benefits, in which Bank of America stated, “we pride ourselves on providing stellar
12 customer service to every caller. Long call hold waits and busy signals are not tolerated at Bank of
13 America.”

14 **H. Plaintiff’s Maddening Experience of Trying to Reach Bank of America**

15 55. Plaintiff’s experience seeking reimbursement under Bank of America’s “No
16 Liability” policy demonstrates the futility of turning to Bank of America’s customer service
17 department for assistance as an EDD debit card holder. After discovering the fraudulent charges on
18 her debit card on December 1, 2020, Plaintiff **tried for days** to contact a Bank of America agent
19 who would assist her with the fraud on her card. After calling the number on the back of the card
20 and waiting on hold, Plaintiff eventually reached an agent who told her that her call needed to go to
21 “claims.” Despite Bank of America’s representations of “24/7” customer service, the agent
22 informed Plaintiff that she would need to **call back during business hours** and provided her with
23 a number to call. Plaintiff called that number three times the following day, December 2, waiting
24 on hold each time, **only to have the system repeatedly hang up on her.**

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27 ¹³ *Id.*

28 ¹⁴ *Id.*

1 56. Plaintiff found another Bank of America customer service number and called it, only
2 to again wait on hold before the system hung up on her. Calling this number led Plaintiff to an
3 automated customer service agent which asked Plaintiff for her card number. Even though Plaintiff
4 provided her card number when asked, the automated agent would simply repeat its request for
5 Plaintiff's card number, without offering any sort of assistance.

6 57. On December 3, 2020, Plaintiff tried once again to contact Bank of America by
7 calling the number on the back of the card. This time she reached a live customer service agent,
8 who advised Plaintiff to describe her claim in an email to a long email address involving a string of
9 abbreviated words which the agent read to her over the phone.

10 58. Remarkably, this email address does not appear in her EDD card Account
11 Agreement, the "Quick Reference Guide" which accompanied her EDD card, or the EDD card FAQ
12 webpage. Nevertheless, when Plaintiff finally reached a live customer service representative, she
13 was advised that sending an email to this previously undisclosed address represented her best chance
14 of recovering the funds stolen from her account.

15 59. On December 6, 2020, Plaintiff sent an email to that address, providing Bank of
16 America with her name, address, partial card number, and summary of the disputed charges. The
17 following evening, however, Plaintiff's email provider (Gmail) sent her an email indicating there
18 was trouble sending her email to that address, and that the system would attempt to send it for 45
19 more hours before sending a notification that delivery had failed.

20 60. Concerned with Bank of America's failures to respond, on December 8, 2020,
21 Plaintiff filed a police report at her neighborhood precinct in San Francisco concerning the
22 fraudulent charges on her Bank of America card.

23 61. On December 9, 2020, Gmail sent Plaintiff a message reading: "Message not
24 delivered The recipient server did not accept our requests to connect."

25 62. On December 22, 2020, when Plaintiff had not received further assistance or
26 communication from Bank of America, she again attempted to email a summary of her claim to the
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1 same email address. As before she was notified three days later that her **email was not delivered**
2 and **“The recipient server did not accept our requests to connect.”**

3 63. In short, Plaintiff has followed the instructions in her account agreement, and made
4 consistent, diligent efforts to recover the funds stolen from her account by multiple telephone calls
5 and email. In spite of this, Bank of America’s customer service department offered Plaintiff no
6 meaningful response or assistance, and indeed has stymied her efforts at nearly every turn.

7 64. At no point have Plaintiff or members of the proposed class received
8 communication—via mail, email, text, or otherwise—from Bank of America regarding the ongoing
9 widespread fraud affecting EDD debit cards or how defrauded EDD recipients should proceed, even
10 after the Company had frozen hundreds of thousands of EDD accounts in a desperate and heavy-
11 handed effort to stem the effects of the fraud. The only option presented to individuals like Ms.
12 Yick has been to follow Bank of America’s instructions to call the number on the debit card in
13 reliance on its representations of a “Zero Liability” policy and “24/7” customer service.
14 Unfortunately, as Plaintiff and members of the proposed class have learned, Bank of America’s
15 representations are false. Proceeding in accordance with Bank of America’s policies and
16 recommendations offers scant hope of recovering lost funds.

17 65. Flooded by the complaints of defrauded constituents, in late November 2020, fifty-
18 nine California lawmakers wrote a letter to Bank of America Chairman and CEO Brian Moynihan
19 concerning the rampant fraud involving EDD cards and accounts, and the company’s inadequate
20 response. The letter notes, “The only recourse that EDD and our offices can currently provide
21 constituents is to call Bank of America when these problems occur. However, **constituents report**
22 **they are unable to get through to your call centers, or when they do, the issue is not resolved.”**
23 The letter adds, “Many of our own staff have also tried to reach Bank of America to no avail.”¹⁵

24 66. In response to the letter, Bank of America offered—ostensibly as reassurance—that
25 fraud is “not something that happens for most [EDD debit] cards.” The company represented to the
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27 ¹⁵ Philip Y. Ting, *et al.*, Letter to Brian Moynihan (Nov. 24, 2020), available at <https://a19.asmdc.org/sites/a19.asmdc.org/files/pdf/b-letter-ceo-fnl.pdf> (attached here as **Exhibit C**).
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1 lawmakers that “[w]hen a legitimate cardholder reports that he or she has had fraud on his or her
2 account (such as unauthorized use) and Bank of America’s investigation confirms the report, Bank
3 of America covers the losses to the cardholder consistent with federal law and pursuant to our ‘Zero
4 Liability’ policy for unauthorized transactions.”¹⁶

5 67. California lawmakers reportedly plan to call Bank of America to Sacramento this
6 month for questioning about the widespread and ongoing fraud associated with its EDD debit cards.

7 **V. CLASS ACTION ALLEGATIONS**

8 68. Plaintiff brings this class action lawsuit individually and as a class action pursuant to
9 Federal Rule of Civil Procedure (“Rule”) 23, seeking declaratory and equitable relief on behalf of
10 the two following subclasses (collectively, the “Class”):

11 **Declaratory and Injunctive Relief Class:** All persons who were lawfully
12 issued a Bank of America debit card for the purpose of accessing EDD
13 benefits deposited into a Bank of America account, during the period from
and including January 1, 2020, through the present (“Class Period”).

14 **Frozen Account Class:** All persons who were lawfully issued a Bank of
15 America debit card for the purpose of accessing EDD benefits deposited
16 into a Bank of America account, during the period from and including
17 January 1, 2020, through the present (“Class Period”), and who were denied
access to all or part of the EDD benefits on deposit with Bank of America
due to Bank of America freezing EDD accounts.

18 69. Excluded from the above-proposed Class is Defendant’s officers and directors and
19 any entity in which any Defendant has a controlling interest.

20 70. Plaintiff reserves the right under Rule 23 to amend or modify the class descriptions
21 with greater specificity or further division into subclasses or limitation to particular issues, based on
22 information learned after the filing of this Complaint.

23 71. This action has been brought and may properly be maintained as a class action
24 against Bank of America pursuant to the provisions of Rule 23.

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27 ¹⁶ Brian Putler (Dir. of Cal. Govt. Relations at Bank of America), Letter to Philip Y. Ting, *et al.*
28 (Dec. 7, 2020), available at <https://sanfrancisco.cbslocal.com/wp-content/uploads/sites/15116056/2020/12/California-letter-from-BOFA.pdf>.

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a. **Numerosity (Rule 23(a)(1)):** The members of the Class are so numerous that their individual joinder is impracticable. Hundreds of thousands people, or more, received EDD debit card with magnetic stripes issued by Bank of America during the Class Period, or who otherwise meet would be members of the putative Class as defined above. Insofar as class members may be identified through business records regularly maintained by Bank of America or Bank of America’s employees, agents, principles, joint venturers, partners, affiliates, parents, or subsidiaries, and through the media, the number and identities of putative Class members can be ascertained. Members of the putative Class can be notified of the pending action by e-mail, U.S. mail, and supplemented by published notice, if necessary.

b. **Commonality (Rule 23(a)(2) and 23(b)(3)):** There are questions of law and fact common to the Class. These questions predominate over any questions affecting only individual class members. These common legal and factual issues include, but are not limited to:

- i. Whether Defendant systematically engaged in conduct that constitutes *per se* violations of state and federal laws with respect to the distribution of EDD benefits through Bank of America debit cards, or with respect to any other performance under its contract with EDD;
- ii. Whether Defendant breached the duty of care that it owed to persons who received Bank of America debit cards with magnetic strips for the purpose of accessing EDD unemployment or other benefits;
- iii. Whether Defendant should be enjoined from freezing the EDD benefit accounts of EDD accountholders and/or the EDD debit cards of EDD cardholders;

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- iv. Whether Defendant’s conduct breached any express or implied contract with EDD or any state agency, with the recipients of EDD debit cards, or with any member of the putative Class;
- v. Whether Defendant must provide damages, restitution, reimbursement, and/or other relief to EDD cardholders in the amount of any fraudulent or unauthorized transactions affecting their EDD debit cards, and/or whether Defendant must provide any such relief for foreseeable harm to the EDD cardholders resulting from Bank of America’s unlawful conduct.

c. **Typicality (Rule 23(a)(3)):** Plaintiff’s claims are typical of the claims of the members of the putative Class. Plaintiff, like all other members of the putative Class, has sustained damages arising from Defendant’s violations of the law, as alleged herein. The representative Plaintiff and the members of the putative Class were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic, and pervasive pattern of misconduct engaged in by Defendant.

d. **Adequacy of Representation (Rule 23(a)(4)):** The representative Plaintiff will fairly and adequately represent and protect the interests of the putative Class members, and she has retained counsel who are experienced and competent trial lawyers in complex litigation and class action litigation. There are no material conflicts between the claims of the representative Plaintiff and the members of the putative Class that would make class certification inappropriate. Counsel for the putative Class will vigorously assert the claims of all putative Class members.

72. This action is properly maintained as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure for the following reasons:

- 1 a. **Class Action Status (Rule 23(b)(1)):** Class action status is warranted here
2 under Rule 23(b)(1)(A) because prosecution of separate actions by putative
3 Class members would create a risk of establishing incompatible standards of
4 conduct for Defendant. Class action status is also warranted under Rule
5 23(b)(1)(B) because prosecution of separate actions by putative Class
6 members would create a risk of adjudication with respect to individual
7 members of the Class that, as a practical matter, would be dispositive of the
8 interests of other members not parties to this action, or that would
9 substantially impair or impede their ability to protect their interests.
- 10 b. **Declaratory and Injunctive Relief (Rule 23(b)(2)):** Certification under
11 Rule 23(b)(2) is warranted because Defendant acted or refused to act on
12 grounds generally applicable to the putative Class, thereby making
13 appropriate final injunctive, declaratory, or other appropriate equitable relief
14 with respect to the putative Class as a whole.
- 15 c. **Superiority (Rule 23(b)(3)):** Certification under Rule 23(b)(3) is appropriate
16 because questions of law or fact common to putative Class members
17 predominate over any questions affecting only individual members, and class
18 action treatment is superior to the other available methods for the fair and
19 efficient adjudication of this controversy.
- 20 d. The Class is ascertainable, and there is a well-defined community of interest
21 in the questions of law or fact alleged herein since the rights of each Class
22 member were infringed or violated in the same or similar fashion.

23 **VI. CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **Violation of the California Consumer Privacy Act**

26 73. Plaintiff repeats and incorporates by reference each and every allegation set forth
27 above, as though fully set forth here.

1 74. The California Consumer Privacy Act (“CCPA”), Cal. Civ. Code § 1798.100, *et seq.*,
2 provides consumers with a private right of action against businesses when their personal information
3 is subject to unauthorized access, theft, or disclosure as a result of a business’s breach of its duty to
4 take reasonable steps to protect that information.

5 75. Plaintiff and Class members are “consumers” as defined in the CCPA.

6 76. Defendant Bank of America is a “business” as that term is defined in the CCPA and
7 therefore is subject to liability to thereunder.

8 77. Bank of America directly or indirectly collected Plaintiff’s and Class members’
9 personal information as defined in Cal. Civ. Code § 1798.81.5(d)(1)(A), including but not limited
10 to Plaintiff’s and Class member’s first names or first initials, last names and account numbers or
11 credit or debit card numbers, in combination with any required security codes, access codes, or
12 passwords that would permit access to an individual’s financial accounts.

13 78. Plaintiff’s and Class members’ individual and collective personal information was
14 collected, stored, and/or transmitted by Bank of America in a nonencrypted and nonredacted form,
15 or in some other form that permitted unauthorized individuals to access that information in violation
16 of the CCPA.

17 79. As a business, Bank of America had a duty under CCPA to implement and maintain
18 reasonable security procedures and practices appropriate to the nature of Plaintiff and Class
19 members’ personal information.

20 80. Bank of America breached its duty to implement and maintain reasonable security
21 procedures and practices appropriate to the nature of Plaintiff’s and Class members’ personal
22 information by, among other things, issuing EDD debit cards to Plaintiff and Class members with
23 magnetic stripes but without EMV chip technology.

24 81. Upon information and belief, Bank of America further failed to implement and
25 maintain reasonable security measures by transferring information regarding Plaintiff and Class
26 members’ EDD debit card to, and storing it on, unsecured or inadequately secured data storage
27 devices, including at EDD.

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1 88. Bank of America’s “unfair” acts and business practices include, among other things:
2 (a) failing to transfer or store EDD cardholder and account information in a secure manner; (b)
3 representing to the State of California that its EDD debit cards and card services would entail “best-
4 in-class” fraud monitoring, and then failing to equip its EDD debit cards with EMV microchip
5 technology despite knowing that such technology would be a necessary component of “best-in-
6 class” fraud monitoring; (c) failing to provide reasonable or adequate telephone assistance to
7 Plaintiff and other Class members despite representing to them that such assistance is available
8 “24/7” and despite representing to them that “Telephoning is the best way of keeping your possible
9 losses down”; (d) failing to investigate and resolve Plaintiff’s and Class members’ claims of
10 unauthorized transactions in a timely manner despite its “Zero Liability” policy for unauthorized
11 transactions; and (e) failing to extend provisional credit to Plaintiff and class Members in cases
12 where it is unable to timely investigate and resolve fraud claims.

13 89. Bank of America’s acts, omissions, and conduct are “unfair” under the UCL because
14 those acts, omissions, and conduct, as alleged herein, offend public policy and constitute immoral,
15 unethical, oppressive, and unscrupulous activities that caused substantial injury, including to
16 Plaintiff and Class members. The harm caused by Bank of America’s conduct outweighs any
17 potential benefits attributable to such conduct, and there were reasonably available alternatives to
18 further Defendant’s legitimate business interests—namely issuing EDD debit cards with EMV
19 microchips and maintaining procedures and resources adequate to timely resolve reports of
20 fraudulent activity on prepaid EDD accounts—other than Bank of America’s conduct described
21 herein.

22 90. Bank of America has engaged in “unlawful” acts and business practices by violating
23 multiple laws, including the California Consumer Privacy Act, as alleged herein; Regulation E of
24 the federal Electronic Funds Transfer Act (“Regulation E”), which requires Bank of America to
25 limit EDD cardholders’ liability for unauthorized transactions and to extend provisional credit to
26 EDD cardholders in cases where a fraud claim is not resolved within ten business days; and
27 California statutory and common law, as alleged herein.

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1 95. Plaintiff repeats and incorporates by reference each and every allegation set forth
2 above, as though fully set forth here.

3 96. Plaintiff brings this cause of action pursuant to the United States Electronic Funds
4 Transfer Act (“EFTA”) and 12 C.F.R. §§ 1005.1–1005.20 (Regulation E of the EFTA).

5 97. Plaintiff and Class members provided notice to Bank of America within 60 days after
6 Bank of America sent a period statement reflecting an unauthorized transaction (which is an “error”
7 under Regulation E), thereby triggering the error resolution requirements of 12 C.F.R. § 1005.11.

8 98. Bank of America violated Regulation E, 12 C.F.R. § 1005.11, because it failed to
9 provide provisional credit to Plaintiff and Class members accounts relating to error investigations
10 that could not be resolved within 10 business days.

11 99. In situations where Bank of America has violated Regulation E by failing to
12 provisionally Plaintiff’s and Class members’ accounts, Bank of America has failed to conduct good
13 faith investigations into the unauthorized transactions that Plaintiff and Class members have
14 reported or attempted to report by, among other things, failing to provide Plaintiff and Class
15 members reasonable access to Bank of America’s customer service, and failing to provide Plaintiff
16 and Class members meaningful assistance when they have been able to reach customer service.
17 Plaintiff and Class members are therefore entitled to treble damages under 15 U.S.C. § 1693f(e).

18 100. In situations where Bank of America has violated Regulation E by failing to
19 provisionally recredit Plaintiff’s and Class members’ accounts, Bank of America has not had a
20 reasonable basis for believing that the account was not in error. Instead, Bank of America: (a) has
21 made it unreasonably difficult for EDD cardholders to report suspected unauthorized transactions,
22 and (b) has not used at all relevant times, and is not currently using, the resources and procedures
23 necessary to resolve the levels of fraud that are occurring on Plaintiff’s and Class members’
24 accounts. This demonstrates that Bank of America has been unable or unwilling to form a
25 reasonable basis for believing an account was not in error. Plaintiff and Class members are therefore
26 entitled to treble damages under 15 U.S.C. § 1693f(e).

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1 101. Bank of America knowingly and willfully concluded that Plaintiff's and Class
2 members' accounts were not in error when such conclusion could not reasonably have been drawn
3 from the evidence available to Bank of America at the time of its investigation. Plaintiff and Class
4 members are therefore entitled to treble damages under 15 U.S.C. § 1693f(e).

5 102. Bank of America violated Regulation E by failing to limit Plaintiff's and Class
6 members' liability as required by 12 C.F.R. § 1005.6(b).

7 103. Plaintiff provided notice to Bank of America less than two business days after
8 learning of the fraudulent transactions that occurred in her EDD Bank of America account. Under
9 12 C.F.R. § 1005.6(b)(1), Plaintiff's and similarly-situated Class members' liability is capped at \$50
10 in these circumstances. Despite this cap on liability, Bank of America has subjected Plaintiff and
11 similarly-situated Class members' to over \$50 in liability.

12 104. Under 12 C.F.R. § 1005.6(b)(2), \$500 is the maximum liability when an
13 accountholder does not provide notice to the financial institution within two business days after
14 learning of a suspected unauthorized transaction.

15 105. Regarding any Class members who did not provide Bank of America with actual
16 notice within two business days of learning of a suspected unauthorized transaction, Bank of
17 America was on constructive notice, under 12 C.F.R. § 1005.6(b)(5)(iii), of widespread
18 unauthorized electronic funds transfers from EDD debit card accounts since the beginning of the
19 Covid-19 pandemic. Since that time, countless unauthorized fund transfers have occurred and
20 continue to occur from EDD accounts. The volume of calls from EDD cardholders to Bank of
21 America's customer service to report unauthorized transactions has been, and continues to be, so
22 great that EDD cardholders routinely wait on hold for multiple hours. The widespread fraud
23 specifically targeting EDD cardholders has been widely reported in the media and has been the
24 subject of significant attention from California legislators.

25 106. In no event should any class member be liable for over \$500 of damages under 12
26 C.F.R. § 1005.6. Bank of America has violated 12 C.F.R. § 1005.6 by imposing hundreds and
27 thousands of dollars of liability on unemployed Californians.

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1 dramatic increase in EDD benefits recipients and dollars (which foreseeably would make EDD debit
2 cards and accounts of greater interest to bad actors) by issuing EDD debit cards with EMV chips to
3 all new and existing EDD cardholders, and taking other reasonably prudent security measures to
4 prevent fraudulent and unauthorized transactions; (d) failing to ensure its customer service operation
5 was capable of providing reasonably timely and effective assistance to Plaintiff and Class members,
6 including when they are victims of fraudulent or unauthorized transactions; (e) failing to give
7 reasonable and adequate notice to Plaintiff and Class members that their EDD benefits were and
8 remain at risk of being vulnerable to fraudulent and unauthorized transactions; (f) failing process
9 EDD cardholders' claims regarding fraudulent or unauthorized transactions in a reasonably timely
10 and adequate manner; and (g) failing to extend provisional credit to Plaintiff and Class members
11 when Bank of America fails to resolve their claims regarding fraudulent or unauthorized transactions
12 in a reasonably timely and adequate manner.

13 112. Bank of America's misconduct concerning its failure to safeguard EDD cardholders'
14 funds is inconsistent with industry standards, which prescribe using EMV chip technology in debit
15 cards.

16 113. Bank of America's misconduct concerning its failure to timely and adequately
17 respond to Plaintiff's and Class members' claims of fraudulent and unauthorized transactions on
18 their EDD debit cards or accounts is inconsistent with industry regulations, including Regulation E.

19 114. Bank of America's misconduct is inconsistent with its own policies and procedures
20 for non-EDD debit card accounts, for which Bank of America consistently deploys EMV chip
21 technology to prevent fraud.

22 115. The harm inflicted upon Plaintiff and other Class members was reasonably
23 foreseeable to Bank of America because it was and is well aware of the security risks associated
24 with magnetic stripe technology, and because it knew or should have known its customer service
25 resources and/or procedures were insufficient to accommodate issues stemming from the significant
26 increase in EDD benefits and EDD benefits recipients due to the sharp rise in unemployment in the
27 State of California caused by or related to the Covid-19 pandemic, as well as the well-publicized
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1 sharp rise in financial fraud during the Covid-19 pandemic, both of which would foreseeably lead
2 to an increased demand for customer service by Plaintiff and Class members for all purposes,
3 including for the purpose of reporting and attempting to resolve claims of fraudulent or unauthorized
4 transactions.

5 116. As a direct and proximate result of Bank of America’s misconduct, Plaintiff and
6 Class members have been deprived of their EDD benefits and have failed to receive accrued interest
7 thereon.

8 **FIFTH CAUSE OF ACTION**

9 **Negligent Performance of Contract**

10 117. Plaintiff repeats and incorporates by reference each and every allegation set forth
11 above, as though fully set forth here.

12 118. Bank of America owed a duty to Plaintiff and the other Class members to exercise
13 reasonable care in performing its contract with the State of California because Plaintiff and other
14 Class members were and are intended beneficiaries of the contract. To fulfill this duty, bank of
15 America was and is obligated to: (a) safeguard Plaintiff’s and Class members’ EDD benefits; (b)
16 respond to the rise in demand for EDD benefits which occurred in 2020 by issuing chip cards; (c)
17 ensure its customer service operation was capable of providing effective assistance to EDD
18 cardholders who experience fraud on their debit card; (d) warn or notify Plaintiff and Class members
19 if their EDD benefits were at risk of being subject to unauthorized use; (e) to timely and adequately
20 investigate and resolve claims regarding unauthorized transactions; and (f) extend provisional credit
21 in cases where fraud claims are not timely resolved.

22 119. Bank of America breached its duty to Plaintiff and Class members by, among other
23 things: (a) failing to transfer or store their EDD cardholder and account information in a secure
24 manner; (b) failing to issue EDD debit cards with microchips, despite having for years been well-
25 aware of the risks associated with magnetic “stripe” technology; (c) failing to respond to the rise in
26 demand for EDD benefits by issuing chip cards; (d) failing to ensure its customer service operation
27 was capable of providing effective assistance to EDD cardholders who experience fraud on their
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1 debit card; (e) failing to warn or notify EDD cardholders that their EDD benefits were and remain
2 at risk of being subject to unauthorized use; (f) failing to timely or adequately process EDD
3 cardholders' claims regarding unauthorized transactions; and (g) failing to extend provisional credit
4 in cases where fraud claims are not timely resolved.

5 120. Bank of America's misconduct with regard to its failure to safeguard EDD
6 cardholders' funds is inconsistent with industry standards, which prescribe using EMV chip
7 technology in debit cards.

8 121. Bank of America's misconduct with regard to its failure to timely and adequately
9 respond to claims of fraud on EDD debit cards is inconsistent with industry regulations, including
10 Regulation E.

11 122. Bank of America's misconduct is inconsistent with its own policies and procedures
12 for non-EDD debit card accounts, for which it implements EMV chip technology to prevent fraud.

13 123. The harm inflicted upon Plaintiff and other Class members was reasonably
14 foreseeable to Bank of America because Bank of America was well aware of the security risks
15 associated with magnetic stripe technology, was aware that EDD cardholder and account
16 information should be transferred and stored in a secure manner, and knew or should have known
17 its customer service resources and/or procedures were insufficient to accommodate issues stemming
18 from the increased distribution of EDD benefits which foreseeably entailed an increase in fraud
19 claims.

20 124. As a direct and proximate result of Bank of America's misconduct, Plaintiff and
21 Class members have been deprived of their EDD benefits and have failed to receive the accrued
22 interest thereon.

23 **SIXTH CAUSE OF ACTION**

24 **Negligent Failure to Warn**

25 125. Plaintiff repeats and incorporates by reference each and every allegation set forth
26 above, as though fully set forth here.

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1 126. During all times relevant to this Complaint, Bank of America had actual or
2 constructive knowledge of all relevant aspects of the vulnerabilities to fraud of using magnetic stripe
3 technology in debit cards.

4 127. During all times relevant to this Complaint, Bank of America had a duty to exercise
5 reasonable and ordinary care and skill, and to behave in accordance with applicable standards of
6 conduct, in adequately warning EDD cardholders about the fact that their EDD benefits would be at
7 a substantial risk of being fraudulently appropriated due to the magnetic stripe technology used in
8 its cards.

9 128. Bank of America breached its duty by failing to adequately warn EDD cardholders
10 about the risks associated with magnetic stripe technology in debit cards.

11 129. As a direct and proximate consequence of Bank of America's breach, Plaintiff and
12 Class member have been severely harmed. Plaintiff and Class members have been deprived of the
13 EDD benefits which, in many cases, represented their only available funds.

14 130. Bank of America's failure to warn was willful, malicious, oppressive, fraudulent,
15 and/or in reckless disregard of Plaintiff's and Class members' rights, thereby entitled Plaintiff and
16 Class members to punitive damages.

17 131. Bank of America's ongoing failure to warn EDD cardholders about the risks
18 associated with EDD prepaid debit cards is irreparably harming Plaintiff and Class members, whose
19 EDD benefits remain vulnerable to unauthorized use. Plaintiff and Class members seek injunctive
20 relief, and any and all available damages and/or restitution, in an amount to be proven at trial.

21 **SEVENTH CAUSE OF ACTION**

22 **Breach of Contract**

23 132. Plaintiff repeats and incorporates by reference each and every allegation set forth
24 above, as though fully set forth here.

25 133. Plaintiff and Class members entered into a contract requiring Bank of America to
26 administer EDD benefits to them through prepaid debit cards.

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1 134. The contract provides in Section 9:

2 Federal law (described in the section below entitled “Regulation E Liability
3 Disclosure; Your Liability in Case of Loss, Theft or Unauthorized Transactions”) may
4 limit your liability for unauthorized transactions in some circumstances. Under the
5 Bank of America “zero liability” policy, you may incur no liability for unauthorized
6 use of your Card up to the amount of the transaction, provided you notify us within a
7 reasonable time of the loss or theft of your Card, Card number or PIN or its
8 unauthorized use, subject to the following terms and conditions

9 135. The contract provides in Section 11:

10 We will determine whether an error occurred within 10 business days after we hear
11 from you—and will correct any error promptly. If we need more time, however, we
12 may take up to 45 days to investigate your complaint or question. If we decide to do
13 this, we will credit your Account within 10 business days for the amount you think is
14 in error, so that you will have the money during the time it takes us to complete our
15 investigation.

16 136. Plaintiff and Class members did all, or substantially all, of the significant things that
17 the contract required and fulfilled any conditions precedent to Bank of America’s performance,
18 including, among other things, contacting or attempting to contact Bank of America to reimburse
19 fraudulently appropriated funds within the time specified in the account agreement.

20 137. Bank of America failed to perform as promised in the contract by, among other
21 things: (a) failing to timely investigate and resolve claims of unauthorized card use, as required by
22 Section 11 of the account agreement; (b) failing to reimburse Plaintiff and Class members for
23 unauthorized card use or provide provisional credit within ten business days, as required by Section
24 11 of the account agreement; and (c) failing to limit EDD cardholders’ liability as required by
25 Section 9 of the account agreement.

26 138. Plaintiff and Class members were harmed by Bank of America’s conduct and have
27 suffered actual damages in an amount equal to the difference in the value of the banking services
28 they provided valuable consideration for and the banking services they received.

EIGHTH CAUSE OF ACTION

Breach of Implied Contract

139. Plaintiff repeats and incorporates by reference each and every allegation set forth
above, as though fully set forth here.

1 140. Bank of America provided banking services to Plaintiff and members of the Class.
2 In exchange Bank of America benefitted and continues to benefit from Plaintiff and the Class
3 because it makes money through fees associated with EDD debit cards.

4 141. Bank of America acknowledged these benefits and accepted or retained them.

5 142. In using Bank of America's banking services, Plaintiff and Class members
6 continually provide Bank of America with the ability and opportunity to make money through fees
7 associated with EDD debit cards.

8 143. By providing Bank of America that ability and opportunity, and upon Bank of
9 America's acceptance of it, Plaintiff and Class members, on the one hand, and Bank of America, on
10 the other, entered into implied contracts separate and apart from Bank of America's terms of service,
11 under which Bank of America and agreed to and was obligated to take reasonable steps to ensure
12 that Bank of America prepaid EDD debit card accounts were secure against unauthorized
13 transactions and that any claims regarding unauthorized transactions were adequately investigated
14 and resolved.

15 144. All parties understood that such protections and customer service obligations were
16 integral and essential to Bank of America's business.

17 145. Under those implied contracts, Bank of America was obligated to provide Plaintiff
18 and Class members with EDD prepaid debit card services that were suitable for their intended
19 purpose of saving and accessing EDD benefits as needed, rather than such services that failed to
20 take reasonable steps to safeguard their money, warn or notify them in the event that their EDD
21 benefits were at risk of unauthorized use, or adequately investigate or resolve claims regarding
22 unauthorized transactions.

23 146. Without such implied contracts, Plaintiff and Class members would not have used
24 Bank of America's prepaid debit card services and would not have conferred benefits on Bank of
25 America.

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1 147. Plaintiff and Class members fully performed their obligations and fulfilled any
2 relevant conditions under these implied contracts, including by, among other things, seeking
3 assistance from Bank of America regarding suspected unauthorized transactions on EDD accounts.

4 148. As described throughout, Bank of America did not take reasonable steps to protect
5 Plaintiff's and Class members' deposited funds from unauthorized transactions or to adequately
6 investigate or resolve claims regarding unauthorized transactions. In fact, Bank of America willfully
7 violated those interests by electing to issue EDD prepaid debit cards with outdated magnetic stripe
8 technology, which it knows to be uniquely vulnerable to fraud, in lieu of EMV chip technology,
9 which has been included in Bank of America consumer debit cards for over six years for the express
10 purpose of protecting against fraud.

11 149. Because Bank of America failed to take reasonable steps to protect EDD prepaid
12 debit card holders' funds from being appropriated through unauthorized transactions and failed to
13 take reasonable steps to timely or adequately respond to claims regarding unauthorized transactions,
14 Bank of America breached its implied contracts with Plaintiff and Class members.

15 150. Bank of America's failure to fulfill its obligations to take reasonable steps to protect
16 EDD prepaid debit card holders' funds from being appropriated through unauthorized transactions,
17 and its failure to take reasonable steps to timely or adequately respond to claims regarding
18 unauthorized transactions resulted in Plaintiff and Class members receiving banking services that
19 were of less value than they provided consideration for.

20 151. Stated otherwise, because Plaintiff and Class members provided valuable
21 consideration for banking services in the form of fees associated with the cards, they did not receive
22 the full benefit of their bargain.

23 152. As a result of Bank of America's conduct Plaintiff and members of the Class have
24 suffered actual damages in an amount equal to the difference in the value of the banking services
25 they provided valuable consideration for and the banking services they received.

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1 153. Accordingly, Plaintiff, on behalf of herself and Class members, seeks an order
2 declaring that Bank of America’s conduct constitutes a breach of implied contract, and awarding
3 them damages in an amount to be determined at trial.

4 **NINTH CAUSE OF ACTION**

5 **Breach of Implied Covenant of Good Faith and Fair Dealing**

6 154. Plaintiff repeats and incorporates by reference each and every allegation set forth
7 above, as though fully set forth here.

8 155. There is a covenant of good faith and fair dealing implied in every contract and every
9 implied contract. This implied covenant requires each contracting party to refrain from doing
10 anything to injure the right of the other to receive the benefits of the agreement. To fulfill its
11 covenant, a party must give at least as much consideration to the interests of the other party as it
12 gives to its own interests.

13 156. Under the covenant of good faith and fair dealing implied in its account agreements
14 with Plaintiff and Class members, Bank of America was and is obligated to, at a minimum, (a)
15 safeguard Plaintiff’s and Class members’ EDD benefits; (b) respond to the rise in demand for EDD
16 benefits which occurred in 2020 by issuing chip cards; (c) ensure its customer service operation was
17 capable of providing effective assistance to EDD cardholders who experience fraud on their debit
18 card; (d) warn or notify Plaintiff and Class members if their EDD benefits were at risk of being
19 subject to unauthorized use; (e) to timely and adequately investigate and resolve claims regarding
20 unauthorized transactions; and (f) extend provisional credit in cases where fraud claims are not
21 timely resolved.

22 157. Bank of America breached the implied covenant of good faith and fair dealing by,
23 among other things: (a) failing to issue EDD debit cards with microchips, despite having for years
24 been well-aware of the risks associated with magnetic “stripe” technology; (b) failing to respond to
25 the rise in demand for EDD benefits by issuing chip cards; (c) failing to ensure its customer service
26 operation was capable of providing effective assistance to EDD cardholders who experience fraud
27 on their debit card; (d) failing to warn or notify EDD cardholders that their EDD benefits were and
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1 remain at risk of being subject to unauthorized use; (e) failing to timely or adequately process EDD
2 cardholders' claims regarding unauthorized transactions; and (f) failing to extend provisional credit
3 in cases where fraud claims are not timely resolved.

4 158. As a direct and proximate result of Bank of America's breaches of the implied
5 covenant of good faith and fair dealing, Plaintiff and other Class members have suffered actual
6 losses and damages.

7 **TENTH CAUSE OF ACTION**

8 **Breach of Contract (Third-Party Beneficiaries)**

9 159. Plaintiff repeats and incorporates by reference each and every allegation set forth
10 above, as though fully set forth here.

11 160. Bank of America and the State of California EDD entered into a contract requiring
12 Bank of America to administer EDD benefits to Plaintiff and Class members through prepaid debit
13 cards.

14 161. A motivating purpose of the EDD in entering the contract was for EDD benefits
15 recipients to benefit from the contract through secure administration of EDD benefits and competent
16 customer service relating to the administration of EDD benefits. EDD cardholders are accordingly
17 third-party beneficiaries of the contract between the EDD and Bank of America.

18 162. Plaintiff, Class members, and the State of California EDD did all, or substantially
19 all, of the significant things that the contract required and fulfilled any conditions precedent to Bank
20 of America's performance.

21 163. Bank of America failed to perform as promised in the contract by, among other
22 things: (a) failing to take adequate steps to prevent fraud on EDD accounts, including but not limited
23 to its failure to incorporate EMV chips into EDD debit cards; (b) failing to timely investigate and
24 resolve claims of unauthorized card use, as required by Section 11 of the account agreement; and
25 (c) failing to reimburse Plaintiff and Class members for unauthorized card use or provide provisional
26 credit within ten business days, as required by Section 11 of the account agreement.

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1 164. Plaintiff and Class members were harmed by Bank of America's conduct and have
2 suffered actual damages in an amount equal to the difference in the value of the banking services
3 they provided valuable consideration for and the banking services they received.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following
6 relief:

7 A. For an order certifying the Class as defined above, appointing Plaintiff as
8 representative for the Class, and appointing Plaintiff's counsel as counsel for the Class;

9 B. For declaratory and injunctive relief prohibiting Defendant from engaging in the
10 misconduct described herein, including but not limited to ordering that Defendant take each of the
11 following corrective actions:

12 (1) Refund all Class members for the value of unauthorized transactions from
13 their EDD accounts;

14 (2) Issue EDD debit cards with EMV chips to all current and future EDD
15 cardholders;

16 (3) Establish a customer service website, e-mail address, and telephone hotline
17 that allow EDD cardholders to report unauthorized transactions and request
18 reimbursement of the same in a reasonably easy and hassle-free manner;

19 (4) Respond to EDD cardholders' claims of unauthorized transactions and
20 requests for reimbursement within a reasonable time; and

21 (5) Provide a reasonable opportunity for Class members to file claims regarding
22 unauthorized transactions that otherwise would be deemed expired;

23 C. For an award of all recoverable compensatory, statutory, and other damages
24 sustained by Plaintiff and the Class members, including disgorgement, unjust enrichment,
25 restitution, and all other available relief under applicable law, including but not limited to accrued
26 interest for the periods during which Plaintiff and Class members were deprived of funds in their
27 EDD accounts due to unauthorized transactions;

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