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**UNITED STATES DISTRICT COURT
DISTRICT OF STATE OF NEW JERSEY**

**CASSANDRA VALERIE BEAMAN,
individually and on behalf of others
similarly situated,**

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

Case No.

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

1 Cassandra Valerie Beaman (“Plaintiff”), individually and on behalf of all
2 others similarly situated as New Jersey residents (“Class Members”), brings this
3 action against Bank of America, N.A. (“Bank of America,” “Bank” or “Defendant”)
4 for violations of the Electronic Funds Transfer Act at 15 U.S.C. §§1693 et seq.
5 (“EFTA”) and its implementing regulations at 12 C.F.R. Part 1005 (“Regulation
6 E”), breach of contract, negligence, and other state common law and statutory
7 claims, to remedy Bank of America’s egregious maladministration of its obligations
8 under the New Jersey Department of Labor & Workforce (“LWD”) benefits
9 payment programs. In violation of its constitutional, statutory, common law, and
10 contractual obligations to Plaintiff and Class Members, the Bank has failed to take
11 reasonable steps to protect Plaintiff and Class Members’ benefits from fraud, has
12 deprived them of their statutory right to public benefits without providing them with
13 notice or an opportunity to be heard, and has otherwise failed to ensure that they are
14 able to receive and access the public benefits to which they are lawfully entitled.

15 I. INTRODUCTION

16 1. Like millions of other Americans, Plaintiff and Class Members lost
17 their jobs through no fault of their own during the COVID-19 pandemic. Plaintiff
18 and Class Members applied for unemployment and other public benefits through
19 programs administered by New Jersey Department of Labor & Workforce
20 (“LWD”). They were found eligible by LWD to receive, and initially did receive,
21 the benefits to which they were and are lawfully entitled. Throughout the COVID-
22 19 pandemic, Plaintiff and Class Members have relied on these subsistence benefits
23 to pay for food, housing, and other necessities of life.

24 2. Pursuant to an exclusive contract between LWD and Bank of America,
25 Plaintiff and Class Members received their periodic benefits payments not from
26 LWD directly, but through Bank-issued and Bank-administered prepaid debit cards
27 (“LWD Debit Cards” or “Cards”), which are linked to individual Bank depository
28 accounts (“LWD Debit Card Accounts” or “Accounts”). Although the Bank was

1 entrusted with administering these critical LWD Benefits, on which millions of
2 vulnerable Americans' lives depend, and although the Bank was legally required to
3 take necessary and reasonable steps to protect Plaintiff's and Class Members' LWD
4 Debit Cards and Accounts from fraudulent access by third parties, the Bank failed
5 to do so and indeed treated these Cards and Accounts with *less* care than it affords
6 its regular consumer debit and credit cardholders. Among other things, the Bank
7 failed to secure Plaintiff's and Class Members' sensitive Card and Account
8 information and issued her a LWD Debit Card without the industry-standard, fraud-
9 preventing EMV chip technology that the Bank has used on all its *regular consumer*
10 customers' debit and credit cards since 2014. Instead, for its *government benefits*
11 customers, the Bank chose to issue debit cards with only outdated magnetic stripe
12 technology, which makes those cards far more susceptible to skimming, cloning,
13 and other schemes that have allowed third parties to fraudulently use and access
14 Plaintiff's and Class Members' LWD Debit Cards and Accounts. The Bank further
15 breached its duties through its systemic practice of failing to take reasonable steps
16 to secure Plaintiff's and Class Members' personal and financial information,
17 including failing to ensure that this information was appropriately handled and not
18 misappropriated by the Bank's subcontractors and their employees and agents,
19 including by customer service representatives and other call center agents. The
20 Bank's systemically lax security practices enabled unauthorized persons to access
21 Plaintiff's and Class Members' personal and financial information and to make
22 fraudulent, unauthorized transactions involving Plaintiff's and Class Members'
23 LWD Debit Cards and Accounts.

24 3. In addition to the Bank acting negligently and in breach of its statutory
25 and common law obligations to Plaintiff and Class Members by failing to protect
26 their LWD Debit Cards and Accounts, the Bank also has violated its statutory and
27 common law obligations to Plaintiff and Class Members by failing to implement
28 adequate and reasonable systems, measures, and protections to permit: prompt and

1 effective identification of fraud on Plaintiff's and Class Members' Cards and
2 Accounts, prompt submission of fraud claims (also referred to herein as
3 unauthorized transaction claims), provisional access to already-approved benefits
4 during the course of the Bank's investigations of fraud claims, prompt and accurate
5 resolution of those claims, and prompt reimbursement of funds stolen from
6 Plaintiff's and Class Members' Accounts. For example, instead of providing an
7 effective and timely process for Plaintiff and Class Members to report fraud claims,
8 the Bank adopted a series of "customer service" practices and policies that have
9 required Plaintiff and Class Members to spend dozens of hours on the phone with
10 customer service, and that have otherwise frustrated and obstructed Plaintiff's and
11 Class Members' efforts to submit such claims. When those Plaintiff and Class
12 Members who persevered were finally able to reach the Bank's customer service
13 representatives to report that unauthorized transactions had fraudulently been
14 conducted on their LWD Debit Card Accounts, the Bank then violated their
15 statutory, common law, and constitutional due process rights by denying their fraud
16 claims without investigation or explanation and freezing their Accounts
17 indefinitely, thereby depriving them of access to their past *and future* disbursements
18 of LWD benefits without any prior notice or an opportunity to be heard.

19 4. The cardholder agreement between Bank of America and each Plaintiff
20 and Class Member ("Cardholder Agreement") sets forth the Bank's "Zero Liability"
21 policy, which promises to protect each Plaintiff and Class Member from adverse
22 financial consequences if their LWD Debit Cards or Accounts are fraudulently used
23 or accessed by third parties. The Bank has not implemented this policy as promised,
24 which has caused Plaintiff and Class Members to suffer significant financial losses
25 from third-party fraud, including by the Bank failing to have reasonable procedures
26 in place to identify and receive notifications of fraud, failing to adequately monitor
27 its customer service, establishing procedures that frustrate and obstruct timely
28 submission of fraud claims by Plaintiff and Class Members, closing fraud claim

1 investigations without having conducted a reasonable investigation, and failing to
2 extend provisional credit to Plaintiff and Class Members as required by law while
3 fraud claim investigations are underway. The Bank has also deprived Plaintiff and
4 Class Members of their constitutional rights to notice and an opportunity to be heard
5 before causing their LWD Debit Cards and Accounts to be frozen or blocked for
6 extended periods of time, thereby depriving Plaintiff and Class Members of access
7 to past, present, and future disbursements of unemployment and other government
8 benefits for which they have been found eligible.

9 5. By the acts and omissions alleged here, Bank of America has violated
10 federal and state constitutional due process protections; violated EFTA and its
11 implementing Regulation E; acted negligently; and breached its Cardholder
12 Agreement with Plaintiff and Class Members, its contract with LWD (to which
13 Plaintiff and Class Members are intended third-party beneficiaries), the implied
14 covenant of good faith and fair dealing under those contracts, and its fiduciary
15 duties to Plaintiff and Class Members. These acts and omissions have caused
16 substantial financial and other harm to Plaintiff and Class Members, and unless
17 promptly enjoined will cause them and the public to suffer immediate and
18 irreparable harm.

19 II. JURISDICTION AND VENUE

20 6. This Court has subject matter jurisdiction pursuant to: (a) 28 U.S.C.
21 §1331 because this action arises under the federal Due Process Clause and the
22 Electronic Fund Transfers Act, 15 U.S.C. §§1693 et seq.; (b) 28 U.S.C. §1332(d)
23 because this is a class action in which the amount in controversy exceeds
24 \$5,000,000, there are more than 100 putative Class Members, and the majority of
25 putative Class Members are citizens of a state different than the state of which Bank
26 of America is a citizen; (c) 28 U.S.C. §1332(a) because Plaintiff and Class Members
27 are citizens of New Jersey, Bank of America is incorporated under the laws of
28 Delaware and has its principal place of business in North Carolina, and the amount

1 in controversy exceeds \$75,000; and (d) supplemental jurisdiction under 28 U.S.C.
2 §1367 with respect to the claims for relief arising under state law.

3 7. This Court has specific personal jurisdiction over Bank of America
4 because the Bank has sufficient minimum contacts with New Jersey, has purposely
5 availed itself of the benefits and protection of New Jersey law, and conducts a
6 substantial amount of business in and with the State of New Jersey (including with
7 LWD), such that the Court's exercise of personal jurisdiction over the Bank is
8 reasonable and accords with due process.

9 8. Venue is proper in this District pursuant to 28 U.S.C. §1391, because
10 Plaintiff resides in this District, a substantial portion of the acts or omissions giving
11 rise to the claims alleged occurred in this District, and because Bank of America is
12 subject to the Court's personal jurisdiction with respect to this action.

13 III. THE PARTIES

14 A. Class Representative Plaintiff

15 9. Class Representative Plaintiff Cassandra Valerie Beaman resides in
16 East Orange, New Jersey. Plaintiff qualified for, and received, LWD benefits in the
17 State of New Jersey, and those benefits were delivered to Plaintiff through Bank of
18 America. Plaintiff received her LWD benefits through a Bank of America account
19 and was issued a Bank of America LWD Debit Card.

20 B. Defendant

21 10. Defendant Bank of America, N.A., is a financial institution
22 incorporated in the State of Delaware and headquartered in North Carolina that
23 conducts a substantial amount of business in New Jersey, including pursuant to its
24 exclusive contract with the State of New Jersey LWD to administer unemployment
25 benefits and other benefit payments through LWD Debit Cards and Accounts.

26 11. Plaintiff and Class Members allege that at all times relevant to the
27 events giving rise to this action, each and every Defendant was acting as an agent
28 or employee of each of the other Defendants. Plaintiff and Class members further

1 allege that at all times relevant to those events, each and every Defendant was acting
2 within the course and scope of that agency or employment at the direction of or with
3 the full knowledge, permission, or consent of each and every other Defendant. In
4 addition, each of the acts or omissions of each and every Defendant was made
5 known to, and ratified by, each of the other Defendants.

6 IV. FACTUAL ALLEGATIONS

7 A. The Bank's Contract with LWD

8 12. LWD is an agency of the State of New Jersey that is responsible for
9 administering numerous benefits programs for low-income, unemployed, and other
10 New Jerseyans, including programs providing LWD Benefits, such as
11 unemployment insurance ("UI") benefits, pandemic unemployment assistance
12 ("PUA") benefits, pandemic emergency unemployment compensation benefits,
13 disability insurance benefits, and paid family leave benefits, to New Jersey.

14 13. On information and belief, prior to 2020 Bank of America entered into
15 a contract with LWD to provide certain services, including issuance of Bank of
16 America LWD Debit Cards through which individuals entitled to receive LWD
17 benefits could access those benefits.

18 14. On information and belief, Bank of America obtained that contract in
19 part by falsely representing to LWD that it would provide "best-in-class" fraud
20 monitoring.

21 15. On information and belief, continuing in to 2020 and beyond LWD
22 began distributing LWD benefits pursuant to its contract with Bank of America,
23 under which the default means of distributing LWD benefits payments has been
24 through Bank-issued and Bank-administered LWD Debit Cards, rather than paper
25 checks or other forms of payment.

26 16. On information and belief, the agreement Bank of America had with
27 New Jersey Department of Labor & Workforce included the representations that it
28 would fully protect LWD Debit Cardholders in case they became victims of fraud.

1 Specifically, the Bank represented that it would comply with all EFTA and
2 Regulation E requirements and timelines with respect to error resolution and it
3 provided assurance that its LWD Debit Cardholders (which includes) “should feel
4 comfortable in dealing with disputed transactions knowing that we extend our Zero
5 Liability protection on disputed claims, including ATM and pinned POS [point-of-
6 sale] transactions.” The Bank described its error resolution process as follows: “A
7 Claimant can file a dispute by calling the Customer Service Center for complete
8 instructions. . . . After selecting the ‘dispute a transaction’ option within our IVR
9 [Interactive Voice Response], the cardholder will immediately speak with a live
10 representative who will further review the transaction and any other possible
11 fraudulent transactions with the cardholder. . . . Once a dispute is requested in our
12 system, a case will be created within our claims tracking system and tracked until
13 final resolution. Per Regulation E, within 10 business days of the initial dispute, we
14 will promptly correct the error. . . . If more time is needed, we will temporarily credit
15 the cardholder’s account within 10 business days of the initiated dispute for the full
16 disputed amount. There is no limitation or maximum to the credit amount provided.
17 This will allow the account holder to use the funds while the claim is being
18 resolved.”

19 17. On information and belief LWD entered into a contract with Bank of
20 America because of and in reliance on Bank of America’s representations above.

21 18. LWD Debit Cards and Accounts are an integral part of LWD’s benefits
22 distribution and administration system. Under the terms of the LWD-Bank
23 Contract, those Accounts can only receive deposits from the LWD and do not allow
24 commingling of benefits payments with other funds. The LWD-Bank Contract
25 provides that the Bank “shall disburse to each claimant the entire amount the LWD
26 authorizes” and “shall process all benefit payment amounts provided by the LWD
27 without alteration or adjustment.”

28 **B. The Bank’s Failure to Secure LWD Debit Cardholder Information**

1 19. Bank of America has failed to store, share, transmit, or otherwise use
2 LWD Debit Cardholders' personally identifiable information, Card and Account
3 information, and other financial data and information, including any such data or
4 information learned in the course of providing customer service to Cardholders
5 (collectively, "Cardholder Information") in a reasonably secure manner and
6 consistent with the Bank's obligations to LWD and to Plaintiff and Class Members.
7 The Bank has also failed to act reasonably in its hiring, supervision, training, and
8 retention of its agents, including its subcontractors and its subcontractors'
9 employees and agents, who have access to Cardholder Information, including as a
10 result of staffing the Bank's Call Centers, interacting with Cardholders, and
11 reviewing Cardholders' unauthorized transaction claims. The Bank has failed to
12 take reasonable steps to ensure that its subcontractors and their employees and
13 agents, including CSRs and other Call Center agents, maintain the security and
14 confidentiality of Cardholder Information, including by failing to ensure: that all
15 such agents were subject to reasonable background checks, that all such agents
16 received reasonable training on maintaining the security and confidentiality of
17 Cardholder Information, and that the Bank's subcontractors took reasonable steps
18 to secure Cardholder Information from unnecessary or unauthorized access,
19 disclosure, and exfiltration, including by the subcontractors' agents and employees.

20 20. As a result of the Bank's acts and omissions alleged herein, Cardholder
21 Information has been obtained by unauthorized third parties in a series of security
22 breaches that have allowed Plaintiff's and Class Members' benefits to be stolen out
23 of their Accounts through unauthorized transactions. The Bank's repeated and
24 ongoing failure to secure Plaintiff's and Class Members' Cardholder Information
25 violated and continues to violate the Gramm-Leach-Bliley Act and rules and
26 regulations promulgated thereunder requiring the Bank to ensure the security of
27 their customers' personal and financial information, and the Bank's common law
28 duty to take reasonable steps to protect Cardholder Information from unauthorized

1 access, disclosure, and exfiltration, including by the Bank’s own agents.

2 21. Some LWD Debit Cardholders who have had money stolen from their
3 Debit Card Accounts through unauthorized transactions received and activated their
4 LWD Debit Cards, but never used their Cards. Such unauthorized transactions
5 could only have occurred if the Bank failed to store, share, transmit, or otherwise
6 use Cardholder Information in a reasonably secure manner.

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

8 22. When a debit or credit cardholder seeks to access funds on the card,
9 for example at a point-of-sale terminal or ATM, the Cardholder Information stored
10 on the card is first sent through a processing network operated by Visa. The first
11 step in that process occurs at the point of sale, where the card must either be swiped
12 or inserted into a card reader. The reader obtains the Cardholder Information stored
13 on the card and transmits it to the financial services provider through a computer
14 network, either at the time of the transaction or later in a “batch” with other
15 transactions.

16 23. From the 1960s until approximately 10 years ago, magnetic stripes
17 were the standard for storing consumer information on debit cards and credit cards
18 in the United States. A magnetic stripe contains static data about the card, including
19 the cardholder’s name, the card number, and the card expiration date. This data is
20 printed directly on the outside of the card and recorded on the magnetic stripe. When
21 swiped through a reader, this data is collected and transmitted as part of the
22 transaction process.

23 24. Because the data on a magnetic stripe are static and easily readable,
24 magnetic stripe cards are highly susceptible to fraud. One of several common
25 methods of stealing information from magnetic stripe cards is called “skimming,”
26 a process by which a wireless transmitter affixed to a card reader collects the
27 information on the magnetic stripe when the card is swiped or inserted and sends it
28 to a nearby computer. The recipient can then use the information to clone the

1 consumer's card, conduct unauthorized transactions, and access the bank account
2 connected to the card.

3 25. Personal data on magnetic stripe cards can also be captured by hackers
4 on a large scale. For example, in 2013, hackers infiltrated the retailer Target's
5 payment terminals and systematically captured the information of every swiped
6 card for weeks, ultimately gathering the card information of tens of millions of
7 people.¹ Card data collected in this manner can be sold on an underground market,
8 where the stolen data can be used to make fraudulent purchases.

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

17 27. In 2011, the same year the Bank began issuing LWD Debit Cards, the
18 Bank announced it would offer EMV chips in corporate credit cards to its U.S.
19 business customers who regularly traveled outside the United States.

20 28. On September 30, 2014, the Bank announced that it would include
21 EMV chip technology on "all new and reissued" consumer debit cards. In
22 announcing this shift, a Bank of America executive stated that "chip technology is
23 an important tool in increasing card security, and we want our customers to have
24 the best possible experience when using their payment cards." The executive added

25
26 ¹ Elise Hu, "Target Hack a Tipping Point in Moving Away from Magnetic
27 Stripes," *NPR* (Jan. 23, 2014), *available at* <https://www.npr.org/sections/alltechconsidered/2014/01/23/264910138/target-hack-a-tipping-point-in-moving-away-from-magnetic-stripes>.
28

1 that the “new chip-enabled cards will improve security of customers’ transactions.”²

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

5 30. In 2015, card-issuing banks and payment networks introduced a new
6 policy that shifted liability for fraudulent transactions away from themselves and
7 onto retailers and card issuers. As of October 1, 2015, retail merchants who did not
8 have certified EMV chip readers became liable for fraudulent transactions if the
9 consumer presented an EMV chip card. In essence, this meant that liability for
10 consumer card fraud would fall on either the retailer or the card issuer, whichever
11 was the least compliant with the EMV protocol.

12 31. Bank of America acknowledges on its website that EMV chip
13 technology “has been around for over 20 years and is the credit and debit card
14 security standard in many countries around the world. When purchases are made
15 using the chip feature at chip-enabled terminals, the transaction is more secure
16 because of the process used to determine if the card is authentic. This makes the
17 card more difficult to counterfeit or copy.” The Bank also assures Cardholders on
18 its website that “whether you use the magnetic stripe or the chip to make your
19 purchase, you can have confidence in the protection and security features we
20 provide for all credit and debit accounts.”

21 32. Bank of America has been aware for many years that EMV chip cards
22 are significantly more secure than magnetic stripe cards and that EMV chip cards
23 are the “debit card security standard.” Despite that knowledge and despite the
24 Bank’s representations to LWD that it will “focus on claimants” while leveraging
25 “rapidly evolving payment technology” and staying “at the forefront of payments

26 ² Bank of America Press Release, “Bank of America Begins Rollout of Chip
27 Debit Cards” (Sept. 30, 2014), *BusinessWire*, available at [https://](https://www.businesswire.com/news/home/20140930005292/en/Bank-of-America-Begins-Rollout-of-Chip-Debit-Cards)
28 [www.businesswire.com/news/home/20140930005292/en/Bank-of-America-](https://www.businesswire.com/news/home/20140930005292/en/Bank-of-America-Begins-Rollout-of-Chip-Debit-Cards)
[Begins-Rollout-of-Chip-Debit-Cards](https://www.businesswire.com/news/home/20140930005292/en/Bank-of-America-Begins-Rollout-of-Chip-Debit-Cards).

1 innovation,” the Bank chose to issue LWD Debit Cards using old, vulnerable
2 magnetic stripe technology to hundreds of thousands of the most financially
3 vulnerable New Jerseyans —Plaintiff and Class Members. To this day, the Bank
4 continues to issue LWD Debit Cards with no EMV chip, notwithstanding its
5 announcement nearly seven years ago that it would include EMV chip technology
6 on all consumer debit cards to help prevent fraud. Predictably, the issuance of LWD
7 Debit Cards without EMV chips has led to rampant fraud, resulting in the ongoing
8 loss of millions of dollars in LWD benefits intended to assist New Jerseyans who
9 lost their jobs, including during the COVID-19 pandemic.

10 **D. The Bank’s Contractual Promises and Representations to Cardholders**

11 33. Bank of America represented to Plaintiff and Class Members, in its
12 Cardholder Agreement and on its website, that they would not be responsible for
13 unauthorized transactions on their LWD Debit Cards or Accounts because of the
14 Bank’s “Zero Liability” policy, under which the Bank would fully protect them
15 against, and would reimburse them for, any unauthorized transactions. The Bank
16 also represented to Plaintiff and Class Members that they could call the Bank 24
17 hours a day 7 days a week to report any unauthorized transaction to live customer
18 services representatives, and that the Bank would promptly investigate the
19 transaction and determine whether it was unauthorized within 10 business days
20 thereafter, except that if the Bank took longer than 10 business days (but in no event
21 longer than 45 calendar days) to investigate the transaction, the Bank “will credit
22 your Account within 10 business days for the amount you think is in error, so that
23 you will have the money during the time it takes us to complete our investigation.”

24 34. On information and belief, the Bank’s agreement with New Jersey
25 Department of Labor & Workforce which governs the handling of the debit cards,
26 to which all LWD Debit Cardholders must agree, Bank of America sets forth the
27 above promises in detail. These cardholder agreements were effective at the time
28 Plaintiff received her benefits and thus has been effective throughout all claims

1 made by Plaintiff. The agreement with Bank of America provided for zero liability
2 for the card holder in the case of fraud.

3 **E. The Rampant Third-Party Fraud on LWD Debit Card Accounts**

4 35. In the spring of 2020, the COVID-19 pandemic devastated New
5 Jersey's economy, and hundreds of thousands of workers lost their jobs due to
6 business closures and mass layoffs. The state's unemployment rate skyrocketed to
7 heights not seen in 44 years following closure orders³. Industries such as
8 hospitality, food service, retail trade, and educational services were especially hard
9 hit.

10 36. As a result, thousands of New Jerseyans turned to the LWD
11 unemployment benefits programs administered by Bank of America to pay their
12 bills and make ends meet. Since the start of the COVID-19 pandemic in March
13 2020, LWD has received over 200 thousand claims for various unemployment
14 benefits. Bank of America has issued thousands of LWD Debit Cards to individuals
15 found by LWD to be eligible for unemployment benefits.

16 37. Tens of thousands of LWD Debit Cardholders have been the victims
17 of fraud throughout the pandemic, resulting in tens of millions of dollars having
18 been stolen from their Accounts, including through fraudulent ATM withdrawals,
19 such as Plaintiff and Class Members have experienced.

20 38. LWD Debit Cardholders have reported thousands of dollars stolen
21 through unauthorized use of their LWD Debit Cards. These unauthorized
22 transactions have taken various forms, including massive ATM withdrawals in
23 distant states and countries,⁴ thousand-dollar charges at luxury vendors, and
24

25 ³ The Post and Courier, *SC Posted Its Highest Unemployment Rate In At Least 44 Years Due To The Pandemic*;
26 https://www.postandcourier.com/health/covid19/sc-posted-its-highest-unemployment-rate-in-at-least-44-years-due-to-pandemic/article_2abebbea-9c2e-11ea-9553-cbb3fe0e5f5e.html

27 ⁴ See, e.g., CBSLA Staff, "Bank of America Freezes LWD Accounts of Nearly
28 350,000 Unemployed Californians for Suspected Fraud," *CBS Los Angeles* (Oct. 29, 2020), available at <https://losangeles.cbslocal.com/2020/10/29/bank-of->

1 repeated transactions with food delivery services. Regardless of how or where the
2 fraud has been carried out, the Bank’s LWD Debit Cards have proven highly
3 susceptible to unauthorized use.

4 39. After criminals exploit the security vulnerabilities of the Bank’s LWD
5 Debit Cards and Accounts and misappropriate Cardholder Information, that
6 information can be sold on the dark web, allowing the buyers to engage in
7 unauthorized use of funds belonging to Plaintiff and Class Members.⁵

8 40. Such rampant third-party fraud was readily foreseeable given the rapid
9 growth of the number of new unemployment benefits claims, as well as reports from
10 early in the pandemic warning of the potential for fraud and exploitation of the
11 unemployment benefits system by criminals. It is well known in the financial
12 industry that crises such as economic recessions lead to an increase in scams, fraud,
13 and other financial crimes. The early months of the COVID-19 pandemic in the
14 United States—March through May 2020—made clear that the pandemic would be
15 no exception. In late March 2020, the federal Coronavirus Aid, Relief, and
16 Economic Security (CARES) Act was signed into law, injecting \$2.2 trillion of
17 relief into the American economy, including \$260 billion in increased
18 unemployment benefits, and hundreds of billions of dollars more in one-time cash
19 payments to taxpayers and forgivable Paycheck Protection Program (“PPP”) loans.
20 This rapid influx of pandemic relief to individuals and businesses, combined with
21 rapid growth in the number of new claims for UI, PUA, and other public benefits
22 created a “perfect environment” for fraud that was widely reported in the American
23 media,⁶ and that led to a flood of warnings from government agencies and expert

24 _____
25 america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-
suspected-fraud/.

26 ⁵ *See id.*

27 ⁶ Ari Shapiro & Martin Kaste, “The Pandemic Creates A Perfect Environment
28 For New Types Of Fraud,” *NPR All Things Considered* (May 21, 2020),
<https://www.npr.org/2020/05/21/860584461/the-pandemic-creates-a-perfect->

1 nongovernmental organizations about major increases in malicious cyber activity
2 and financial fraud, including fraud targeting government unemployment benefits
3 and consumer banking and credit services.⁷ Reporting during the early months of
4 the pandemic also noted the major increases in fraudulent financial activity had,
5 predictably, caused a corresponding increase in demand on customer service phone
6 lines, causing many agencies and companies to hire additional customer service

7 _____
8 environment-for-new-types-of-fraud (reporting experts saying that there was a
9 “bonanza” and “gold rush right now” in pandemic-related financial crimes); Steve
10 Inskeep & Martin Kaste, Washington State Hit Hard by Unemployment Fraud,
11 *NPR Morning Edition* (May 22, 2020) (“scams thriving nationwide in the
12 uncertain conditions created by the pandemic,” including hundreds of millions of
13 dollars lost by Washington state to fraudulent unemployment claims).

14 ⁷ See, e.g., National Governor’s Association, *Memorandum To: All Governors*
15 *Re: COVID-19 and Cybersecurity* at 1 (Apr. 28, 2020) (“State agencies, critical
16 infrastructure sectors, and the general public are experiencing waves of COVID-
17 themed malicious cyber activity.”); Greg Iacurci, “If there’s coronavirus relief
18 money, scammers will try and steal it,” *CNBC* (May 6, 2020), [https://](https://www.cnn.com/2020/05/06/scammers-are-looking-to-steal-your-coronavirus-relief-money.html)
19 [www.cnn.com/2020/05/06/scammers-are-looking-to-steal-your-coronavirus-](https://www.cnn.com/2020/05/06/scammers-are-looking-to-steal-your-coronavirus-relief-money.html)
20 [relief-money.html](https://www.cnn.com/2020/05/06/scammers-are-looking-to-steal-your-coronavirus-relief-money.html) (“Federal agencies like the IRS, Federal Trade Commission,
21 Social Security Administration and FBI have warned consumers and business
22 owners in recent weeks to be vigilant as fraudsters try to take advantage of them
23 during the coronavirus pandemic,” including by targeting government financial
24 relief such as unemployment benefits); U.S. Dept. of Labor Press Release, *U.S.*
25 *Department Of Labor Issues Guidance And Reminders To States To Ensure*
26 *Integrity Of Unemployment Insurance Programs* (May 11, 2020), [https://](https://www.dol.gov/newsroom/releases/eta/eta20200511-1)
27 www.dol.gov/newsroom/releases/eta/eta20200511-1 (announcing new “targeted
28 guidance and reminders . . . to help states guard against fraud and abuse of their
unemployment insurance systems”); Mike Baker, “Feds Suspect Vast Fraud
Network Is Targeting U.S. Unemployment Systems,” *The New York Times* (May
16, 2020), available at [https://www.nytimes.com/2020/05/16/us/coronavirus-](https://www.nytimes.com/2020/05/16/us/coronavirus-unemployment-fraud-secret-service-washington.html)
[unemployment-fraud-secret-service-washington.html](https://www.nytimes.com/2020/05/16/us/coronavirus-unemployment-fraud-secret-service-washington.html); AnnaMaria Andriotis &
Orla McCaffrey, “Borrower, Beware: Credit-Card Fraud Attempts Rise During
the Coronavirus Crisis,” *The Wall Street Journal* (May 27, 2020), available at
[https://www.wsj.com/articles/borrower-beware-credit-card-fraud-attempts-rise-](https://www.wsj.com/articles/borrower-beware-credit-card-fraud-attempts-rise-during-the-coronavirus-crisis-11590571800)
[during-the-coronavirus-crisis-11590571800](https://www.wsj.com/articles/borrower-beware-credit-card-fraud-attempts-rise-during-the-coronavirus-crisis-11590571800) (reporting on the “big jump in
attempted credit- and debit-card fraud since coronavirus shut down the U.S.
economy” and that “[b]anks have increased their fraud projections for 2020”).

1 representatives.⁸ Bank of America nonetheless failed to take reasonable measures
 2 to prepare for, prevent, or respond to the readily foreseeable transactional fraud as
 3 relates to its LWD Debit Cards and Accounts.

4 **F. The Bank’s Evasive and Ineffectual Response Prior to the Filing of**
 5 **Plaintiff’s Initial Class Action Complaint**

6 41. Bank of America’s ineffective response to the rampant fraud has taken
 7 various forms, as detailed herein, including failing to employ reasonable procedures
 8 for monitoring, detecting, stopping, and notifying Plaintiff and Class Members
 9 about highly suspicious transactions in their Accounts; not answering the customer
 10 service phone lines it advises LWD Debit Cardholders to call; establishing
 11 “customer service” procedures that frustrate and obstruct Plaintiff’s and Class
 12 Members’ efforts to file fraud claims; opening fraud claims and then promptly
 13 closing them without conducting a reasonable and good faith investigation;
 14 unilaterally reversing “permanent” credits previously granted for unauthorized
 15 transactions without reasonable and good faith basis and without advance notice to
 16 the LWD Debit Cardholder; failing to extend provisional credit to LWD Debit
 17 Cardholders without reasonable and good faith basis; and indefinitely freezing or
 18 blocking the Accounts of LWD Debit Cardholders who call Bank of America to
 19 report third-party fraud on their Accounts.⁹

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22 ⁸ See, e.g., Baker, *supra* note 9 (phone calls reporting fraud “flooded”
 23 Washington state unemployment benefits agency and “forced the state to hire
 24 more people to answer the phones”); Andriotis *et al.*, *supra* note 9 (cardholders of
 25 major credit card issuers experiencing difficulty “getting customer-service
 representatives on the phone to remove charges and replace cards”).

26 ⁹ Kenny Choi, “Victims of Bank of America Bank Debit Card Fraud Tell
 27 Stories of Fake Charges, Long Waits, Closed Claims,” *KPIX–CBS SF Bay Area*
 28 (Dec. 22, 2020), available at <https://sanfrancisco.cbslocal.com/2020/12/22/victims-of-bank-of-america-edd-debit-card-fraud-tell-stories-of-closed-claims-frustration-loss/>.

1 **1. The Bank’s Policy and Practice of Making it Difficult for**
2 **Cardholders to Report Unauthorized Transactions**

3 42. The Bank has prevented many Plaintiff and Class Members from being
4 able to report fraud in a timely manner, or even at all. Notwithstanding the
5 foreseeable spike in calls that the Bank knew or should have known would
6 inevitably accompany the dramatic increase in unemployment benefits recipients,
7 the Bank failed to appropriately staff its customer service call centers in a manner
8 that would enable the Bank to honor its contractual commitments under the LWD-
9 Bank Contract and to provide reasonable levels of assistance to the predictably large
10 volume of LWD Debit Cardholders seeking assistance during this pandemic. As a
11 result, Plaintiff and Class Members attempting to report fraud or to inquire about
12 potential fraud have been kept on hold for hours, have been disconnected without
13 warning, have waited long periods of time to speak with someone only to be told to
14 call back later, have been transferred to various departments with no apparent end
15 or sent to voicemail, have had to deal with unhelpful automated agents, and have
16 unsuccessfully attempted to reach the Bank by email.

17 **2. The Bank’s Policy and Practice of Automatically Denying**
18 **Unauthorized Transaction Claims Without Reasonable**
19 **Investigation or Explanation, Including Based Solely on a**
20 **Highly Flawed “Claim Fraud Filter”**

21 43. Even when Plaintiff and Class Members have been able to report
22 unauthorized transactions to the Bank, the Bank has had a policy and practice since
23 at least October 2020 of automatically and summarily denying the fraud claims of
24 LWD Debit Cardholders without adequate investigation or explanation, including
25 based solely and exclusively on the results of the Bank’s highly flawed and
26 unreliable automated “fraud filter” (“Claim Fraud Filter”), which it applies
27 whenever an LWD Cardholder reports an unauthorized transaction on their
28 Account, purportedly to determine if the claimant is using a stolen identity. Pursuant
to this policy and/or practice, the Bank has failed to provide provisional credit to

1 tens or hundreds of thousands of Cardholders who filed a fraud claim and were
2 flagged by the Bank's Claim Fraud Filter. Instead of investigating the claim and
3 providing provisional credit as required by law, the Bank sent those Cardholders a
4 form letter, often dated the very same day or within a day or two of the Cardholder's
5 report of the unauthorized transactions, closing the Cardholder's claim. The form
6 letter states, "Your claim has been closed because we believe the account or the
7 claim have been the subject of fraud or suspicious activity. Any temporary credit
8 that was applied to your account related to this claim, including any related
9 reimbursement of fees, has been or will be debited from your account and reflected
10 in your available balance, if any." The form letter does not provide any
11 individualized information explaining what the Bank's investigation, if any,
12 entailed, nor does it explain the basis for the Bank's determination.

13 44. The Bank's form letter provides a telephone number that Cardholders
14 should call if they wish to "request that [the Bank] reopen your claim for further
15 consideration," but LWD Debit Cardholders who have called the Bank at that
16 number to make such a request have been given erroneous information or have been
17 told they cannot be helped. Even those who have submitted detailed documentation
18 to the Bank substantiating their fraud claims, such as sworn statements, police
19 reports, and documentary proof of their whereabouts at the time the fraudulent
20 transactions occurred (e.g., that they were nowhere near the ATM from which their
21 funds were withdrawn) have been often ignored and forced to go months without
22 receiving any update from the Bank regarding the status of their claim. Some who
23 submitted additional information simply received yet another form letter from the
24 Bank summarily reaffirming without explanation the Bank's original decision
25 denying the fraud claim. Even those whose claims have been reopened were not
26 issued provisional credit pending completion of the Bank's investigation and were
27 not guaranteed that the Bank's investigation will be completed within a certain
28 number of days.

1 45. The Bank adopted its policy and practice of automatically denying the
2 fraud claims of LWD Debit Cardholders in an attempt to circumvent its obligations
3 under EFTA and Regulation E, which require the Bank to issue provisional credit
4 if it has not completed a good-faith investigation within 10 business days of a
5 Cardholders' report of fraud, to complete a good-faith investigation of the claim
6 within no more than 45 days, and thereafter to issue permanent credit absent a
7 reasonable basis for believing no fraud occurred. In implementing this unlawful
8 policy and practice, the Bank sought to protect its own financial interests at the
9 expense of legitimate claimants whose life-sustaining public benefits had been
10 stolen.

11 46. The Bank also implemented its policy and practice of automatically
12 denying the fraud claims of LWD Debit Cardholders *retroactively* by rescinding
13 "permanent" credits that the Bank had previously paid. Thus, many Plaintiff and
14 Class Members who previously had been "permanently" credited with the amount
15 of the funds that had been stolen from them and who had been previously informed
16 by the Bank that their fraud claims were favorably resolved suddenly and without
17 explanation had that same amount *debited* from their LWD Debit Card Accounts,
18 sometimes leaving their Accounts with a negative balance. As a result, when those
19 Cardholders received their next LWD benefits payment deposit into the LWD Debit
20 Card Account, they were not actually able to access those benefits because the new
21 LWD benefits payments were credited against the negative balance in their Account
22 that resulted from the Bank's actions.

23 **3. The Bank's Policy and Practice of Automatically and**
24 **Indefinitely Freezing Cardholders' Accounts When They**
25 **Report Unauthorized Transactions, Based on a Highly**
26 **Flawed "Claim Fraud Filter"**

27 47. In and around October 2020, the Bank implemented an additional
28 policy and practice of responding to LWD Debit Cardholders who report
unauthorized transactions by automatically and indefinitely freezing or blocking

1 their LWD Debit Card Accounts without any prior notice, explanation, or
2 opportunity to be heard, including based solely on the results of the Bank’s highly
3 flawed and unreliable automated Claim Fraud Filter. A Cardholder whose Account
4 is frozen or blocked cannot access any funds in their Account; moreover, the Bank
5 will not accept LWD benefits payments from LWD for deposit into a frozen
6 Account. Thus, many Class Members have had the experience of reporting that they
7 were **the victims** of fraudulent transactions and receiving assurances from the Bank
8 that it will cancel their old LWD Debit Card and issue a new one, only to discover
9 that their new LWD Debit Card is useless because the Bank has frozen (or blocked)
10 their LWD Debit Card Account. The Bank implements this policy and practice of
11 freezing or blocking Accounts without any prior notice, thus depriving such
12 Cardholder of access to any LWD benefits that may have been in the Account at
13 the time. Moreover, the Bank’s practice of freezing or blocking Accounts cuts off
14 the affected LWD Debit Cardholders’ access to any continuing benefits that the
15 LWD deposits into the Cardholder’s blocked Account or attempts to deposit into
16 the Cardholder’s frozen Account—LWD benefits to which LWD has determined
17 the Cardholder is entitled. As a result, many LWD Debit Cardholders who are the
18 victims of third-party fraud and who turn to the Bank for help, find themselves
19 indefinitely deprived of access to *all* their LWD benefits and treated as if *they* are
20 the criminals.

21 48. Bank of America has frozen many Cardholders’ Accounts for months
22 on end, without providing them any information as to when their Accounts will be
23 unfrozen or how they can facilitate that unfreezing. Some LWD Debit Cardholders
24 whose Accounts are frozen in this manner have eventually received notice from the
25 Bank weeks or months after the fact, but that notice simply states, “It has been
26 determined that there may be irregular, unauthorized, or unlawful activities
27 involved with the prepaid debit card issued to you. As a result . . . a freeze (or hold)
28 has been placed on your account.” The notice states that once the Bank freezes your

1 Account, you “will be unable to use the prepaid debit card or access the money in
2 your account,” and that the Account “will not be available to receive any additional
3 benefits that may be issued to you by [LWD].” The notice further states, “If a
4 conclusion is reached that there is no irregular, unauthorized, or unlawful activity
5 on your account, your account will be unfrozen and your balance will become
6 available in accordance with the terms of the card account agreement and state
7 agency guidelines,” but the notice does not advise the affected Cardholder as to
8 what steps they can take to regain access to their Account.

9 49. After Bank of America has frozen a LWD Debit Card Account in
10 response to a report of transactional fraud, the Bank has had a policy and practice
11 of telling LWD Debit Cardholders they are required to re-establish their identity
12 and re-verify eligibility with LWD as a condition of unfreezing the Account—even
13 if LWD itself has not raised any question regarding the individual’s identity or
14 benefits eligibility. Bank of America has imposed this onerous and unreasonable
15 condition on Cardholders who report third-party transactional fraud regardless of
16 whether there is a reasonable basis for suspecting them of having committed
17 benefits eligibility fraud, and despite knowing that LWD’s call center has been
18 completely overwhelmed by the surge in unemployment benefits recipients
19 throughout the pandemic and that many individuals who call LWD will never get
20 through.

21 50. Even after Cardholders have complied with this onerous and
22 unreasonable Bank-imposed requirement of contacting LWD and obtaining
23 confirmation from LWD that they either do not need to re-verify or have
24 successfully re-verified their benefits eligibility, Bank of America *still* has not
25 unfrozen their LWD Debit Card Account, continuing without explanation to
26 deprive Cardholders of access to their LWD benefits and refusing to process their
27 fraud claims or refund their stolen money, sometimes for months longer.

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1 **4. The Bank’s Policy and Practice of Denying Reasonable**
2 **Customer Service to Cardholders Seeking Assistance with**
3 **Fraud Claims and the Unfreezing of Accounts**

4 51. Desperate and confused, LWD Debit Cardholders whose fraud claims
5 have been summarily denied and/or whose LWD Debit Card Accounts have been
6 suddenly frozen have spent months calling the Bank’s customer service hotline, to
7 no avail.

8 52. The Bank has failed to appropriately staff its customer service call
9 centers in a manner that would allow it to honor its contractual commitments under
10 the LWD-Bank Contract and to provide reasonable levels of assistance to the
11 predictably large volume of LWD Debit Cardholders seeking assistance during this
12 pandemic. Further, the Bank has a policy and practice of failing to provide its
13 customer service representatives the tools or authority necessary to assist
14 Cardholders who call seeking assistance in resolving their fraud claims or
15 unfreezing their Accounts. Although the Bank at some point in the Fall of 2020
16 hired additional customer service agents, on information and belief those newly
17 hired customer service agents are not adequately trained and are not empowered to
18 investigate or resolve fraud claims, and the number of customer service agents
19 continued to be too low to handle incoming calls, resulting in hours-long wait times
20 if Cardholders can get through at all.

21 53. Despite the Bank’s promise of 24/7 customer service, Plaintiff and
22 Class Members have found themselves repeatedly kept on hold, sometimes for
23 hours, waiting to speak to a live agent. Plaintiff and Class Members have routinely
24 been disconnected, hung up on, and treated rudely by overworked and overwhelmed
25 agents. They often spend hours on hold with customer service, despite the Bank
26 having represented in its Cardholder Agreement that “[t]elephoning is the best way
27 of keeping your possible losses down.” Even when Plaintiff and Class Members
28 finally reach customer service representatives, those representatives are unable to

1 offer any meaningful assistance, often conveying false information or contradicting
2 one another.

3 54. The Bank’s representatives also often provide erroneous information
4 to Plaintiff and Class Members regarding the source of their Account freezes.
5 Countless Class Members have been told that the Bank has no control over the
6 freeze, that LWD is the entity responsible for the freeze, and that only LWD has the
7 power to unfreeze their LWD Debit Card Accounts. But when Class Members call
8 LWD, LWD informs them that it has no control over their LWD Debit Card
9 Accounts and that the freeze is entirely within the Bank’s control. Even when Class
10 Members re-verify their identity with LWD, LWD confirms their eligibility for
11 LWD benefits, and LWD or Class Members convey this information to the Bank,
12 the Bank *still* does not unfreeze their Accounts. In some cases, LWD has resumed
13 paying benefits to Class Members through paper checks upon specific request by a
14 Cardholder, but those Class Members have continued to be unable to access funds
15 in their LWD Debit Card Accounts, which remain frozen.

16 55. Bank of America’s inadequate response to LWD Debit Cardholders’
17 issues with fraud on their Cards and Accounts results from the Bank’s failure to
18 adequately staff its customer-service and fraud-investigation departments, and from
19 Bank procedures that are designed to, or that the Bank knows or reasonably should
20 know will, frustrate and obstruct Cardholders’ efforts to submit their claims and to
21 obtain reimbursement under EFTA and the Bank’s “Zero Liability” policy.

22 56. Many LWD Debit Cardholders have characterized their efforts to
23 obtain relief from the Bank for the wrongful conduct alleged herein as an “unofficial
24 full-time job trying to get the money back.” One defrauded LWD Debit Cardholder
25 reported: “It’s kind of like a nightmare Every day I’m wondering what’s more
26 important. Do I get on the phone with the bank and try again so I have a place to

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1 sleep tomorrow, or do I just accept that I'm going to be on the street and focus on
2 my job search? Because you can't do both."¹⁰

3 57. A Bank of America customer service worker, addressing the Bank's
4 response to the influx of reports of third-party debit card fraud, stated: "We're
5 actually no longer allowed to tell them a timeframe, because we have no clue
6 Every day, I talk to 30 people with the same story. I just pray for them after my
7 shift, honestly."¹¹

8 58. Bank of America's disregard for LWD Debit Cardholders' issues with
9 fraud and the Bank's inadequate response contradicts the representations it made to
10 the State in its proposal to administer the LWD public benefits program, in which
11 the Bank represented, "we pride ourselves on providing stellar customer service to
12 every caller. Long call hold wait times and busy signals are not tolerated at Bank of
13 America."

14 **5. The Bank's Policies and Practices Continue to Harm**
15 **Cardholders**

16 59. Despite the apparent issues with depending on the Claim Fraud Filter
17 as a basis for denying or closing unauthorized transaction claims or as a basis for
18 "freezing" any Class Member's Account, the Bank continues to apply the Claim
19 Fraud Filter to every Class Member who reports an unauthorized transaction and
20 continues to rely on the results of the Claim Fraud Filter as a basis for "blocking"
21 those Class Members' Accounts. Just as Class Members whose Accounts are
22 "frozen" are denied access to funds in their Accounts, Class Members whose
23 Accounts are "blocked" are likewise unable to access any LWD Benefits still
24 remaining in their Account and are unable to access any continuing LWD Benefits

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26 ¹⁰ Lauren Hepler & Stephen Council, "How Bank of America Helped Fuel
27 California's Unemployment Meltdown," *CalMatters* (Nov. 20, 2020), available at
28 <https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-california-unemployment-meltdown/>.

¹¹ *Id.*

1 that LWD deposits into their Account while their Account is blocked.

2 60. On information and belief, the Bank continues to block the Accounts
3 of thousands if not tens of thousands of Class Members *each month* based solely on
4 the results of the Bank's highly flawed and unreliable Claim Fraud Filter, thus
5 depriving Class Members of access to critical unemployment and other public
6 benefits to which the LWD has found they are entitled and on which they and their
7 families depend for food, shelter, and other basic life necessities.

8 61. Moreover, Class Members continue to experience unauthorized
9 transactions on their LWD Debit Card Accounts.

10 **G. Class Representative Plaintiff's Experiences Dealing with Bank of**
11 **America's Customer Service and Trying to Obtain Reimbursement**
12 **and to Unfreeze their Accounts**

13 62. Cassandra Valerie Beaman is a New Jersey resident. In March 2020,
14 after losing her job due to the COVID-19 pandemic, she applied for and began
15 receiving unemployment benefits.

16 63. On May 23, 2021, she experienced fraud on her account. The
17 fraudulent transactions included purchases totaling approximately \$300. On May
18 23, 2021, she discovered the fraudulent transactions when she called Bank of
19 America after her card was declined. Bank of America told her a fraudulent person
20 made purchases on the account. On May 23, 2021, during the same phone call, she
21 reported the fraud to Bank of America.

22 64. Since May 23, 2021, Bank of America has yet to credit her account for
23 any of the fraudulently stolen money. Further, on May 23, 2021, Bank of America
24 illegally froze her account. Bank of America has yet to unfreeze her account.

25 65. Since May 2021, she has called Bank of America over twenty times.
26 Bank of America's told her she needed to re-verify her identity to gain access to her
27 account; however, when she completed this process, Bank of America still failed to
28 give her access to her account and her unemployment funds.

1 66. As a direct consequence of Bank of America's actions, she missed one
 2 \$200 rent payment. She missed one \$60 phone bill. She struggled to afford food,
 3 gas, and clothing. She is also pregnant and suffers severe anxiety over the prospect
 4 of failing to provide for her new-born child.

5 V. CLASS ACTION ALLEGATIONS

6 67. Class Representative Plaintiff bring this lawsuit individually and as a
 7 class action pursuant to Federal Rule of Civil Procedure 23, seeking declaratory and
 8 injunctive relief and damages on behalf of a class defined as follows (the "Class"):

9 All persons who were Bank of America LWD Debit Cardholders at any
 10 time between January 1, 2020 and the present ("Class Period"), and
 11 whose eligibility for benefits LWD has not revoked for failure to
 12 establish valid identity.

13 68. Plaintiff further seek declaratory and injunctive relief, restitution,
 14 disgorgement, and statutory and actual damages on behalf of the following
 15 Subclasses:

16 **Claim Denial Subclass:** All Class Members who, during the Class
 17 Period, gave the Bank notice of a claim that an unauthorized transaction
 18 had occurred on their Account ("Claim") and whose Claim the Bank
 19 closed or denied based on application of the Claim Fraud Filter.

20 **Untimely Investigation Subclass:** All Class Members who, during the
 21 Class Period, received provisional credit in connection with their claim
 22 for an unauthorized transaction that the Bank rescinded more than 45
 23 days after the Bank received notice of the claim.

24 **Credit Rescission Subclass:** All Class Members who, during the Class
 25 Period, received provisional or permanent credit from the Bank in
 26 connection with their Claim, which the Bank rescinded more than 45
 27 days after the Class Member gave notice of the Claim.

28 **Account Freeze Subclass:** All Class Members whose LWD Debit
 Card Account the Bank froze during the Class Period based on
 application of the Claim Fraud Filter and later unfroze or later
 converted from frozen to blocked status and then unblocked.

1 **Account Block Subclass:** All Class Members whose LWD Debit Card
2 Account the Bank blocked during the Class Period based on application
3 of the Claim Fraud Filter and later unblocked.

4 **Security Breach Subclass:** All Class Members whose Card, Account,
5 or other personal information in the possession of the Bank or its agents
6 was, during the Class Period, accessed or taken by a third party without
7 the Class Member's consent.

8 **EMV Chip Subclass:** All Class Members whose LWD Debit Card,
9 during the Class Period, did not include an EMV chip and whose Card,
10 Account, or other personal information was accessed or taken from the
11 Card by a third party without the Class Member's consent.

12 69. Plaintiff reserves the right under Rule 23 to amend or modify the Class
13 and Subclass descriptions and/or add one or more subclasses based on information
14 obtained in the course of this litigation.

15 70. All Class Members have suffered or are threatened with imminent
16 injury during the Class Period, caused by Defendants' wrongful acts and omissions,
17 as alleged herein.

18 71. This action has been brought and may properly be maintained as a class
19 action against Defendants pursuant to the following provisions of Rule 23.

20 a. **Numerosity (Rule 23(a)(1)):** The members of the Class and
21 each Subclass are so numerous that their individual joinder is impracticable. Bank
22 of America provided hundreds of thousands of LWD benefits recipients with LWD
23 Debit Cards that used only outdated magnetic stripe technology (no EMV chip) and
24 subjected these individuals to an undue risk of experiencing fraudulent transactions
25 on their LWD Debit Cards and Accounts. The identities of, and contact information
26 for, those individuals may readily be obtained through the Bank's business records
27 or the business records of its affiliated entities. Tens of thousands of LWD Debit
28 Cardholders reported unauthorized transactions to the Bank and had their
29 unauthorized transaction claims summarily closed or denied by the Bank without
30 explanation and without issuance of provisional or permanent credit. In addition,

1 tens of thousands of LWD Debit Cardholders have had their Cards and Accounts
2 frozen or blocked by the Bank.

3 **b. Commonality and Predominance (Rule 23(a)(2) and**
4 **23(b)(3)):** Many questions of law and fact are common to the Class and Subclasses.
5 These questions predominate over any questions affecting only individual Class
6 Members. These common legal and factual issues include, but are not limited to:

7 i. Whether the Bank had or has a policy and/or practice of denying
8 LWD Debit Cardholders' unauthorized transaction claims
9 without having conducted a good-faith investigation that results
10 in the Bank having a reasonable basis for believing that the
11 Cardholder authorized or benefitted from the transaction,
12 including denying claims based solely on the results of the
13 Claim Fraud Filter.

14 ii. Whether the Bank had or has a policy and/or practice of denying
15 LWD Debit Cardholders' unauthorized transaction claims
16 without providing the Cardholder with a report of the results of
17 the Bank's investigation of the claim that includes a written
18 explanation of the Bank's findings.

19 iii. Whether the Bank had or has a policy and/or practice of not
20 provisionally or permanently crediting the Accounts of LWD
21 Debit Cardholders in the amount of an unauthorized transaction
22 claim within 10 business days of the Bank receiving notice of
23 the claim, and without having conducted a good-faith
24 investigation that results in the Bank having a reasonable basis
25 for believing that the Cardholder authorized or benefitted from
26 the transaction.

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- 1 iv. Whether the Bank had or has a policy and/or practice of
- 2 knowingly and willfully denying LWD Debit Cardholders’
- 3 unauthorized transaction claims.
- 4 v. Whether the Bank had or has a policy and/or practice of
- 5 automatically freezing the LWD Debit Card Accounts of
- 6 Cardholders who report unauthorized transactions, including
- 7 based solely on the results of the Claim Fraud Filter.
- 8 vi. Whether the Bank had or has a policy and/or practice of failing
- 9 to provide its customer service representatives with the
- 10 training, tools, or authority necessary to reasonably assist
- 11 LWD Debit Cardholders who call about resolving their
- 12 unauthorized transaction claims or unfreezing their Accounts.
- 13 vii. Whether the Bank violated or is violating EFTA and
- 14 Regulation E by having a policy and/or practice of denying
- 15 LWD Debit Cardholders’ unauthorized transaction claims
- 16 without having conducted a good-faith investigation that
- 17 results in the Bank having a reasonable basis for believing that
- 18 the Cardholder authorized or benefitted from the transaction,
- 19 including denying claims based solely on the results of the
- 20 Claim Fraud Filter.
- 21 viii. Whether the Bank violated or is violating EFTA and
- 22 Regulation E by having a policy and/or practice of denying
- 23 LWD Debit Cardholders’ unauthorized transaction claims
- 24 without providing the Cardholder with a report of the results of
- 25 the Bank’s investigation of the claim that includes a written
- 26 explanation of the Bank’s findings.
- 27 ix. Whether the Bank is violating or violated EFTA and
- 28 Regulation E by having a policy and/or practice of not

- 1 provisionally or permanently crediting the Accounts of LWD
2 Debit Cardholders in the amount of an unauthorized
3 transaction claim within 10 business days of the Bank
4 receiving notice of the claim, and without having conducted a
5 good-faith investigation that results in the Bank having a
6 reasonable basis for believing that the Cardholder authorized
7 or benefitted from the transaction.
- 8 x. Whether the Bank is a state actor under the “public function”
9 test, the “joint action” test, or any other test for state action
10 status.
- 11 xi. Whether the Bank violated Plaintiff’s and Class Members’
12 federal or state due process rights by having a policy and/or
13 practice of automatically and indefinitely freezing and/or
14 blocking their LWD Debit Card Accounts, without providing
15 them with adequate notice or an opportunity to be heard, when
16 they report unauthorized transactions on their Accounts.
- 17 xii. Whether the Bank owed a duty of care to Plaintiff and Class
18 Members, including because of the fiduciary relationship
19 between the Bank and its LWD Debit Cardholders, under the
20 LWD-Bank Contract, under the Cardholder Agreement, or
21 under any other contract between the Bank and Cardholders.
- 22 xiii. Whether Plaintiff and Class Members are third-party
23 beneficiaries of the LWD-Bank Contract.
- 24 xiv. Whether the Bank breached its duties to Plaintiff and Class
25 Members, including by using outdated fraud-prevention
26 technology in its LWD Debit Cards and Accounts, by not
27 adequately monitoring LWD Debit Cards and Accounts for
28 suspicious activity, by not conducting appropriate follow-up or

1 investigation when unauthorized transaction claims were
2 made, by failing to comply with EFTA and its own “Zero
3 Liability” policy, and by otherwise failing to make Plaintiff
4 and Class Members whole for unauthorized transactions on
5 their Accounts.

6 xv. Whether the Bank acted negligently in its hiring, supervision,
7 and retention of TTEC and other subcontractors and agents
8 who have access to Plaintiff’s and Class Members’ sensitive
9 Cardholder Information.

10 xvi. Whether TTEC was the Bank’s actual, apparent, or ostensible
11 agent in its negligent hiring, supervision, and retention of
12 employees who mishandled or misappropriated Plaintiff’s and
13 Class Members’ sensitive Cardholder Information.

14 xvii. Whether the Bank should be enjoined from freezing LWD
15 Debit Card Accounts or from failing to take the reasonable
16 steps necessary to avoid causing additional future harm to
17 Plaintiff and Class Members as the result of the Bank’s acts
18 and omissions alleged herein.

19 xviii. Whether the Bank should pay damages and interest or provide
20 restitution, reimbursement, and/or other relief to Plaintiff and
21 Class Members.

22 c. **Typicality (Rule 23(a)(3)):** Class Representative Plaintiff’s
23 claims are typical of the claims of the members of the putative Class. Class
24 Representative Plaintiffs, like all other members of the putative Class, sustained
25 economic and other damages as a result of the Bank’s wrongful acts and omissions
26 as alleged herein. Class Representative Plaintiff and members of the putative Class
27 were and are similarly or identically harmed by the Bank’s same unlawful,
28 deceptive, unfair, systematic, and pervasive pattern of misconduct as alleged herein.

1 d. **Adequacy of Representation (Rule 23(a)(4)):** Class
2 Representative Plaintiff will fairly and adequately represent and protect the interests
3 of the putative Class Members and have retained competent and qualified counsel
4 with extensive experience in complex litigation and class action litigation. There
5 are no material conflicts between the claims of the Class Representative Plaintiff
6 and the members of the putative Class that would make class certification
7 inappropriate. Counsel for the putative Class will vigorously prosecute the claims
8 of all putative Class Members.

9 72. This action is properly maintained as a class action pursuant to Rule
10 23(b) of the Federal Rules of Civil Procedure for the following reasons:

11 a. **Class Action Status (Rule 23(b)(1)):** Class action status is
12 appropriate under Rule 23(b)(1)(A) because prosecution of separate actions by each
13 of the thousands of putative Class Members would create a risk of establishing
14 incompatible standards of conduct for the Bank and inconsistent results for Class
15 Members. Class action status is also appropriate under Rule 23(b)(1)(B) because
16 prosecution of separate actions by putative Class Members would create a risk of
17 adjudication with respect to individual members of the Class that, as a practical
18 matter, would be dispositive of the interests of other members not parties to this
19 action or would substantially impair or impede their ability to protect their interests.

20 b. **Declaratory and Injunctive Relief (Rule 23(b)(2)):**
21 Certification under Rule 23(b)(2) is appropriate because the Bank acted or refused
22 to act on grounds generally applicable to the putative Class, thereby making
23 appropriate final injunctive, declaratory, or other appropriate equitable relief with
24 respect to the putative Class as a whole.

25 c. **Predominance and Superiority (Rule 23(b)(3)):** Certification
26 of the Subclasses under Rule 23(b)(3) is appropriate because questions of law or
27 fact common to putative Subclass Members predominate over any questions
28 affecting only individual members, and because class action treatment is superior

1 to the other available methods for the fair and efficient adjudication of this
2 controversy.

3 d. **Issue Certification (Rule 23(c)(4)):** Certification of issues of
4 liability and statutory and treble damages under Rule 23(c)(4) is appropriate
5 because these issues are common to putative Class Members and resolution of these
6 common issues on a class-wide basis will materially advance the disposition of the
7 litigation as a whole.

8 e. The Class and each Subclass is ascertainable from the Bank’s
9 own records, and there is a well-defined community of interest in the questions of
10 law or fact alleged herein since the rights of each Class Member and each Subclass
11 Member were infringed or violated in the same or similar fashion.

12 **VI. CAUSES OF ACTION**

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATIONS OF THE ELECTRONIC FUND TRANSFERS ACT**

15 **(15 U.S.C. §§1693 et seq.; 12 C.F.R. §§1005.1 et seq.)**

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

18 74. Plaintiff brings this cause of action pursuant to the Electronic Fund
19 Transfers Act (“EFTA”), 15 U.S.C. §§1693 et seq., and Regulation E of EFTA, 12
20 C.F.R. §§1005.1–1005.20.

21 75. Plaintiff and Class Members provided notice to Bank of America
22 within 60 days after Bank of America sent a period statement reflecting an
23 unauthorized transaction (which is an “error” under Regulation E) consistent with
24 15 U.S.C. §1693f and 12 C.F.R. §1005.11. As reflected (or should be reflected in
25 Bank of America’s own records, absent the customer service failures alleged
26 herein), Plaintiff and Class Members provided sufficient information to identify the
27 unauthorized transaction and reasons for their belief that the transaction was
28 unauthorized.

1 76. Bank of America violated 15 U.S.C. §1693f and 12 C.F.R. §1005.11,
2 including but not limited to through its implementation of each of the following
3 policies and/or practices:

4 a. Adopting and implementing policies and practices designed to
5 circumvent the Bank’s statutory and regulatory obligations under 15 U.S.C. §1693f
6 and Regulation E, including by frustrating and obstructing Plaintiff’s and Class
7 Members’ efforts to submit unauthorized transaction claims and by denying their
8 claims without having conducted a reasonable investigation or having a reasonable
9 basis for believing that the Cardholder had authorized or benefitted from the
10 transaction in question;

11 b. Failing to provide provisional credit to Plaintiff and Class
12 Members relating to error investigations that could not be resolved within 10
13 business days;

14 c. Not issuing provisional credit to Plaintiff and Class Members
15 within 10 business days of the Bank receiving notice the Plaintiff’s or Class
16 Member’s unauthorized transaction claim, despite the Bank having no intention of
17 conducting a good-faith investigation of the claim within 10 business days, and
18 despite not completing a good-faith investigation of the claim within 10 business
19 days;

20 d. Failing to conduct good-faith investigations into alleged errors
21 or unauthorized transactions that Plaintiff and Class Members timely reported to
22 the Bank;

23 e. Failing to conduct good-faith investigations into the alleged
24 errors or unauthorized transactions within 45 days of the date that the Plaintiff or
25 Class Member timely reported the alleged error or unauthorized transaction;

26 f. Denying Plaintiff’s and Class Members’ claims of error without
27 having conducted a good-faith investigation, including by denying claims based

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1 solely on the results of the Bank's automated and highly unreliable and inaccurate
2 Claim Fraud Filter;

3 g. Denying Plaintiff's and Class Members' claims of error without
4 having a reasonable basis for concluding that their Accounts were not in error, and
5 where the Bank could not reasonably have drawn its conclusion that no error
6 occurred based on the evidence available to the Bank at the time;

7 h. Denying Plaintiff's and Class Members' claims of error without
8 providing a report of the results of the Bank's investigation of the claim that
9 includes a written explanation of the Bank's findings.

10 i. Failing to credit Plaintiff's and Class Members' LWD Debit
11 Card Accounts with interest on the amounts of unauthorized transactions that Bank
12 wrongly denied, for the period during which Plaintiff and Class Members were
13 without access to those funds;

14 j. Freezing Plaintiff's and Class Members' LWD Debit Card
15 Accounts in order to avoid the Bank's legal obligations and to prevent Plaintiff and
16 Class Members from accessing their funds; and

17 k. Unilaterally reopening claims of error long after they had
18 already been resolved in the LWD Debit Cardholders' favor and debiting the
19 amounts previously credited to the Cardholder's Account, without basis to do so.

20 77. In situations where Bank of America has violated Regulation E by
21 failing to provisionally credit Plaintiff's and Class Members' LWD Debit Card
22 Accounts within 10 business days of the reported error, the Bank has neither
23 conducted a good faith investigation nor had a reasonable basis for believing that
24 the Account was not in error. Plaintiff and Class Members are therefore entitled to
25 treble damages under 15 U.S.C. §1693f(e).

26 78. Bank of America knowingly and willfully concluded that Plaintiff's
27 and Class Members' LWD Debit Card Accounts were not in error when such
28 conclusion could not reasonably have been drawn from the evidence available to

1 the Bank at the time of its investigation. Plaintiff and Class Members are therefore
2 entitled to treble damages under 15 U.S.C. §1693f(e).

3 79. Bank of America violated EFTA and Regulation E by failing to limit
4 Plaintiff's and Class Members' liability as required by 15 U.S.C. §1693m and 12
5 C.F.R. §1005.6(b).

6 80. Plaintiff provided notice to Bank of America less than two business
7 days after learning of the fraudulent transactions that occurred in their LWD Debit
8 Card Accounts. Under 12 C.F.R. §1005.6(b)(1), Plaintiff's and Class Members'
9 liability is capped at \$50 in these circumstances. Bank of America has subjected
10 Plaintiff and Class Members to far greater than \$50 in liability through its wrongful
11 conduct as alleged herein.

12 81. Under 12 C.F.R. §1005.6(b)(2), \$500 is the maximum liability that
13 may be imposed on an accountholder who does not provide notice to the financial
14 institution within two business days after learning of a suspected unauthorized
15 transaction. Bank of America has subjected Plaintiff and Class Members to far
16 greater than \$500 in liability through its wrongful conduct as alleged herein.

17 82. Regarding any Class Members who did not provide Bank of America
18 with actual notice within two business days of learning of a suspected unauthorized
19 transaction, the Bank was on constructive notice, under 12 C.F.R.
20 §1005.6(b)(5)(iii), of widespread unauthorized electronic fund transfers from LWD
21 Debit Card Accounts since the beginning of the COVID-19 pandemic. Since that
22 time, countless unauthorized fund transfers have occurred and continue to occur
23 from those Accounts. The volume of calls from LWD Debit Cardholders to the
24 Bank's customer service to report unauthorized transactions has been, and
25 continues to be, so great, and the Bank's customer service department is so
26 understaffed, that the Bank routinely causes LWD Debit Cardholders to wait on
27 hold for multiple hours. The widespread fraud specifically targeting LWD Debit

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1 Cardholders has been widely reported in the media and has been the subject of
2 significant attention from New Jersey legislators.

3 83. In no event should any Class Member be liable for over \$500 of
4 damages under 12 C.F.R. §1005.6. Bank of America has violated 12 C.F.R. §1005.6
5 by imposing hundreds and thousands of dollars of liability on unemployed New
6 Jerseyans.

7 84. As a direct and proximate result of Bank of America violations of
8 Regulation E, Plaintiff and Class Members have lost money.

9 85. Plaintiff, on behalf of herself and the Class, seek an injunction barring
10 Bank of America from denying provisional credit and denying fraud claims without
11 having timely conducted a good faith investigation of the alleged fraud and without
12 a reasonable basis for believing that the transaction was authorized, and barring
13 Bank of America from otherwise violating EFTA and Regulation E. Plaintiff, on
14 behalf of herself and the Fraud Claim Denial Subclass, further seek the following
15 relief: (a) actual damages with interest; (b) restitution of all LWD benefits funds
16 improperly debited by Bank of America; (c) statutory damages; (d) treble damages
17 pursuant to 15 U.S.C. §1693f(e); and (e) incidental and consequential damages
18 suffered due to their inability to pay bills or otherwise use their unemployment
19 funds.

20 **SECOND CLAIM FOR RELIEF**

21 **NEGLIGENCE AND NEGLIGENCE PER SE**

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

24 87. Plaintiff and Bank of America have a special relationship that gives
25 rise to the Bank's duties to Plaintiff and other Class Members to act reasonably to:
26 (a) safeguard their UI and other LWD benefits; (b) protect them from fraudulent
27 access by unauthorized third parties to the funds paid into their LWD Debit Card
28 Accounts, including by timely and accurately warning them of suspicious activity

1 in those Accounts; (c) protect them from unreasonable interference with their right
2 and ability to continue to collect, receive, and access the LWD benefits to which
3 they were entitled; (d) ensure that the Bank's customer service staffing levels,
4 technology, and operations were capable of providing Plaintiff and Class Members
5 reasonably timely and effective customer service, including to address those
6 customers' concerns about fraudulent or unauthorized transactions related to their
7 LWD Debit Cards or Accounts; (e) provide Plaintiff and Class Members reasonable
8 and adequate notice that their LWD Debit Cards and Accounts were at risk of being
9 subject to unauthorized use or had been subjected to unauthorized use; (f) timely
10 and adequately investigate and resolve Plaintiff's and Class Members' claims
11 regarding unauthorized or fraudulent transactions; and (g) extend to Plaintiff and
12 Class Members provisional credit in cases where Bank of America failed to timely
13 resolve their fraud-related claims.

14 88. Bank of America breached its duty to Plaintiff and Class Members by,
15 among other things: (a) failing to maintain, store, share, and transmit Cardholder
16 Information in a secure manner; (b) failing to issue Plaintiff and Class Members
17 LWD Debit Cards with EMV chips, despite having been well aware for years of the
18 risks associated with magnetic stripe technology; (c) failing to protect Plaintiff and
19 Class Members from fraudulent access by unauthorized third parties to the funds
20 paid into their LWD Debit Card Accounts, including by providing timely and
21 accurate warnings of suspicious activity in those Accounts; (d) failing to respond to
22 the dramatic increase in LWD benefits and LWD benefits recipients caused by or
23 related to the COVID-19 pandemic by issuing LWD Debit Cards with EMV chips
24 to all new and existing LWD Debit Cardholders and by taking other reasonably
25 prudent security measures to prevent fraudulent and unauthorized transactions;
26 (e) failing to ensure its customer service operation was capable of providing
27 reasonably timely and effective assistance to Plaintiff and Class Members,
28 including when they were victims of fraudulent or unauthorized transactions;

1 (f) failing to give reasonable and adequate notice to Plaintiff and Class Members
2 that their LWD benefits were and remain at risk of being vulnerable to fraudulent
3 and unauthorized transactions; (g) failing to process LWD Debit Cardholders'
4 claims regarding fraudulent or unauthorized transactions in a reasonably timely and
5 adequate manner, including by unreasonably automatically freezing LWD Debit
6 Card Accounts without prior notice, reasonable investigation, or an opportunity to
7 be heard; and (h) failing to extend provisional credit to Plaintiff and Class Members
8 when Bank of America failed to resolve their claims regarding fraudulent or
9 unauthorized transactions in a reasonably timely and adequate manner. Bank of
10 America's misconduct was intended to adversely affect Plaintiff and Class
11 Members, who rely on Bank of America to access their UI and other LWD benefits
12 through their LWD Debit Cardholder accounts managed exclusively by Bank of
13 America.

14 89. Bank of America's misconduct concerning its failure to safeguard
15 LWD Debit Cardholders' funds is contrary to industry standards, which prescribe
16 using EMV chip technology in debit cards.

17 90. Bank of America's misconduct concerning its failure to adequately
18 protect Plaintiff's and Class Members' data violates its obligations under the
19 Gramm-Leach-Bliley Act, 15 U.S.C. §§6801 et seq.; and customary industry
20 practice, as well as its own policies and procedures for its *non*-LWD debit and credit
21 cards and accounts, each of which are secured through EMV chip technology.
22 Plaintiff and Class Members are within the classes of persons that each of these
23 statutes are designed to protect, and Bank of America's conduct caused the precise
24 harm to Plaintiff and Class Members that each of these statutes was designed to
25 prevent.

26 91. Bank of America's failure to comply with the Gramm-Leach-Bliley
27 Act constitutes negligence per se.

28 92. The harms inflicted upon Plaintiff and other Class Members were

1 reasonably foreseeable because the Bank was and is well aware of the security risks
2 associated with magnetic stripe technology, and knew or should have known that
3 its customer service resources and/or procedures were insufficient to consider,
4 evaluate, and appropriately resolve issues stemming from the significant increase
5 in LWD benefits and LWD benefits recipients due to the sharp rise in
6 unemployment in the State of New Jersey caused by or related to the COVID-19
7 pandemic, as well as the sharp, well-publicized rise in financial fraud during the
8 COVID-19 pandemic, both of which would foreseeably lead to an increased
9 demand for customer service by Plaintiff and Class Members for all purposes,
10 including for the purpose of reporting and attempting to resolve claims of fraudulent
11 or unauthorized transactions. It was a near certainty, which the Bank knew or should
12 have known, that Plaintiff and Class Members would suffer significant and
13 irreparable harm as a result of the Bank's morally blameworthy actions that caused
14 tens of thousands of unemployed New Jerseyans to lose access to past, present, and
15 future unemployment insurance benefits for which they had been found eligible and
16 on which they relied for their survival during the pandemic.

17 93. As a direct and proximate result of Bank of America's misconduct,
18 Plaintiff and Class Members have been deprived of their LWD benefits and have
19 failed to receive accrued interest thereon.

20 **THIRD CLAIM FOR RELIEF**

21 **NEGLIGENT HIRING, SUPERVISION AND RETENTION**

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

24 95. Bank of America hired various subcontractors, including but not
25 limited to TTEC Holdings, Inc. ("TTEC"), to provide customer service, call center
26 operations, and other services for the Bank and to perform various functions and
27 services under the terms of the LWD-Bank Contract. These subcontractors and their
28 employees and agents, including Customer Service Representatives, have access to

1 highly sensitive and confidential LWD Debit Cardholder Information, including
2 Plaintiff's and Class Members' personally identifiable information, Card and
3 Account data, and other financial data and information.

4 96. Acting as the Bank's agent, TTEC negligently hired hundreds if not
5 thousands of employees *en masse* to perform services for the Bank without ever
6 conducting a background check on these individuals. Bank of America granted
7 these unvetted agents access to LWD Debit Cardholders' highly sensitive and
8 confidential Cardholder Information. Neither Bank of America itself nor TTEC
9 provided proper training or supervision to these agents regarding handling and
10 maintaining the confidentiality of Cardholder Information.

11 97. Given the Bank's and TTEC's failure to conduct background checks
12 or to take other reasonable security measures in hiring employees *en masse* to serve
13 as Bank of America Customer Service Representatives and other Bank agents, it
14 was reasonably foreseeable that such unvetted agents would compromise the
15 security of Plaintiff's and Class Members' confidential Cardholder Information.

16 98. Bank of America's and its subcontractors' negligent hiring, training,
17 supervision, and retention of Customer Service Representatives and other agents
18 who have access to highly confidential Cardholder Information harmed and
19 continues to harm Plaintiff and Class Members by subjecting them to unreasonable
20 risk of fraud and exfiltration of their Cardholder Information and enabled a series
21 of internal data breaches committed by TTEC employees within the scope of their
22 employment, which harmed the Class Members whose information was
23 compromised.

24 99. Under the terms of the LWD-Bank Contract, Bank of America is
25 required to track and report all incidents or security breach exposures of confidential
26 information that may have compromised an LWD Cardholder's confidential
27 Cardholder Information or the integrity and secure delivery of LWD Benefits to the
28 Cardholder. Bank of America thus knew or should have known that TTEC was or

1 became unfit or incompetent to perform the work for which it was hired, including
2 as a result of its negligent hiring, training, supervision, and retention of agents with
3 access to confidential Cardholder Information, yet Bank of America continued to
4 retain TTEC as a subcontractor to perform services under the LWD-Bank Contract.

5 100. TTEC at all relevant times has been the actual, apparent, and ostensible
6 agent of Bank of America, who has ratified TTEC's actions.

7 101. As a direct and proximate result of Bank of America's and its agents'
8 misconduct, Plaintiff and Class Members have been deprived of their LWD benefits
9 and have failed to receive accrued interest thereon.

10 **FOURTH CLAIM FOR RELIEF**

11 **BREACH OF CONTRACT**

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

14 103. Each Plaintiff and Class Member entered into a Cardholder Agreement
15 with the Bank that requires the Bank to administer LWD benefits to them through
16 prepaid debit cards.

17 104. The Cardholder Agreement provides, among other things: "Under the
18 Bank of America 'zero liability' policy, you may incur no liability for unauthorized
19 use of your Card up to the amount of the transaction, provided you notify us within
20 a reasonable time of the loss or theft of your Card, Card number or PIN or its
21 unauthorized use, subject to the following terms and conditions." The Cardholder
22 Agreement further provides: "We will determine whether an error occurred within
23 10 business days after we hear from you — and will correct any error promptly. If
24 we need more time, however, we may take up to 45 days to investigate your
25 complaint or question. If we decide to do this, we will credit your Account within
26 10 business days for the amount you think is in error, so that you will have the
27 money during the time it takes us to complete our investigation."

28 105. The Cardholder Agreement also provides that the Bank "will add funds

1 to your Account . . . in accordance with instructions from the LWD” and that
2 “[f]unds are available for your use on the day we have been instructed by the LWD
3 to fund your Account.” Those also limit the circumstances under which the Bank
4 may deprive LWD Debit Cardholders of access to their funds by freezing their
5 LWD Debit Card Accounts. As relevant here, the Cardholder Agreement provides
6 that if the Bank “suspect[s] irregular, unauthorized, or unlawful activities may be
7 involved” with the Account, it may freeze the Account, but only “pending an
8 investigation of such suspected activities.”

9 106. Plaintiff and Class Members performed all or substantially all of the
10 material requirements that their Cardholder Agreement with Bank of America
11 imposed on them, and they fulfilled all conditions precedent to Bank of America’s
12 performance, including, among other things, by contacting or attempting to contact
13 Bank of America to reimburse them for fraudulently appropriated funds within the
14 time specified in the Cardholder Agreement.

15 107. Bank of America breached its promises to Plaintiff and Class Members
16 in its Cardholder Agreement by, among other things: (a) failing to timely and
17 reasonably investigate and resolve their fraud claims; (b) failing to reimburse them
18 for unauthorized transactions; (c) failing to provide them with provisional credit
19 when the Bank’s investigation into their fraud claims exceeds 10 business days; (d)
20 failing to limit their liability for unauthorized transactions; (e) freezing or blocking
21 their LWD Debit Card Accounts without a reasonable basis for suspecting irregular,
22 unauthorized, or unlawful activities in the Account, and beyond the length of time
23 necessary for a reasonable investigation; (f) freezing or blocking their LWD Debit
24 Card Accounts for reasons other than those specified in the Cardholder Agreement;
25 (g) failing to make funds available to them for their use on the day the Bank has
26 been instructed by the LWD to fund their Accounts; and (h) otherwise failing to
27 make funds available to them in accordance with LWD’s instructions.

28 108. Plaintiff and Class Members were harmed by Bank of America’s

1 conduct and have suffered actual damages in an amount equal to the difference in
2 the value of the banking services for which they provided valuable consideration
3 and the banking services they received.

4 **FIFTH CLAIM FOR RELIEF**

5 **BREACH OF IMPLIED CONTRACT**

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

8 110. Bank of America agreed to and was obligated to take reasonable steps
9 to ensure that Bank's LWD Debit Card Accounts were secure against unauthorized
10 transactions and that any claims regarding unauthorized transactions were
11 adequately investigated and resolved.

12 111. All parties understood that such protections and customer service
13 obligations were integral and essential to Bank of America's business.

14 112. Bank of America was obligated to provide Plaintiff and Class
15 Members with LWD Debit Card services that were suitable for their intended
16 purpose of preserving and accessing LWD benefits as needed, rather than providing
17 debit card services that failed to take reasonable steps to safeguard their money,
18 failed to warn or notify them in the event that their LWD Debit Cards or Accounts
19 were at risk of unauthorized use, or failed to adequately investigate or resolve
20 claims regarding unauthorized transactions.

21 113. Bank of America did not take reasonable steps to protect Plaintiff's
22 and Class Members' deposited funds from unauthorized transactions or to
23 adequately investigate or resolve claims regarding unauthorized transactions. In
24 fact, Bank of America willfully violated those interests by choosing to issue LWD
25 Debit Cards with cheaper, outdated magnetic stripe technology, which it knew to
26 be uniquely vulnerable to fraud, rather than using the same EMV chip technology
27 that the Bank has included in all of its consumer credit cards and debit cards for
28 more than six years, for the express purpose of protecting against fraud.

1 114. Because Bank of America failed to take reasonable steps to protect
2 LWD Debit Cardholders' funds from being appropriated through unauthorized
3 transactions and failed to take reasonable steps to timely or adequately respond to
4 claims regarding unauthorized transactions, Bank of America breached its implied
5 contracts with Plaintiff and Class Members.

6 115. Bank of America's failure to fulfill its obligations to take reasonable
7 steps to protect its LWD Debit Cardholders' funds from being appropriated through
8 unauthorized transactions, and its failure to take reasonable steps to timely or
9 adequately respond to claims regarding unauthorized transactions resulted in
10 Plaintiff and Class Members receiving banking services that were of less value than
11 they provided consideration for.

12 **SIXTH CLAIM FOR RELIEF**

13 **BREACH OF IMPLIED COVENANT OF GOOD FAITH**

14 **AND FAIR DEALING**

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

17 117. There is a covenant of good faith and fair dealing implied in every
18 contract and every implied contract. This implied covenant requires each
19 contracting party to refrain from doing anything to injure the right of the other to
20 receive the benefits of the agreement. To fulfill its covenant, a party must give at
21 least as much consideration to the interests of the other party as it gives to its own
22 interests.

23 118. The covenant of good faith and fair dealing implied in the Bank's
24 Cardholder Agreement with Plaintiff and Class Members obligated the Bank, at a
25 minimum: (a) to take reasonable and necessary steps to safeguard Plaintiff's and
26 Class Members' LWD benefits, including in light of the foreseeable and actual rise
27 in the number of LWD Debit Cardholders and the amount of financial fraud caused
28 by or related to the COVID-19 pandemic; (b) to ensure that its customer service

1 operation was capable of providing reasonably adequate and effective assistance to
2 LWD Debit Cardholders who experienced or claimed to have experienced fraud on
3 their LWD Debit Cards or Accounts; (c) to warn or notify Plaintiff and Class
4 Members if their public benefit funds were subject to, or at risk of being subject to,
5 actual or suspected unauthorized use; (d) to timely and adequately investigate and
6 resolve claims of unauthorized transactions involving Plaintiff's and Class
7 Members' LWD Debit Cards or Accounts; (e) to extend provisional credit to
8 Plaintiff and Class Members in cases where their fraud claims are not timely
9 resolved; (f) to freeze or block LWD Debit Card Accounts only to protect them
10 from third-party fraud and only for the period necessary to conduct a reasonable
11 investigation into whether third-party fraud occurred; (g) to make LWD benefits
12 deposited into LWD Debit Card Accounts immediately available to Cardholders
13 and not to freeze or block Accounts without a reasonable basis for believing that
14 the Cardholders themselves have committed fraud; and (h) to not freeze or block
15 Accounts out of concern for the Bank's own potential liability for third-party fraud.

16 119. Bank of America breached the implied covenant of good faith and fair
17 dealing by, among other things: (a) failing to take reasonable and necessary steps
18 to safeguard Plaintiff's and Class Members' LWD benefits, including but not
19 limited to (i) failing to issue LWD Debit Cards with EMV chip technology, (ii)
20 failing to secure Plaintiff's and Class Members' Cardholder Information and other
21 sensitive personal information that could be used by third parties to effect
22 unauthorized transactions, (iii) failing to adequately monitor for fraudulent or
23 suspected fraudulent transactions on LWD Debit Cards and Accounts, and (iv)
24 failing to promptly issue LWD Debit Cards with EMV chips and to increase its
25 efforts with respect to securing personal information, fraud monitoring, and
26 otherwise safeguarding benefits in light of the foreseeable and actual rise in the
27 number of LWD Debit Cardholders and the amount of financial fraud caused by or
28 related to the COVID-19 pandemic; (b) failing to ensure its customer service

1 operations were capable of providing effective assistance to LWD Debit
2 Cardholders who experienced fraud on their LWD Debit Card or Account,
3 including during the COVID-19 pandemic; (c) failing to warn or notify LWD Debit
4 Cardholders that their LWD benefits were and remain subject to, or at risk of being
5 subject to, actual or suspected unauthorized use; (d) failing to timely or adequately
6 process and investigate LWD Debit Cardholders' claims regarding unauthorized
7 transactions; (e) failing to extend provisional credit in cases where LWD Debit
8 Cardholders' fraud claims are not timely resolved; (f) freezing or blocking LWD
9 Debit Card Accounts without a reasonable basis for believing that the Cardholders
10 themselves had committed fraud, and for longer than it would reasonably take to
11 investigate any such belief; (g) failing to provide LWD Debit Cardholders any
12 reasonable means of contesting the Bank's purported basis for freezing their LWD
13 Debit Card Accounts or for otherwise getting their Accounts unfrozen; and (h)
14 freezing or blocking LWD Debit Card Accounts not to protect the Cardholders, but
15 rather to protect the Bank itself, from liability for third-party fraud.

16 120. As a direct and proximate result of Bank of America's breaches of the
17 implied covenant of good faith and fair dealing, Plaintiff and Class Members have
18 suffered actual losses and damages.

19 **VII. PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, on their own behalf and on behalf of the Class, pray
21 for the following relief:

22 (1) For an order certifying the Class and Subclasses as defined above and
23 such additional subclasses as may be appropriate, appointing Plaintiff as
24 representative for the Class, and appointing Plaintiff's counsel as counsel for the
25 Class;

26 (2) For declaratory and preliminary and permanent injunctive relief
27 prohibiting Bank of America from engaging in the wrongful conduct alleged herein,
28 as necessary to remedy the violations alleged herein;

1 (3) For an award of all recoverable compensatory, statutory, and other
2 damages sustained by Plaintiff and the Class Members, including treble damages
3 where authorized by law, disgorgement, unjust enrichment, restitution, a
4 declaration that the Bank holds the Account funds in constructive trust for the
5 benefit of Plaintiff and the Class Members, and all other available relief under
6 applicable law, including but not limited to accrued interest for the periods during
7 which Plaintiff and Class Members were deprived of funds in their LWD Debit
8 Card Accounts due to unauthorized transactions;

9 (4) For an award of punitive damages pursuant to applicable law;

10 (5) For reasonable attorney’s fees and expenses as permitted by 42
11 U.S.C. §1988, and any other applicable statute or law;

12 (6) For taxable costs;

13 (7) For pre- and post-judgment interest as allowed by law; and

14 (8) For any other relief the Court deems just.

15 **VIII. JURY TRIAL DEMAND**

16 Plaintiff demands a trial by jury on all issues so triable.

17
18 Dated: December 17, 2021

FREEDOM LAW FIRM

19
20 By: s/ George Haines
George Haines
ghaines@freedomlegalteam.com

21
22 *Attorneys for Plaintiff &
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