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10 *Co-Lead Counsel for Plaintiffs and the Proposed Class (Additional Counsel Listed Below)*

11 **UNITED STATES DISTRICT COURT**

12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 **JENNIFER YICK,**  
 14 **ROLAND OOSTHUIZEN,**  
 15 **ROSEMARY MATHEWS,**  
**CARLOS RODRIGUEZ,**  
 16 **J. MICHAEL WILLRICH,**  
**LINDSAY MCCLURE,**  
 17 **ROBERT L. WILSON,**  
**CHRISTOPHER MOSSON,**  
 18 **CLARA CAJAS,**  
**STEPHANIE SMITH,**  
 19 **ALAN KARAM,**  
**AZURI MOON,**  
 20 **VANESSA RIVERA,**  
**CANDACE KOOLE, and**  
**LUIS PEREZ,** on behalf of themselves  
 and all others similarly situated,

21 Plaintiffs,

22 vs.

23 **BANK OF AMERICA, N.A.;** and  
 24 **DOES 1 through 50, inclusive,**

25 Defendants.  
26  
27  
28

**Case No. 3:21-cv-00376-VC**

**CONSOLIDATED CLASS ACTION COMPLAINT FOR:**

1. Violations of Electronic Funds Transfer Act, 15 U.S.C. §§1693 et seq.
2. Violations of Federal Due Process and 42 U.S.C. §1983
3. Violations of California Due Process
4. Violations of California Consumer Privacy Act, Civil Code §§1798.100 et seq.
5. Violations of California Customer Records Act, Civil Code §§1798.80 et seq.
6. Violations of California Unfair Competition Law, Bus. & Prof. Code §§17200 et seq.
7. Negligence and Negligence Per Se
8. Breach of Contract
9. Breach of Implied Contract
10. Breach of the Implied Covenant of Good Faith and Fair Dealing
11. Breach of Fiduciary Duty
12. Breach of Contract (Third-Party Beneficiaries)
13. Breach of the Implied Covenant of Good Faith and Fair Dealing (Third-Party Beneficiaries)

**JURY TRIAL DEMANDED**

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1 Plaintiffs Jennifer Yick, Roland Oosthuizen, Rosemary Mathews, Carlos Rodriguez, J.  
2 Michael Willrich, Lindsay McClure, Robert L. Wilson, Christopher Mosson, Clara Cajas,  
3 Stephanie Smith, Alan Karam, Azuri Moon, Vanessa Rivera, Candace Koole, and Luis Perez  
4 (collectively, “Plaintiffs”), on behalf of themselves and all other similarly situated individuals  
5 whose California unemployment insurance (“UI”), pandemic unemployment assistance (“PUA”),  
6 and other public benefits are or were paid through debit cards issued by Defendant Bank of  
7 America, N.A. (“Bank of America” or “Bank”), bring this class action against the Bank for  
8 violations of the Electronic Funds Transfer Act at 15 U.S.C. §§1693 et seq. (“EFTA”) and its  
9 implementing regulations at 12 C.F.R. Part 1005 (“Regulation E”), violations of the Due Process  
10 Clauses of the U.S. and California Constitutions, breach of contract, negligence, and other state  
11 common law and statutory claims, to remedy Bank of America’s egregious maladministration of  
12 its obligations under the California Employment Development Department’s (“EDD”) benefits  
13 payment programs. In violation of its constitutional, statutory, common law, and contractual  
14 obligations to Plaintiffs and Class Members, the Bank has deprived Plaintiffs and Class Members  
15 of their statutory right to public benefits without prior notice or an opportunity to be heard, has  
16 failed to take reasonable steps to protect Plaintiffs’ and Class Members’ benefits from fraud, and  
17 has otherwise failed to ensure that Plaintiffs and Class Members are able to receive and access  
18 the benefits to which they are lawfully entitled.

## 19 I. INTRODUCTION

20 1. Like millions of other Californians, Plaintiffs lost their jobs through no fault of  
21 their own during the COVID-19 pandemic. Plaintiffs applied for UI, PUA, and other public  
22 benefits through programs administered by California’s EDD, and they were found eligible by  
23 EDD to receive, and initially did receive, the benefits to which they were and are lawfully  
24 entitled.

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

1 or “Accounts”). Although the Bank was legally required to take necessary and reasonable steps  
2 to protect Plaintiffs’ and Class Members’ EDD Debit Cards and Accounts from fraudulent access  
3 by third parties, the Bank failed to do so. Among other things, the Bank failed to secure  
4 Plaintiffs’ and Class Members’ sensitive Card and Account information and issued them EDD  
5 Debit Cards without the fraud-preventing EMV chip technology that the Bank has used on all its  
6 other debit and credit cards since 2014. Instead, the Bank’s EDD Debit Cards use outdated  
7 magnetic stripe technology, which makes them readily susceptible to cloning and other schemes  
8 that have allowed third parties to fraudulently use and access Plaintiffs’ and Class Members’  
9 EDD Debit Cards and Accounts.

10 3. In addition to the Bank acting negligently and in breach of its statutory and  
11 common law obligations to Plaintiffs and Class Members by failing to protect their EDD Debit  
12 Cards and Accounts, the Bank also has violated its statutory obligations to Plaintiffs and Class  
13 Members under the federal EFTA and other laws by not implementing adequate and reasonable  
14 systems, measures, and protections to permit prompt and effective identification of fraud,  
15 submission of fraud claims, provisional access to already approved benefits during the course of  
16 fraud investigations, prompt and accurate resolution of fraud claims, and prompt reimbursement  
17 of funds stolen from Plaintiffs’ and Class Members’ Accounts. For example, instead of providing  
18 an effective and timely process for Plaintiffs and Class Members to report unauthorized  
19 transactions and submit fraud claims, the Bank adopted a series of “customer service” practices  
20 and policies that require Plaintiffs and Class Members to spend dozens of hours on telephone  
21 calls with customer service, and that have frustrated and obstructed their efforts to submit their  
22 claims. When Class Members persevere and finally reach the Bank’s customer service  
23 representatives to report fraud on their Account, the Bank then violates their statutory, common  
24 law, and constitutional rights by denying their fraud claims without investigation or explanation  
25 and freezing their EDD Debit Card Accounts indefinitely, thereby depriving them of access to  
26 their past *and future* EDD benefits without any prior notice or an opportunity to be heard.

27 4. The cardholder agreement between Bank of America and each Plaintiff and Class  
28 Member sets forth the Bank’s “Zero Liability” policy, which promises to protect each Plaintiff

1 and Class Member from adverse financial consequences if their EDD Debit Cards or Accounts  
2 are fraudulently used or accessed by third parties. The Bank has not implemented this policy as  
3 promised, which has caused Plaintiffs and Class Members to suffer significant financial losses  
4 from third-party fraud, including by the Bank failing to have reasonable procedures in place to  
5 identify and receive notifications of fraud, failing to adequately monitor its customer service,  
6 establishing procedures that frustrate and obstruct timely submission of fraud claims by Plaintiffs  
7 and Class Members, closing fraud investigations without conducting reasonable and appropriate  
8 review, and failing to extend provisional credit to Plaintiffs and Class Members as required by  
9 law while fraud investigations are underway or after fraud is, or reasonably should have been,  
10 determined. The Bank has also deprived Plaintiffs and Class Members of their constitutional  
11 rights to notice and an opportunity to be heard before causing their EDD Debit Cards and  
12 Accounts to be frozen for extended periods of time, thereby depriving Plaintiffs and Class  
13 Members of access to past, present, and future disbursements of government benefits for which  
14 they have been found eligible.

15 5. By the acts and omissions alleged here, Bank of America has violated federal and  
16 state constitutional due process protections; violated EFTA and its implementing Regulation E;  
17 violated California's Consumer Privacy Act, Customer Records Act, and Unfair Competition  
18 Law; acted negligently; and breached its cardholder agreement with Plaintiffs and Class  
19 Members, its contract with EDD (to which Plaintiffs and Class Members are intended third-party  
20 beneficiaries), the implied covenant of good faith and fair dealing under those contracts, and its  
21 fiduciary duties to Plaintiffs and Class Members. These acts and omissions have caused  
22 substantial financial and other harm to Plaintiffs and Class Members, and unless promptly  
23 enjoined will cause them and the public to suffer immediate and irreparable harm.

## 24 II. JURISDICTION AND VENUE

25 6. This Court has subject matter jurisdiction pursuant to: (a) 28 U.S.C. §1331  
26 because this action arises under the federal Due Process Clause and the Electronic Funds  
27 Transfer Act, 15 U.S.C. §§1693 et seq.; (b) 28 U.S.C. §1332(d) because this is a class action in  
28 which the amount in controversy exceeds \$5,000,000, there are more than 100 putative Class

1 Members, and the majority of putative Class Members are citizens of a state different than the  
2 state of which Bank of America is a citizen; (c) 28 U.S.C. §1332(a) because Plaintiffs and Class  
3 Members are citizens of California, Bank of America is incorporated under the laws of Delaware  
4 and has its principal place of business in North Carolina, and the amount in controversy exceeds  
5 \$75,000; and (d) supplemental jurisdiction under 28 U.S.C. §1367 with respect to the claims for  
6 relief arising under state law.

7 7. This Court has specific personal jurisdiction over Bank of America because the  
8 Bank has sufficient minimum contacts with California, has purposely availed itself of the  
9 benefits and protection of California law, and conducts a substantial amount of business in and  
10 with the State of California (including with EDD), such that the Court's exercise of personal  
11 jurisdiction over the Bank accords with due process.

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

### 16 III. THE PARTIES

#### 17 A. Plaintiffs

18 9. Plaintiff Jennifer Yick ("Yick") resides in San Francisco, California. She is a real  
19 estate professional who found herself out of work during the COVID-19 pandemic. She then  
20 applied for and was found eligible by EDD to receive unemployment benefits. Yick received a  
21 Bank of America EDD Debit Card with a magnetic stripe (but no EMV chip) to access her  
22 benefits. She was then the victim of unauthorized transactions on her EDD Debit Card Account.  
23 Yick promptly reported the unauthorized transactions to Bank of America, which failed to  
24 comply with its legal obligations as alleged herein, causing Yick to suffer immediate and  
25 irreparable injury. *See* paragraphs 85–96, *infra*. Yick is pursuing the claims alleged herein on her  
26 own behalf and as a representative of all Class Members.

27 10. Plaintiff Rosemary Mathews ("Mathews") resides in Lawndale, California. She  
28 lost her employment with the Staples Center catering department and with a yoga studio in



1 March 2020 due to the COVID-19 pandemic. She then applied for and was found eligible by  
2 EDD to receive unemployment benefits. Mathews received a Bank of America EDD Debit Card  
3 with a magnetic stripe (but no EMV chip) to access her benefits. In or about October 2020,  
4 Mathews was the victim of an unauthorized transaction on her card in the amount of \$1,000.  
5 Mathews promptly reported the unauthorized transaction to Bank of America, which failed to  
6 comply with its legal obligations as alleged herein, causing Mathews to suffer immediate and  
7 irreparable injury. *See* paragraphs 97–104 *infra*. Mathews is pursuing the claims alleged herein  
8 on her own behalf and as a representative of all Class Members.

9 11. Plaintiff Roland Oosthuizen (“Oosthuizen”) resides in Lawndale, California. He  
10 was furloughed from his job working for ABM at Los Angeles International Airport in or about  
11 April 2020 due to the COVID-19 pandemic. He then applied for and was found eligible by EDD  
12 to receive unemployment benefits. Oosthuizen received a Bank of America EDD Debit Card  
13 with a magnetic stripe (but no EMV chip) to access his benefits. In or about September 2020,  
14 Oosthuizen was the victim of five separate unauthorized transactions on his card on five  
15 successive days in the amount of \$1,000 each. Oosthuizen promptly reported the unauthorized  
16 transaction to Bank of America, which failed to comply with its legal obligations as alleged  
17 herein, causing Oosthuizen to suffer immediate and irreparable injury. *See* paragraphs 105–114,  
18 *infra*. Oosthuizen is pursuing the claims alleged herein on his own behalf and as a representative  
19 of all Class Members.

20 12. Plaintiff Carlos Rodriguez (“Rodriguez”) resides in Chula Vista, California.  
21 Rodriguez’s job as a real estate agent slowed to almost a complete stop during the COVID-19  
22 pandemic. Rodriguez then applied for and was found eligible by EDD to receive unemployment  
23 benefits. Rodriguez received a Bank of America EDD Debit Card with a magnetic stripe (but no  
24 EMV chip) to access his benefits. On December 10 and 18, 2020, Rodriguez was the victim of  
25 unauthorized transactions that removed \$1,130 from his EDD Debit Card Account. Rodriguez  
26 promptly reported the unauthorized transactions to Bank of America, which failed to comply  
27 with its legal obligations as alleged herein, causing Rodriguez to suffer immediate and  
28



1 irreparable injury. *See* paragraphs 115–119, *infra*. Rodriguez is pursuing the claims alleged  
2 herein on his own behalf and as a representative of all Class Members.

3 13. Plaintiff J. Michael Willrich (“Willrich”) resides in San Diego, California. He is a  
4 hospitality professional who found himself out of work during the COVID-19 pandemic. He then  
5 applied for and was found eligible by EDD to receive unemployment benefits. Soon thereafter,  
6 he received a Bank of America EDD Debit Card with a magnetic stripe (but no EMV chip) to  
7 access his benefits. He was then the victim of unauthorized transactions that removed \$5,083.75  
8 from his EDD Debit Card Account. Willrich promptly reported the unauthorized transaction to  
9 Bank of America, which failed to comply with its legal obligations as alleged herein, causing  
10 Willrich to suffer immediate and irreparable injury. *See* paragraphs 120–128, *infra*. Willrich is  
11 pursuing the claims alleged herein on his own behalf and as a representative of all Class  
12 Members.

13 14. Plaintiff Lindsay McClure (“McClure”) resides in California. She is a visual  
14 merchandiser at Nordstrom who found herself out of work during the COVID-19 pandemic. She  
15 then applied for and was found eligible by EDD to receive unemployment benefits. Soon  
16 thereafter, she received a Bank of America EDD Debit Card with a magnetic stripe (but no EMV  
17 chip) to access her benefits. Plaintiff experienced fraudulent charges on or around December 1,  
18 2020. McClure promptly reported the unauthorized transactions to Bank of America, which  
19 failed to comply with its legal obligations as alleged herein, causing McClure to suffer  
20 immediate and irreparable injury. *See* paragraphs 129–133, *infra*. McClure is pursuing the claims  
21 alleged herein on her own behalf and as a representative of all Class Members.

22 15. Plaintiff Robert L. Wilson (“Wilson”) resides in Stockton, California. He worked  
23 in construction doing project management and estimating prior to the onset of the COVID-19  
24 pandemic. After the pandemic hit, his work slowed to the point where there were no available  
25 opportunities for employment. He applied for and was found eligible by EDD to receive  
26 unemployment benefits. He received a Bank of America EDD Debit Card with a magnetic stripe  
27 (but no EMV chip) to access his benefits. After becoming aware of approximately \$2,600 in  
28 unauthorized transactions on his EDD Debit Card Account, Wilson reported these unauthorized

1 transactions to the Bank, which failed to comply with its legal obligations as alleged herein,  
2 causing Wilson to suffer immediate and irreparable injury. *See* paragraphs 134–135, *infra*.  
3 Wilson is pursuing the claims alleged herein on his own behalf and as a representative of all  
4 Class Members.

5 16. Plaintiff Christopher Mosson (“Mosson”) resides in Oakland, California. He is a  
6 sound, lights, and video professional whose work entails providing support and assistance to  
7 venues hosting large events such as trade shows, concerts and conventions. As a result of the  
8 pandemic, Mosson has been unable to work since the spring of 2020. In May 2020, Mosson  
9 applied for and was found eligible by EDD for unemployment benefits. He received a Bank of  
10 America EDD Debit Card with a magnetic stripe (but no EMV chip) to access his benefits. In  
11 early December 2020, Mosson noticed a number of fraudulent transactions on his Account. He  
12 promptly reported the unauthorized transactions to Bank of America, which failed to comply  
13 with its legal obligations as alleged herein, causing Mosson to suffer immediate and irreparable  
14 injury. *See* paragraphs 136–140, *infra*. Mosson is pursuing the claims alleged herein on his own  
15 behalf and as a representative of all Class Members.

16 17. Plaintiff Clara Cajas (“Cajas”) resides in California. Cajas is a registered dental  
17 assistant who works as an instructor, who found herself out of work during the pandemic. She  
18 then applied for and was found eligible by EDD to receive unemployment benefits. Soon  
19 thereafter, she received a Bank of America EDD Debit Card with a magnetic stripe (no EMV  
20 chip) to access her benefits. She was then twice the victim of unauthorized transactions on her  
21 card. Cajas promptly reported the unauthorized transaction to Bank of America, which failed to  
22 comply with its legal obligations as alleged herein, causing Cajas to suffer immediate and  
23 irreparable injury. *See* paragraphs 141–145, *infra*. Cajas is pursuing the claims alleged herein on  
24 her own behalf and as a representative of all Class Members.

25 18. Plaintiff Stephanie Smith (“Smith”) resides in Tracy, California. Smith was a  
26 salesperson who lost her job in March 2020 because of the COVID-19 pandemic. She then  
27 applied for and was found eligible by EDD to receive unemployment benefits. She received a  
28 Bank of America EDD Debit Card with a magnetic stripe (but no EMV chip) to access her

1 benefits. Despite never having used her card for a purchase, ATM withdrawal, or other  
2 transaction (i.e., she only conducted online transfers through Bank of America’s website),  
3 unauthorized transactions appeared on her EDD Debit Card Account in late November 2020.  
4 Upon discovering the unauthorized transactions, Smith immediately reported them to Bank of  
5 America, which failed to comply with its legal obligations as alleged herein, causing Smith to  
6 suffer immediate and irreparable injury. *See* paragraphs 146–148, *infra*. Smith is pursuing the  
7 claims alleged herein on her own behalf and as a representative of all Class Members.

8 19. Plaintiff Alan Karam (“Karam”) resides in Palos Verdes Estates, California. He  
9 operates a food truck in the Los Angeles area and applied for unemployment benefits after  
10 restrictions related to the COVID-19 pandemic limited his ability to operate his business. Karam  
11 then applied for and was found eligible by EDD for unemployment benefits. He received a Bank  
12 of America EDD Debit Card with a magnetic stripe (but no EMV chip) to access his benefits. In  
13 August 2020, his EDD Debit Card Account was subjected to over \$2,000 in unauthorized  
14 transactions. Karam promptly reported the unauthorized transactions to Bank of America, which  
15 failed to comply with its legal obligations as alleged herein, causing Karam to suffer immediate  
16 and irreparable injury. *See* paragraphs 149–158, *infra*. Karam is pursuing the claims alleged  
17 herein on his own behalf and as a representative of all Class Members.

18 20. Plaintiff Azuri Moon (“Moon”) resides in Culver City, California. He is a music  
19 educator and a live and studio guitarist. He became unemployed early in the COVID-19  
20 pandemic. He then applied for and was found eligible by EDD to receive unemployment  
21 benefits. Soon thereafter, in or about June 2020, he received an EDD Debit Card with a magnetic  
22 stripe (but no EMV chip) to access his benefits. In October 2020, he was the victim of two  
23 unauthorized ATM withdrawals on his EDD Debit Card Account totaling \$1,800. Moon  
24 promptly reported the unauthorized transactions to Bank of America, which failed to comply  
25 with its legal obligations as alleged herein, causing Moon to suffer immediate and irreparable  
26 injury. *See* paragraphs 159–165, *infra*. Moon is pursuing the claims alleged herein on his own  
27 behalf and as a representative of all Class Members.

28

1           21. Plaintiff Vanessa Rivera resides in Culver City, California. She worked as a lien  
2 negotiator until early 2020, when she became unemployed. She then applied for and was found  
3 eligible by EDD to receive unemployment benefits in or about January 2020. Soon thereafter,  
4 she received an EDD Debit Card with a magnetic stripe (but no EMV chip) to access her  
5 benefits. On or about January 29, 2021, she was then the victim of an unauthorized \$800 ATM  
6 withdrawal from her EDD Debit Card Account, which occurred at a Bank of America ATM.  
7 Rivera promptly reported the unauthorized transaction to Bank of America, which failed to  
8 comply with its legal obligations as alleged herein, causing Rivera to suffer immediate and  
9 irreparable injury. *See* paragraphs 166–169, *infra*. Rivera is pursuing the claims alleged herein on  
10 her own behalf and as a representative of all Class Members.

11           22. Plaintiff Candace Koole resides in Temecula, California. She is a doula and a  
12 nanny who found herself out of work during the COVID-19 pandemic. She applied for and was  
13 found eligible by EDD to receive unemployment benefits. Soon thereafter, she received an EDD  
14 Debit Card with a magnetic stripe (but no EMV chip) to access her benefits. In December 2020,  
15 she was then the victim of unauthorized transactions on her EDD Debit Card Account. Koole  
16 promptly reported the unauthorized transaction to Bank of America, which failed to comply with  
17 its legal obligations as alleged herein, causing Koole to suffer immediate and irreparable injury.  
18 *See* paragraphs 170–175, *infra*. Koole is pursuing the claims alleged herein on her own behalf  
19 and as a representative of all Class Members.

20           23. Plaintiff Luis Perez (“Perez”) resides in Orange, California. He worked as a  
21 concrete carpenter until July 2020, when he became unable to continue working in that role due  
22 to conditions of the COVID-19 pandemic. He applied for and was found eligible by EDD to  
23 receive unemployment benefits. Perez received an EDD Debit Card with a magnetic stripe (but  
24 no EMV chip) to access his benefits. He was then the victim of unauthorized transactions on his  
25 EDD Debit Card Account. Perez promptly reported the unauthorized transactions to Bank of  
26 America, which failed to comply with its legal obligations as alleged herein, causing Perez to  
27 suffer immediate and irreparable injury. *See* paragraphs 176–184, *infra*. Perez is pursuing the  
28 claims alleged herein on his own behalf and as a representative of all Class Members.

1 **B. Defendants**

2 24. Defendant Bank of America, N.A., is a financial institution incorporated in the  
3 State of Delaware and headquartered in North Carolina that conducts a substantial amount of  
4 business in California, including pursuant to its exclusive contract with the State of California  
5 EDD to administer UI, PUA, and other benefit payments through EDD Debit Cards and  
6 Accounts.

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

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

20 **IV. FACTUAL ALLEGATIONS**

21 **A. The Bank’s Contract with EDD**

22 27. EDD is an agency of the State of California that is responsible for administering  
23 numerous benefits programs for low-income, unemployed, and other Californians, including  
24 programs providing unemployment insurance (UI) benefits, disability insurance benefits, paid  
25 family leave benefits, pandemic unemployment assistance (PUA) benefits, and pandemic  
26 emergency unemployment compensation (PEUC) benefits to Californians (collectively, “EDD  
27 benefits”).  
28

1           28.     In 2010, Bank of America entered into an exclusive contract with EDD for the  
2 provision of Electronic Benefits Payment (EBP) services, including issuance of Bank of America  
3 EDD Debit Cards through which individuals entitled to receive EDD benefits could access those  
4 benefits.

5           29.     On information and belief, Bank of America obtained that contract by falsely  
6 representing to EDD that it would provide “best-in-class” fraud monitoring.

7           30.     Beginning in or about July 2011, EDD began distributing EDD benefits pursuant  
8 to its contract with Bank of America, under which the default means of distributing EDD  
9 benefits payments is through Bank-issued and Bank-administered EDD Debit Cards, rather than  
10 paper checks or other forms of payment.

11           31.     In or about 2015, Bank of America submitted a response to EDD’s Request for  
12 Proposals (“2015 RFP Response” or “2015 Proposal”) to extend the scope and duration of the  
13 contract. The 2015 Proposal was accepted by EDD and incorporated by reference into a new  
14 contract for EBP Services entered into between EDD and the Bank, with an initial term of  
15 August 1, 2016 through July 31, 2021 (“EDD-Bank Contract”). In its 2015 Proposal, the Bank  
16 represented that it had applied and would continue to apply “the most rigorous fraud detection  
17 procedures,” including “the highest level of security and fraud safeguards” based on “multiple  
18 layers of extensive security” to ensure that EDD Debit Cardholders do not become the victims of  
19 fraud. The Bank’s 2015 Proposal also represented that the Bank has provided and will continue  
20 to provide “fraud monitoring” as part of its “multi-faceted” approach to preventing and  
21 combatting fraud, and that it would provide “immediate response to emerging fraud trends” to  
22 ensure that fraudulent transactions would be “declined in real time.” The 2015 Proposal further  
23 represented that the Bank would provide “industry best-in-class” fraud investigations services,  
24 “applying specialized processes and tools to resolve fraud,” and that “Bank of America is  
25 committed to being at the forefront of fraud and data security strategies, benefiting the EDD and  
26 [EDD’s] claimants.”

27           32.     In its 2015 Proposal, Bank of America also represented that it would fully protect  
28 EDD Debit Cardholders in case they do become victims of fraud. Specifically, Bank of America

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

16 33. The Bank’s 2015 Proposal also made representations about the “[s]uperb  
17 customer service” levels it would guarantee EDD Debit Cardholders, boasting that “[w]e set the  
18 bar high and pride ourselves on serving each caller with swift, responsive service,” and providing  
19 assurances that “[l]ong call hold waits and busy signals are not tolerated at Bank of America.  
20 Your program’s average speed of answer is 30 seconds and your average handle time is 230  
21 seconds.” Pursuant to the EDD-Bank Contract, the Bank promised, among other things, to  
22 provide an Interactive Voice Response (IVR) system and live Customer Service Representative  
23 (CSR) support available “24 hours a day, seven days a week.” The Bank promised that live CSR  
24 agents would be available 24/7 to assist EDD Debit Cardholders with “[i]nvestigat[ing]  
25 transactions (fraud security, use),” “[p]rocess[ing] lost/stolen/damaged card reports,” and  
26 “[c]heck[ing] on the Status of Disputed Transactions.” The Bank further promised that “no call  
27 [would be] transferred to voicemail or automatically disconnected from the queue,” that “calls  
28 [would] not [be] immediately placed on hold,” that “the average wait time to speak to a live



1 CSR” agent would be “no more than 30 seconds for 70 percent of the calls, and no more than  
2 two (2) minutes for all calls,” and that the Bank would “monitor Customer Service calls to  
3 ensure quality service and address Customer complaints.”

4 34. On information and belief, EDD entered into the EDD-Bank Contract because of,  
5 and in reliance on, the Bank’s representations in its 2015 Proposal.

6 35. Pursuant to the terms of the EDD-Bank Contract, EDD and the Bank are engaged  
7 in a joint undertaking to administer the EDD benefits programs and distribute EDD benefits  
8 payments to eligible claimants through EDD Debit Cards. These Cards are the default payment  
9 method for EDD benefits, and EDD’s website presents EDD Debit Cards as the exclusive means  
10 of receiving EDD benefits.<sup>1</sup> EDD further promotes EDD Debit Cards as “a fast, convenient, and  
11 secure way to get your benefit payments,” and advertises the many purported benefits of EDD  
12 Debit Cards: “Get your money sooner”; “Use it everywhere VISA is accepted (in stores, online,  
13 and by phone)”; “Withdraw cash at ATMs, banks, and stores with cash back options”; “Transfer  
14 funds to the financial institution of your choice at no additional cost”; “Be notified when a  
15 deposit is made to your card, or when you have a low balance”; and “Receive fraud protection  
16 from a Zero Liability Policy.”<sup>2</sup>

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

23  
24  
25 <sup>1</sup> See, e.g., EDD website, *Unemployment Insurance – After You File a Claim*, [https://www.edd.ca.gov/unemployment/After\\_you\\_Filed.htm#receive](https://www.edd.ca.gov/unemployment/After_you_Filed.htm#receive) (“When your first benefit  
26 payment is available, you will receive a debit card in the mail.”); EDD Website, *Guide to  
27 Applying for Unemployment Benefits*, <https://unemployment.edd.ca.gov/guide/receive-benefits>  
28 (“Benefit payments for Unemployment Insurance, Pandemic Unemployment Assistance (PUA),  
Disability Insurance, and Paid Family Leave are all made using the Bank Debit Card.”).

<sup>2</sup> EDD website, *Debit Card*, [https://www.edd.ca.gov/about\\_edd/The\\_EDD\\_Debit\\_Card.htm](https://www.edd.ca.gov/about_edd/The_EDD_Debit_Card.htm).

1           37. Pursuant to the EDD-Bank Contract, EDD and Bank of America work  
2 cooperatively to identify potentially fraudulently obtained EDD Debit Card Accounts. EDD and  
3 Bank of America have made joint decisions to freeze between approximately 344,000 and  
4 405,000 such Accounts. In addition, since September 2020, Bank of America has frozen another  
5 approximately 75,000 Accounts and informed EDD about those freezes. Once it freezes an EDD  
6 Debit Card Account, the Bank, if contacted by a customer seeking to unfreeze the Account,  
7 informs the affected cardholder that they must re-establish their identity and re-verify their  
8 benefits eligibility with EDD before the Bank will unfreeze their Account—regardless of  
9 whether EDD itself has raised any question regarding the cardholder’s identity or benefits  
10 eligibility. In many cases, the Bank maintains the freeze on a cardholder’s Account even long  
11 after the EDD informs the cardholder that there is no need to re-verify their benefits eligibility or  
12 confirms that the cardholder is eligible for benefits.

13           38. By authorizing the Bank to freeze Plaintiffs’ and Class Members’ EDD Debit  
14 Card Accounts based on the Bank’s own determination of potential benefits eligibility fraud, and  
15 by authorizing the Bank to require EDD Debit Cardholders to re-verify their benefits eligibility  
16 with EDD as a necessary (but not sufficient) condition of unfreezing their Accounts, EDD has  
17 delegated to the Bank the responsibility and authority to determine when, why, and how to deny  
18 Plaintiffs and Class Members access to benefits to which EDD has already found them entitled.  
19 The Bank accepted and has exercised that delegated authority, including by freezing the EDD  
20 Debit Card Accounts of at least 75,000 EDD benefits recipients and thereby suspending those  
21 individuals’ public benefits.

22           39. The EDD-Bank Contract, which contains an express revenue-sharing agreement,  
23 creates a relationship of financial interdependency between EDD and Bank of America. Under  
24 the revenue-sharing agreement, the State of California benefits from delegating the  
25 administrative burdens of EDD benefits distribution to the Bank at no cost to the State, while the  
26 Bank benefits from collecting point-of-sale transaction fees and other fees from millions of EDD  
27 Debit Cardholders and vendors and from earning interest on funds loaded onto the EDD Debit  
28 Cards while they remain unspent by cardholders, which revenues it shares with the State. At the

1 same time, the EDD-Bank Contract relieves EDD of any liability for “fraud, misuse, and lost or  
2 stolen debit cards,” leaving the Bank solely liable for such fraud, misuse, loss, or theft. This  
3 creates a financial incentive for the Bank to circumvent its EFTA and other legal obligations to  
4 provide provisional credit and permanent reimbursement for fraudulent transactions that occur in  
5 EDD Debit Card Accounts.

6 **B. The Bank’s Failure to Secure Sensitive EDD Debit Cardholders Information**

7 40. Bank of America has failed to maintain, store, share, or transfer EDD Debit  
8 Cardholders’ personally identifiable information, Card and Account data, and other financial  
9 data and information (collectively, “Cardholder Information”) in a reasonably secure manner and  
10 consistent with the Bank’s obligations to EDD and to Plaintiffs and Class Members. As a result,  
11 Cardholder Information has been obtained by unauthorized third parties in a series of security  
12 breaches that have allowed millions of dollars to be stolen from Plaintiffs and Class Members  
13 through unauthorized transactions. Bank of America’s repeated and ongoing failure to secure  
14 Plaintiffs’ and Class Members’ Cardholder Information violated and continues to violate the  
15 California Consumer Privacy Act and the Bank’s common law duty to take reasonable steps to  
16 protect Cardholder Information from unauthorized access, theft, or disclosure.

17 41. Some EDD Debit Cardholders who have had money stolen from their Debit Card  
18 Accounts through unauthorized transactions received and activated, but never used, their EDD  
19 Debit Cards.<sup>3</sup> Such unauthorized transactions could only have occurred if Bank of America  
20 failed to store or transfer Cardholder Information in a reasonably secure manner.

21 42. For example, Plaintiff Stephanie Smith received her EDD Debit Card in June  
22 2020, and she activated it on Bank of America’s website that same day. Immediately after  
23 activating the card, she locked the card in a safe inside her home, and she did not subsequently  
24 take the card out of the safe or use it in any way. Her only activity on her EDD Debit Card

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25 <sup>3</sup> See, e.g., David Gotfredson, “California Unemployment: Fraudulent Charges Keep Popping up  
26 on Bank Debit Card Accounts,” *ABC10 Sacramento (KXTV)* (Jan. 21, 2021), available at [https://](https://www.abc10.com/article/money/fraudulent-charges-edd-debit-card-accounts/509-5a8b0958-0b56-41fe-81af-e3ce446d0690)  
27 [www.abc10.com/article/money/fraudulent-charges-edd-debit-card-accounts/509-5a8b0958-](https://www.abc10.com/article/money/fraudulent-charges-edd-debit-card-accounts/509-5a8b0958-0b56-41fe-81af-e3ce446d0690)  
28 [0b56-41fe-81af-e3ce446d0690](https://www.abc10.com/article/money/fraudulent-charges-edd-debit-card-accounts/509-5a8b0958-0b56-41fe-81af-e3ce446d0690) (reporting that an EDD Debit Cardholder experienced fraud  
despite the fact that he “never . . . used the card” and “only used the account number to transfer  
money to [his] credit union”).

1 Account thereafter was to use Bank of America’s website to transfer funds from her EDD Debit  
2 Card Account to her personal consumer bank account (also with Bank of America). She never  
3 used the card at an ATM, for an online purchase, at a retail store, or for any other transaction.  
4 Despite never using the card, Smith’s Personal Information associated with her EDD Debit Card  
5 or Account was used to make unauthorized purchases in November 2020.

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

7 43. To access their EDD benefits, EDD Debit Cardholders must send the Cardholder  
8 Information stored on their cards through a processing network operated by Visa. The first step  
9 in that process occurs at the point of sale, where the card must either be swiped or inserted into a  
10 card reader. The reader obtains the Cardholder Information stored on the card and transmits it to  
11 the financial services provider through a computer network, either at the time of the transaction  
12 or later in a “batch” with other transactions.

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

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

26 46. Personal data on magnetic stripe cards can also be captured by hackers on a large  
27 scale. For example, in 2013, hackers infiltrated the retailer Target’s payment terminals and  
28 systematically captured the information of every swiped card for weeks, ultimately gathering the

1 card information of tens of millions of people.<sup>4</sup> Card data collected in this manner can be sold on  
2 an underground market, where the stolen data can be used to make fraudulent purchases.

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

10 48. In 2011, the same year the Bank began issuing EDD Debit Cards, the Bank  
11 announced it would offer EMV chips in corporate credit cards to U.S. business customers who  
12 regularly traveled outside the United States.

13 49. On September 30, 2014, the Bank announced that it would include chip  
14 technology on “all new and reissued” consumer debit cards. In announcing this shift, a Bank of  
15 America executive stated that “chip technology is an important tool in increasing card security,  
16 and we want our customers to have the best possible experience when using their payment  
17 cards.” The executive added that the “new chip-enabled cards will improve security of  
18 customers’ transactions.”<sup>5</sup>

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

22 51. In 2015, card-issuing banks and payment networks stopped absorbing liability for  
23 fraudulent transactions. On October 1, 2015, retail merchants who did not have certified EMV  
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25 <sup>4</sup> Elise Hu, “Target Hack a Tipping Point in Moving Away from Magnetic Stripes,” *NPR*  
26 (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>.

27 <sup>5</sup> Bank of America Press Release, “Bank of America Begins Rollout of Chip Debit Cards”  
28 (Sept. 30, 2014), *BusinessWire*, available at <https://www.businesswire.com/news/home/20140930005292/en/Bank-of-America-Begins-Rollout-of-Chip-Debit-Cards>.

1 chip readers became liable for fraudulent transactions if the consumer presented an EMV chip  
2 card. In essence, this meant liability for consumer card fraud would fall on either the retailer or  
3 the card issuer, whichever was the least compliant with the EMV protocol.

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

12 53. Despite the fact that Bank of America has been well aware for many years that  
13 EMV chip cards are significantly more secure than magnetic stripe cards and is the “debit card  
14 security standard,” and despite its representations to EDD that it will “focus on claimants” while  
15 leveraging “rapidly evolving payment technology” and staying “at the forefront of payments  
16 innovation,” the Bank chose to issue EDD Debit Cards using old, vulnerable magnetic stripe  
17 technology to hundreds of thousands of the most financially vulnerable Californians—Plaintiffs  
18 and Class Members. To this day, the Bank continues to issue EDD Debit Cards with no EMV  
19 chip, notwithstanding its announcement nearly seven years ago that it would include EMV chip  
20 technology on all consumer debit cards to help prevent fraud. Predictably, the issuance of EDD  
21 Debit Cards without EMV chips led to rampant fraud, resulting in the ongoing loss of millions of  
22 dollars in EDD benefits intended to assist Californians who lost their jobs, including during the  
23 COVID-19 pandemic.

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

25 54. Bank of America represented to Plaintiffs and Class Members, in its cardholder  
26 agreement and on its website, that they would not be responsible for unauthorized transactions  
27 on their EDD Debit Cards or Accounts because of the Bank’s “Zero Liability” policy, under  
28 which the Bank would fully protect them against, and would reimburse them for, any

1 unauthorized transactions. The Bank also represented to Plaintiffs and Class Members that they  
2 could call the Bank 24 hours a day 7 days a week to report any unauthorized transaction to live  
3 customer services representatives, and that the Bank would promptly investigate the transaction  
4 and determine whether it was unauthorized within 10 business days thereafter, except that if the  
5 Bank took longer than 10 days (but in no event longer than 45 days) to investigate the  
6 transaction, the Bank “will credit your Account within 10 business days for the amount you think  
7 is in error, so that you will have the money during the time it takes us to complete our  
8 investigation.”

9 55. In the Bank’s California Employment Development Department Debit Card  
10 Account Agreement (“Cardholder Agreement”), to which all EDD Debit Cardholders must  
11 agree, Bank of America sets forth the above promises in detail. The Cardholder Agreement has  
12 an effective date of March 1, 2018, and thus has been effective throughout the Class Period, as  
13 defined below. The Cardholder Agreement states: “Under the Bank of America ‘zero liability’  
14 policy, you may incur no liability for unauthorized use of your Card up to the amount of the  
15 unauthorized transaction, provided you notify us within a reasonable time . . . .” The Cardholder  
16 Agreement advises the cardholder to “contact us at the number listed below AT ONCE if you  
17 believe your Card has been lost or stolen or if you believe that someone may use of has used  
18 your PIN assigned to your card without your permission. Telephoning is the best way of keeping  
19 your possible losses down.” The Cardholder Agreement requires cardholders to call or write to  
20 report an unauthorized transaction “no later than 60 days” after the Bank sent the statement on  
21 which the transaction appeared.

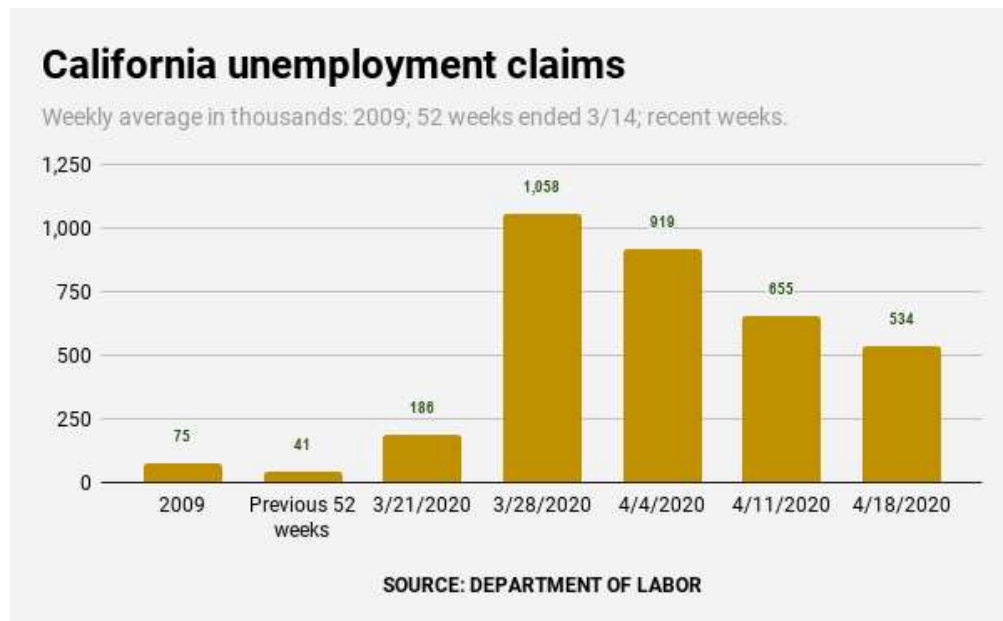
22 56. The Cardholder Agreement promises that Bank of America “will determine  
23 whether an error occurred within 10 business days” after an unauthorized transaction is reported.  
24 The Cardholder Agreement reserves the right to “take up to 45 days to investigate” if the Bank  
25 “need[s] more time,” in which case the Bank promises that “we will credit your Account within  
26 10 business days for the amount you think is in error, so that you will have the money during the  
27 time it takes us to complete our investigation.”  
28



57. Bank of America represents to EDD Debit Cardholders that the Bank’s customer service department representatives are continuously available to assist with suspected fraud. On Bank of America’s EDD Debit Card FAQ webpage, in response to the question “What are the Bank of America EDD Debit Card Customer Service hours?” Bank of America claims that “[f]or your convenience,” Bank of America’s “dedicated customer service representatives are available 24 hours [a] day, 7 days a week” by phone. The webpage further explains that the Bank’s customer service representatives can help with the following: “Resolve a question about your account statement,” “Investigate transactions,” “Process lost/stolen/damaged card reports,” and “Request an emergency cash transfer.” In its Cardholder Agreement, Bank of America advises EDD Debit Cardholders that “Telephoning is the best way of keeping your possible losses down.” In addition, Bank of America provides each EDD Debit Cardholder with a “Quick Reference Guide,” which prominently states that “customer service is available 24/7.”

#### **E. The Rampant Third-Party Fraud on EDD Debit Card Accounts**

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



1           59. As a result, millions of Californians turned to the EDD unemployment benefits  
2 programs administered by Bank of America to pay their bills and make ends meet. Since the start  
3 of the COVID-19 pandemic in March 2020, EDD has received at least 18.5 million claims for  
4 various unemployment benefits. In the first week of December 2020, EDD received 341,813  
5 claims, a 600% increase from December 2019. Bank of America has issued more than 9 million  
6 EDD Debit Cards to individuals found by EDD to be eligible for unemployment benefits.

7           60. As widely reported in the media and as described by legislators who report having  
8 heard from thousands of constituents, tens of thousands of EDD Debit Cardholders have been the  
9 victims of fraud throughout the pandemic, resulting in tens of millions of dollars having been  
10 stolen from their Accounts, including through fraudulent ATM withdrawals, such as many  
11 Plaintiffs experienced.

12           61. Countless EDD Debit Cardholders have reported hundreds and thousands of  
13 dollars stolen through unauthorized use of their EDD Debit Cards. These unauthorized  
14 transactions have taken various forms, including massive ATM withdrawals in distant states and  
15 countries,<sup>6</sup> thousand-dollar charges at luxury vendors, and repeated transactions with food  
16 delivery services. Regardless of how or where the fraud has been carried out, the Bank's EDD  
17 Debit Cards have proven highly susceptible to unauthorized use.

18           62. After criminals exploit the security vulnerabilities of the Bank's EDD Debit Cards  
19 and Accounts and misappropriate Card and Account information, that information can be sold on  
20 the dark web, allowing the buyer to engage in unauthorized use of funds belonging to Plaintiffs  
21 and Class Members.<sup>7</sup>

22           63. Such rampant third-party fraud was readily foreseeable given the rapid growth of  
23 the number of new UI and PUA claims, as well as reports from early in the pandemic warning of  
24 the potential for fraud and exploitation of the UI and PUA benefits system by criminals. This

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26 <sup>6</sup> See, e.g., CBSLA Staff, "Bank of America Freezes EDD Accounts of Nearly 350,000  
27 Unemployed Californians for Suspected Fraud," *CBS Los Angeles* (Oct. 29, 2020), available at  
<https://losangeles.cbslocal.com/2020/10/29/bank-of-america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/>.

28 <sup>7</sup> See *id.*

1 fraud was entirely foreseeable. It is well known in the financial industry that crises, such as  
 2 economic recessions, lead to an increase in scams, fraud, and other financial crimes. The early  
 3 months of the Covid-19 pandemic in the United States—March through May 2020—made clear  
 4 that the pandemic would be no exception. In late March 2020, the federal Coronavirus Aid,  
 5 Relief, and Economic Security (CARES) Act was signed into law, injecting \$2.2 trillion of relief  
 6 into the American economy, including \$260 billion in increased unemployment benefits, and  
 7 hundreds of billions of dollars more in one-time cash payments to taxpayers and forgivable  
 8 Paycheck Protection Program (PPP) loans. This rapid influx of pandemic relief to individuals  
 9 and businesses, combined with rapid growth in the number of new claims for UI, PUA, and other  
 10 public benefits created a “perfect environment” for fraud that was widely reported in the  
 11 American media,<sup>8</sup> and that led to a flood of warnings from government agencies and expert  
 12 nongovernmental organizations about major increases in malicious cyber activity and financial  
 13 fraud, including fraud targeting government unemployment benefits and consumer banking and  
 14 credit services.<sup>9</sup> Reporting during the early months of the pandemic also noted the major

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15 <sup>8</sup> Ari Shapiro & Martin Kaste, “The Pandemic Creates A Perfect Environment For New Types  
 16 Of Fraud,” *NPR All Things Considered* (May 21, 2020), <https://www.npr.org/2020/05/21/860584461/the-pandemic-creates-a-perfect-environment-for-new-types-of-fraud> (reporting  
 17 experts saying that there was a “bonanza” and “gold rush right now” in pandemic-related  
 18 financial crimes); Steve Inskeep & Martin Kaste, Washington State Hit Hard by Unemployment  
 19 Fraud, *NPR Morning Edition* (May 22, 2020) (“scams thriving nationwide in the uncertain  
 20 conditions created by the pandemic,” including hundreds of millions of dollars lost by  
 21 Washington state to fraudulent unemployment claims).

22 <sup>9</sup> See, e.g., National Governor’s Association, *Memorandum To: All Governors Re: COVID-19*  
 23 *and Cybersecurity* at 1 (Apr. 28, 2020) (“State agencies, critical infrastructure sectors, and the  
 24 general public are experiencing waves of COVID-themed malicious cyber activity.”); Greg  
 25 Iacurci, “If there’s coronavirus relief money, scammers will try and steal it,” *CNBC* (May 6,  
 26 2020), <https://www.cNBC.com/2020/05/06/scammers-are-looking-to-steal-your-coronavirus-relief-money.html> (“Federal agencies like the IRS, Federal Trade Commission, Social Security  
 27 Administration and FBI have warned consumers and business owners in recent weeks to be  
 28 vigilant as fraudsters try to take advantage of them during the coronavirus pandemic,” including  
 by targeting government financial relief such as unemployment benefits); U.S. Dept. of Labor  
 Press Release, *U.S. Department Of Labor Issues Guidance And Reminders To States To Ensure  
 Integrity Of Unemployment Insurance Programs* (May 11, 2020), <https://www.dol.gov/newsroom/releases/eta/eta20200511-1> (announcing new “targeted 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*

1 increases in fraudulent financial activity had, predictably, caused a corresponding increase in  
 2 demand on customer service phone lines, causing many agencies and companies to hire  
 3 additional customer service representatives.<sup>10</sup> Bank of America nonetheless failed to take  
 4 reasonable measures to prepare for, prevent, or respond to the readily foreseeable fraud as relates  
 5 to its EDD Debit Cards and Accounts.

6 **F. The Bank’s Evasive and Ineffectual Response**

7 64. Bank of America’s ineffective response to the rampant fraud has taken various  
 8 forms, including not answering the customer service phone lines it advises EDD Debit  
 9 Cardholders to call; establishing “customer service” procedures that frustrate and obstruct  
 10 Plaintiffs’ and Class Members’ efforts to file fraud claims; opening fraud claims and then closing  
 11 them so soon thereafter that a full investigation could not have occurred; crediting funds and  
 12 later debiting them without notice to the EDD Debit Cardholder; failing to extend provisional  
 13 credit to EDD Debit Cardholders; and indefinitely freezing the Accounts of EDD Debit  
 14 Cardholders who call Bank of America to report third-party fraud on their Accounts.<sup>11</sup>

15 65. At no point have Plaintiffs or Class Members received written communication—  
 16 by mail, email, text, or otherwise—from the Bank regarding the ongoing widespread fraud  
 17 affecting their EDD Debit Cards and Accounts, or how defrauded EDD Debit Cardholders  
 18 should proceed, even after the Bank froze hundreds of thousands of EDD Debit Card Accounts

19 \_\_\_\_\_  
 20 *York Times* (May 16, 2020), available at <https://www.nytimes.com/2020/05/16/us/coronavirus-unemployment-fraud-secret-service-washington.html>; AnnaMaria Andriotis & Orla McCaffrey,  
 21 “Borrower, Beware: Credit-Card Fraud Attempts Rise During the Coronavirus Crisis,” *The Wall*  
 22 *Street Journal* (May 27, 2020), available at <https://www.wsj.com/articles/borrower-beware-credit-card-fraud-attempts-rise-during-the-coronavirus-crisis-11590571800> (reporting on the  
 23 “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”).

24 <sup>10</sup> See, e.g., Baker, *supra* note 9 (phone calls reporting fraud “flooded” Washington state  
 25 unemployment benefits agency and “forced the state to hire more people to answer the phones”);  
 26 Andriotis *et al.*, *supra* note 9 (cardholders of major credit card issuers experiencing difficulty  
 “getting customer-service representatives on the phone to remove charges and replace cards”).

27 <sup>11</sup> Kenny Choi, “Victims of Bank of America Bank Debit Card Fraud Tell Stories of Fake  
 28 Charges, Long Waits, Closed Claims,” *KPIX–CBS SF Bay Area* (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 in a desperate and heavy-handed effort to protect its own interests from the effects of the fraud.  
2 The only option presented to Plaintiffs and Class Members has been to comply with Bank of  
3 America's instructions to call the customer service number on their EDD Debit Cards in reliance  
4 on the Bank's representations of a "Zero Liability" policy and "24/7" customer service.  
5 Unfortunately, as Plaintiffs and Class Members have learned, Bank of America's representations  
6 were and continue to be false. Proceeding in accordance with the Bank's policies and  
7 recommendations offers scant hope of recovering stolen funds or getting one's Account unfrozen  
8 in any reasonable time.

9         66. In late November 2020, flooded by complaints from defrauded constituents, 59  
10 California lawmakers wrote a letter to Bank of America Chairman and CEO Brian Moynihan  
11 concerning the rampant fraud involving EDD Debit Cards and Accounts, and the Bank's  
12 inadequate response. The letter states: "The only recourse that EDD and our offices can currently  
13 provide constituents is to call Bank of America when these problems occur. However,  
14 constituents report they are unable to get through to your call centers, or when they do, the issue  
15 is not resolved." The letter adds: "Many of our own staff have also tried to reach Bank of  
16 America to no avail."<sup>12</sup>

17                 **1. The Bank's Policy and Practice of Making Fraud Difficult to Report**

18         67. The Bank has prevented many Plaintiffs and Class Members from being able to  
19 report fraud in a timely manner, or even at all. Notwithstanding the foreseeable spike in calls that  
20 would inevitably accompany the spike in UI and PUA benefits recipients, the Bank failed (and  
21 continues to fail) to appropriately staff its customer service call centers in a manner that would  
22 allow it to honor its contractual commitments under the EDD-Bank Contract and to provide  
23 reasonable levels of assistance to the volume of EDD Debit Cardholders seeking assistance  
24 during this pandemic. As a result, when attempting to report fraud or to inquire about potential  
25 fraud, Plaintiffs and Class Members have been kept on hold for hours, have been disconnected  
26 without warning, have waited long periods of time to speak with someone only to be told to call

27 \_\_\_\_\_  
28 <sup>12</sup> Philip Y. Ting, *et al.*, Letter to Brian Moynihan (Nov. 24, 2020), *available at* <https://a19.asmdc.org/sites/a19.asmdc.org/files/pdf/b-letter-ceo-fnl.pdf>.

1 back later, have been transferred to various departments with no apparent end or sent to  
2 voicemail, have had to deal with unhelpful automated agents, and have unsuccessfully attempted  
3 to reach the Bank by email.

4 **2. The Bank's Policy and Practice of Automatically Denying Fraud**  
5 **Claims Without Investigation or Explanation**

6 68. Even when fraud is reported, the Bank has a policy and practice of automatically  
7 and summarily denying the fraud claims of EDD Debit Cardholders without adequate  
8 investigation or explanation. Pursuant to this policy and/or practice, Cardholders who file a fraud  
9 claim do not receive provisional credit pending investigation within the first 10 days after they  
10 file a claim (or ever). Instead, they receive a form letter from the Bank—often dated the very  
11 same day or within a day or two of their report of the unauthorized transactions—stating simply  
12 that the “claim has been closed.” The form letter states, “Your claim has been closed because we  
13 believe the account or the claim have been the subject of fraud or suspicious activity. Any  
14 temporary credit that was applied to your account related to this claim, including any related  
15 reimbursement of fees, has been or will be debited from your account and reflected in your  
16 available balance, if any.” The form letter does not provide any individualized information  
17 explaining what the Bank’s investigation, if any, entailed, nor does it explain the basis for the  
18 Bank’s determination.

19 69. That letter provides a number that Cardholders should call if they wish to “request  
20 that [the Bank] reopen your claim for further consideration,” but EDD Debit Cardholders who  
21 call the Bank to make such a request are often given erroneous information or told they cannot  
22 be helped. Even those who submit detailed documentation to the Bank substantiating their fraud  
23 claims, such as sworn statements, police reports, and documentary proof of their whereabouts at  
24 the time the fraudulent transactions occurred (e.g., that they were nowhere near the ATM from  
25 which their funds were withdrawn) are often ignored and go months without receiving any  
26 update from the Bank on the status of their claim. Some who submit additional information  
27 simply receive yet another form letter from the Bank summarily reaffirming without explanation  
28 the Bank’s original decision denying the fraud claim.



1           70.     On information and belief, the Bank adopted this policy and practice of  
2 automatically denying the fraud claims of EDD Debit Cardholders to circumvent its obligations  
3 under EFTA and Regulation E, which require the Bank to issue provisional credit within 10 days  
4 of a Cardholders' report of fraud, to complete a good-faith investigation of the claim within no  
5 more than 45 days, and thereafter to issue permanent credit absent a reasonable basis for  
6 believing no fraud occurred. In implementing this policy and practice, the Bank sought to protect  
7 its own financial interests at the expense of legitimate claimants whose life-sustaining public  
8 benefits had been stolen.

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

19                   **3.    The Bank's Policy and Practice of Automatically and Indefinitely**  
20                   **Freezing Class Members' Accounts When They Report Unauthorized**  
21                   **Transactions**

22           72.     The Bank has an additional policy and practice of responding to EDD Debit  
23 Cardholders who report fraudulent transactions by automatically and indefinitely freezing their  
24 EDD Debit Card Accounts without any prior notice, explanation, or opportunity to be heard.  
25 Thus, many Class Members have had the experience of reporting fraudulent transactions and  
26 receiving assurances from the Bank that it will cancel their old EDD Debit Card and issue a new  
27 one, only to discover that their new EDD Debit Card is useless because the Bank has frozen (or  
28 locked) their EDD Debit Card Account. The Bank implements this policy and practice without  
first offering the Accountholder an opportunity to withdraw any remaining funds still in the



1 Account, thus depriving the Accountholder of access to any EDD benefits that may have been in  
2 the Account at the time. Moreover, because the Bank will not accept EDD benefits payments  
3 from EDD for deposit into a frozen Account, the Bank's freezing of an Account cuts off the  
4 affected EDD Debit Cardholder's access to the continuing EDD benefits to which the Cardholder  
5 is entitled. As a result, many EDD Debit Cardholders who are the victim of third-party fraud, and  
6 who turn to the Bank for help, suddenly find themselves indefinitely deprived of access to *all*  
7 their EDD benefits and treated as if *they* are the criminals.

8         73. Many such individuals have been frozen out of their EDD Debit Card Accounts  
9 for months on end, without any information as to when their Accounts will be unfrozen or how  
10 they can facilitate that unfreezing. Some EDD Debit Cardholders whose Accounts are frozen in  
11 this manner eventually receive notice weeks or months after the fact, but that notice simply  
12 states, "It has been determined that there may be irregular, unauthorized, or unlawful activities  
13 involved with the prepaid debit card issued to you. As a result . . . a freeze (or hold) has been  
14 placed on your account." The notice states that once the Bank freezes your Account, you "will be  
15 unable to use the prepaid debit card or access the money in your account." The notice further  
16 states that once the Bank freezes an Account, it "will not be available to receive any additional  
17 benefits that may be issued to you by [EDD]." The notice states, "If a conclusion is reached that  
18 there is no irregular, unauthorized, or unlawful activity on your account, your account will be  
19 unfrozen and your balance will become available in accordance with the terms of the card  
20 account agreement and state agency guidelines," but the notice does not advise the affected  
21 Cardholder as to what steps they can take to regain access to their Account.

22         74. Moreover, after Bank of America has frozen an EDD Debit Card Account in  
23 response to a report of transactional fraud, the Bank has a policy and practice of telling EDD  
24 Debit Cardholders they are required to re-establish their identity and re-verify eligibility with  
25 EDD as a condition of unfreezing the Account—even if EDD itself has not raised any question  
26 regarding the individual's identity or benefits eligibility. Bank of America imposes this onerous  
27 and unreasonable condition on Cardholders who report third-party transactional fraud regardless  
28 of whether there is a reasonable basis for suspecting them of having committed benefits

1 eligibility fraud, and despite knowing that EDD's call center has been completely overwhelmed  
2 by the surge in unemployment benefits recipients throughout the pandemic and that many  
3 individuals who call EDD will never get through. According to the State Auditor, EDD agents  
4 answered just 1.4% (697,132 of 50,251,351) of calls received in July 2020, and just 6.3%  
5 (230,301 of 3,649,193) of calls received in October 2020.

6 75. Even after Class Members comply with this onerous and unreasonable step of  
7 contacting EDD and obtaining confirmation from EDD that they either do not need to re-verify  
8 or have successfully re-verified their benefits eligibility, Bank of America *still* does not unfreeze  
9 their EDD Debit Card Account, continuing without explanation to deprive Cardholders of access  
10 to their EDD benefits and refusing to process their fraud claims or refund their stolen money,  
11 sometimes for months longer.

12 **4. The Bank's Policy and Practice of Denying Meaningful Assistance to**  
13 **Class Members Seeking to Resolve their Fraud Claims or Unfreeze**  
14 **their Accounts**

15 76. Desperate and confused, EDD Debit Cardholders whose fraud claims have been  
16 summarily denied and/or whose EDD Debit Card Accounts have been suddenly frozen have  
17 spent months calling the Bank's customer service hotline, but to no avail.

18 77. The Bank has failed to appropriately staff its customer service call centers in a  
19 manner that would allow it to honor its contractual commitments under the EDD-Bank Contract  
20 and to provide reasonable levels of assistance to the volume of EDD Debit Cardholders seeking  
21 assistance during this pandemic. Further, the Bank has a policy and practice of failing to provide  
22 its customer service representatives the tools or authority to assist Cardholders who call seeking  
23 assistance in resolving their fraud claims or unfreezing their Accounts. Although the Bank at  
24 some point in the Fall of 2020 hired additional customer service agents, on information and  
25 belief those newly hired customer service agents are not trained and are not empowered to  
26 investigate or resolve fraud claims, and the number of customer service agents continues to be  
27 too low to handle incoming calls, resulting in hours-long wait times if cardholders can get  
28 through at all.

1           78.     Despite the Bank’s promise of 24/7 customer service, Plaintiffs and Class  
2 Members have found themselves repeatedly kept on hold, sometimes for hours, waiting to speak  
3 to a live agent. Plaintiffs and Class Members have been disconnected, hung up on, and treated  
4 rudely by overworked and overwhelmed agents. EDD Debit Cardholders often spend hours on  
5 hold with customer service, despite Bank of America having represented in its Cardholder  
6 Agreement that “[t]elephoning is the best way of keeping your possible losses down.” Even  
7 when Plaintiffs and Class Members do reach a customer service representative, those  
8 representatives are unable to offer any meaningful assistance, often conveying false information  
9 or contradicting one another.

10           79.     The Bank’s representatives also often provide erroneous information to Plaintiffs  
11 and Class Members regarding the source of their Account freezes. Countless Class Members  
12 have been told that the Bank has no control over the freeze, that EDD is the entity responsible for  
13 the freeze, and that only EDD has the power to unfreeze their EDD Debit Card Accounts. But  
14 when Class Members call EDD, EDD informs them that it has no control over their EDD Debit  
15 Card Accounts and that the freeze is entirely within the Bank’s control. Even when Class  
16 Members re-verify their identity with EDD and EDD confirms their eligibility for EDD benefits  
17 and Class Members convey this information to the Bank, the Bank *still* does not unfreeze their  
18 Accounts. In some cases, EDD has recently resumed paying benefits to Class Members, through  
19 paper checks, but Class Members remain unable to access funds in their EDD Debit Card  
20 Accounts, which remain frozen.

21           80.     The EDD has publicly stated that the responsibility to prevent fraud and address  
22 claims of unauthorized transactions lies entirely with Bank of America, stating on October 29,  
23 2020 that EDD “has no direct access to debit funds on any accounts” and that those impacted by  
24 card issues should contact Bank of America.<sup>13</sup> The agency has stated that it has no means to  
25 intervene in Bank of America’s procedures.

26 \_\_\_\_\_  
27 <sup>13</sup> Matt Fountain, “Bank of America Froze SLO County Residents’ Unemployment Benefits  
28 Because of Fraud,” *San Luis Obispo Tribune* (Dec. 17, 2020), available at <https://www.sanluisobispo.com/news/local/article247729155.html>.

1           81. Bank of America’s inadequate response to EDD Debit Cardholders’ issues with  
 2 fraud on their Cards and Accounts results from the Bank’s failure to adequately staff its  
 3 customer-service and fraud-investigation departments, and from Bank procedures that are  
 4 designed to, or that the Bank knows or reasonably should know will, frustrate and obstruct  
 5 Cardholders’ efforts to submit their claims and obtain reimbursement under the EFTA and the  
 6 Bank’s “Zero Liability” policy.

7           82. Many EDD Debit Cardholders have characterized their efforts to obtain relief  
 8 from the Bank for the wrongful conduct alleged herein as an “unofficial full-time job trying to  
 9 get the money back.” One defrauded EDD Debit Cardholder reported: “It’s kind of like a  
 10 nightmare . . . . Every day I’m wondering what’s more important. Do I get on the phone with the  
 11 bank and try again so I have a place to sleep tomorrow, or do I just accept that I’m going to be on  
 12 the street and focus on my job search? Because you can’t do both.”<sup>14</sup>

13           83. A Bank of America customer service worker, addressing the Bank’s response to  
 14 the influx of reports of third-party debit card fraud, stated: “We’re actually no longer allowed to  
 15 tell them a timeframe, because we have no clue . . . . Every day, I talk to 30 people with the same  
 16 story. I just pray for them after my shift, honestly.”<sup>15</sup>

17           84. Bank of America’s disregard for EDD Debit Cardholders’ issues with fraud and  
 18 the Bank’s inadequate response is particularly astonishing in light of the representations it made  
 19 to the State in its proposal to administer the EDD public benefits program, in which the Bank  
 20 stated, “we pride ourselves on providing stellar customer service to every caller. Long call hold  
 21 waits and busy signals are not tolerated at Bank of America.”

22 **G. Plaintiffs’ Experiences Dealing with Bank of America’s Customer Service and**  
 23 **Trying to Obtain Reimbursement and to Unfreeze their Accounts**

24 **1. Jennifer Yick**

25 85. In December 2020, Yick was surprised when her EDD Debit Card was declined at

26 \_\_\_\_\_  
 27 <sup>14</sup> Lauren Hepler & Stephen Council, “How Bank of America Helped Fuel California’s  
 28 Unemployment Meltdown,” *CalMatters* (Nov. 20, 2020), available at <https://calmatters.org/economy/2020/11/how-bank-of-america-helped-fuel-californias-unemployment-meltdown/>.

<sup>15</sup> *Id.*

1 a grocery store. She subsequently viewed her Account statement and discovered that her Account  
2 balance, which she knew should have been over \$400, had been drained to 70 cents by four  
3 unauthorized transactions with DoorDash, a food delivery service, for deliveries from restaurants  
4 in Texas, New York, and Southern California. Yick lives in San Francisco. Yick does not have a  
5 DoorDash account and did make or authorize these transactions.

6 86. Yick received no notifications from Bank of America about these highly unusual  
7 transactions, indicating that the Bank failed to detect the instances of fraud, notwithstanding the  
8 Bank's representation to the State in its contract proposal that it "fully intend[s] to apply the most  
9 rigorous fraud detection procedures," including "employ[ing] the highest level of security and  
10 fraud safeguards" based on "multiple layers of extensive security" and a "multi-faceted approach  
11 to combat fraud." The Bank's 2015 Proposal specifically promises that Bank of America would  
12 provide "fraud monitoring" for all EDD Debit Cards and Accounts, and to employ technology  
13 that would provide "immediate response to emerging fraud trends" and allow fraudulent  
14 transactions to be "declined in real time."

15 87. Over the course of more than a month, Yick repeatedly sought assistance through  
16 Bank of America's fraud telephone hotline, to no avail. She repeatedly waited on hold before  
17 being disconnected from the line; waited to speak to someone only to be told to call back later;  
18 was transferred to various departments without receiving any information; was sent to voicemail;  
19 was forced to deal with unhelpful automated agents; and unsuccessfully attempted to reach Bank  
20 of America by email. To date, Yick has not been reimbursed for the unauthorized transactions on  
21 her EDD Debit Card, nor has Bank of America provisionally credited her Account.

22 88. Yick's experience seeking reimbursement from the Bank for the unauthorized  
23 transactions on her Account demonstrates the futility of EDD Debit Cardholders turning to Bank  
24 of America's customer service department for assistance. After discovering the fraudulent  
25 charges on her debit card on December 1, 2020, Yick tried for days to contact a Bank of America  
26 agent who would assist her with the fraud on her card. After calling the number on the back of  
27 her EDD Debit Card and waiting on hold, Yick eventually reached an agent who told her that her  
28 call needed to go to "claims." Despite Bank of America's representations of "24/7" customer

1 service, the agent informed Yick that she would need to call back during business hours and  
2 provided her with a number to call. Yick called that number three times the following day,  
3 December 2, 2020, waiting on hold each time, only to have the system repeatedly hang up on  
4 her.

5 89. Yick found another Bank of America customer service number and called it, only  
6 to again wait on hold before the system hung up on her. Calling this number led Yick to an  
7 automated customer service agent which asked Yick for her card number. Even though Yick  
8 provided her card number when asked, the automated agent continued to repeat its request for  
9 Yick's card number, without offering any sort of assistance.

10 90. On December 3, 2020, Yick tried once again to contact Bank of America by  
11 calling the number on the back of her EDD Debit Card. This time she reached a live customer  
12 service agent, who advised Yick to describe her claim in an email to a long email address  
13 involving a string of abbreviated words which the agent read to her over the phone.

14 91. This email address does not appear in Yick's Cardholder Agreement, the "Quick  
15 Reference Guide" which accompanied her Card, or the Bank's EDD Debit Card FAQ webpage.  
16 Nevertheless, when Yick finally reached a live customer service representative, she was advised  
17 that sending an email to this previously undisclosed address represented her best chance of  
18 recovering the funds stolen from her EDD Debit Card Account.

19 92. On December 6, 2020, Yick sent an email to that address, providing Bank of  
20 America with her name, address, partial card number, and a summary of the disputed charges.  
21 The following evening, Yick's email provider (Gmail) sent her an email stating there was trouble  
22 sending her email to that address, and that the system would attempt to send it for 45 more hours  
23 before sending a notification that delivery had failed.

24 93. Concerned with Bank of America's failures to respond, on December 8, 2020,  
25 Yick filed a police report at her neighborhood precinct in San Francisco concerning the  
26 fraudulent charges on her EDD Debit Card Account.

27 94. On December 9, 2020, Gmail sent Yick a message reading: "Message not  
28 delivered . . . . The recipient server did not accept our requests to connect."

1           95.     On December 22, 2020, when Yick had not received further assistance or  
2 communication from Bank of America, she again attempted to email a summary of her claim to  
3 the same email address. She was notified three days later that her email was not delivered and  
4 that “[t]he recipient server did not accept our requests to connect.”

5           96.     In short, Yick has followed the instructions in her Cardholder Agreement, and  
6 made consistent, diligent efforts to recover the funds stolen from her EDD Debit Card Account  
7 by multiple telephone calls and emails. In spite of this, Bank of America’s customer service  
8 department never offered Yick any meaningful response or assistance, but rather stymied her  
9 efforts at every turn.

## 10                           **2.     Roland Oosthuizen**

11           97.     Every day from September 24 to 28, 2020, an unauthorized third party or parties  
12 withdrew \$1,000 from Oosthuizen’s EDD Debit Card Account, using Bank of America ATMs in  
13 the Los Angeles area. Oosthuizen did not make the withdrawals himself, did not authorize the  
14 withdrawals, and only learned about the withdrawals when he logged into his EDD Debit Card  
15 Account on Bank of America’s website to find that \$5,000 was missing.

16           98.     Oosthuizen has always kept his original EDD Debit Card in his wallet. He does  
17 not know how unauthorized third parties gained access to his EDD Debit Card Account, but he  
18 believes his EDD Debit Card was fraudulently cloned.

19           99.     The Bank never notified Oosthuizen of this fraud, notwithstanding the highly  
20 suspicious withdrawal of the maximum daily ATM limit under the Cardholder Agreement of  
21 \$1,000 per day for five straight days at different ATMs, which was a completely different pattern  
22 of withdrawal than Oosthuizen himself had ever undertaken.

23           100.    After discovering the fraudulent withdrawals from his EDD Debit Card Account  
24 on September 29, 2020, Oosthuizen promptly suspended his EDD Debit Card using the Bank of  
25 America online portal. The next day, Oosthuizen called Bank of America and—after waiting on  
26 hold for three hours—made a fraud claim concerning the missing \$5,000. A Bank of America  
27 representative named Kaitlyn told Oosthuizen he should wait to hear back from Bank of America  
28 concerning his claim.



1           101.    Approximately two weeks later, Oosthuizen received a letter in the mail from  
2 Bank of America dated October 1, 2020—just two days after Oosthuizen had reported the  
3 fraud—which summarily closed his claim and failed to provide any substantive information  
4 concerning what Bank of America did to investigate his claim. On information and belief, the  
5 Bank failed to conduct good-faith investigation of Oosthuizen’s fraud claim and did not have a  
6 reasonable basis for its determination that the transactions were authorized.

7           102.    Over the following months, Oosthuizen called Bank of America multiple times,  
8 typically waiting on hold for hours before, on occasion, reaching a live person. Oosthuizen spoke  
9 with a Bank representative named Tara on October 14, 2020. He requested that Bank of America  
10 re-open his case. Tara assured him during that call that his claim would be “escalated.” Tara also  
11 requested that Oosthuizen fax the Bank documentation supporting his claim.

12           103.    On November 5, 2020, Oosthuizen faxed Bank of America a written statement  
13 regarding the theft, a police report information statement from when he made a report of the theft  
14 to the Los Angeles Sherriff’s Department, and other documentation. In his fax, Oosthuizen  
15 specifically requested that Bank of America provide him with whatever documentation the Bank  
16 had relied upon when it denied his fraud claim. He did not receive a response to his fax. At no  
17 time during this process did the Bank provide him any provisional credit, causing him severe  
18 hardship. On information and belief, the Bank failed to a conduct good-faith investigation of  
19 Oosthuizen’s fraud claim and did not have a reasonable basis for its determination that the  
20 transactions were authorized.

21           104.    Only after Oosthuizen filed a class action lawsuit against Bank of America on  
22 January 26, 2021 did he receive a letter from the Bank dated January 27, 2021, stating that the  
23 Bank had performed an additional review of his claim and had credited him with the \$5,000 that  
24 had been stolen from his EDD Debit Card Account. The Bank did not pay him any interest on  
25 the \$5,000.

26  
27  
28

1                   **3. Rosemary Mathews**

2           105. On October 12, 2020, an unauthorized third party or parties withdrew \$1,000  
3 from Mathews' EDD Debit Card Account, using a Bank of America ATM that Mathews has  
4 never herself used, leaving her with less than \$500 in her Account.

5           106. Mathews has always kept her EDD Debit Card with her. Mathews does not know  
6 how unauthorized third parties gained access to her EDD Debit Card Account, but she believes  
7 her card was fraudulently cloned.

8           107. The Bank never notified Mathews of the unauthorized withdrawal from her  
9 Account. She only realized that the theft occurred when she checked her Account balance on  
10 October 18, 2020, and found it was below \$500. She was horrified because she did not have  
11 enough money left to cover basic necessities.

12           108. After discovering the fraudulent withdrawal of \$1,000 from her Account,  
13 Mathews on October 18, 2020 telephoned Bank of America at the number on the back of her  
14 EDD Debit Card, only to be told that the claims department was not open that day. The next day,  
15 she called and, after waiting on hold, made a claim.

16           109. Approximately two weeks passed before Mathews received a letter in the mail  
17 from Bank of America summarily closing her claim while failing to provide any other  
18 information. On information and belief, the Bank failed to conduct a good-faith investigation of  
19 Mathew's fraud claim and did not have a reasonable basis for its determination that the  
20 transactions were authorized.

21           110. Over the following months, Mathews called Bank of America multiple times,  
22 typically waiting on hold for hours before, on occasion, reaching a live representative.

23           111. On November 5, 2020, Mathews faxed to Bank of America a written statement  
24 regarding the theft, a police report information statement from when she made a report of the  
25 theft to the Los Angeles Sherriff's Department, and other documentation. Mathews specifically  
26 requested that Bank of America provide her with the documentation that the Bank purportedly  
27 relied upon when it denied her fraud claim. She did not receive a response to her November 5,  
28

1 2020 fax, and at no time during this process did the Bank provide her any provisional credit,  
2 causing her severe hardship.

3 112. On or about December 22, 2020, Mathews realized that her EDD Debit Card  
4 Account was frozen. She called the Bank, which told her that it had frozen her Account on or  
5 about December 17, 2020.

6 113. Only after Mathews filed a class action lawsuit against Bank of America on  
7 January 26, 2021, did she finally receive a letter from the Bank dated January 27, 2021 stating  
8 that the Bank had performed an additional review of her claim and had credited her with the  
9 \$1,000 that had been fraudulently stolen from her EDD Debit Card Account.

10 114. Even after receiving the Bank's letter dated January 27, 2021, Mathews was still  
11 unable to access those credited funds because her EDD Debit Car Account remained frozen.  
12 Although her Account had been frozen since December 2020, she did not receive a written notice  
13 from the Bank regarding the freeze until February 1, 2021. The notice did not provide her any  
14 details or information specific to her as to why her Account had been frozen. Sometime  
15 thereafter, without notification, the Bank unfroze her Account, which allowed her to withdraw  
16 the \$1,000 from her Account. The Bank never credited her any interest on the \$1,000.

#### 17 **4. Carlos Rodriguez**

18 115. Plaintiff Carlos Rodriguez received \$900 on his EDD Debit Card every two  
19 weeks after being found eligible for UI benefits during the COVID-19 pandemic.

20 116. On or about December 17, 2020, Rodriguez started calling Bank of America to  
21 inquire about EDD benefits that should have already been, but did not appear to have been,  
22 deposited into his EDD Debit Card Account. For the previous couple of days, Rodriguez had  
23 been checking his Account to confirm receipt of the deposit, but the funds were not there.  
24 Concerned about the whereabouts of those funds, Rodriguez researched his Account transaction  
25 history and noticed a \$230 ATM withdrawal on December 10, 2020, and a \$900 ATM  
26 withdrawal on December 17, 2020. Neither withdrawal was made or authorized by Rodriguez.  
27 The withdrawals were made at one of more ATMs in Los Angeles, while Rodriguez was in San  
28 Diego. Plaintiff Rodriguez further noticed that some unidentified person or persons had checked

1 his Account balance without his authorization on November 30, 2020, and many times  
2 throughout December 2020.

3 117. Alarmed by these transactions and the missing funds, Rodriguez promptly called  
4 Bank of America. Bank of America replied that it had never received funds for his Account from  
5 the EDD. Rodriguez then called the EDD, which confirmed that it had deposited the \$900 to his  
6 EDD Debit Card Account as scheduled. When Rodriguez followed up with the Bank, the Bank  
7 froze his Account and told him that 22,000 other individuals who receive their EDD  
8 unemployment benefits through EDD Debit Cards had also had funds stolen from their EDD  
9 Debit Card Accounts.

10 118. In or about mid-February 2021, Rodriguez started receiving bi-weekly EDD  
11 benefits payments in the form of paper checks that EDD mailed to him. EDD also paid  
12 Rodriguez via check for EDD benefits that were owed to him from the time his EDD Debit Card  
13 Account was frozen until the time he started receiving paper checks. He did not receive any  
14 interest on those funds.

15 119. As of the filing of this complaint, Rodriguez's EDD Debit Card Account remains  
16 frozen, and Bank of America has not credited any of the money stolen from his Account.

### 17 **5. J. Michael Willrich**

18 120. In late September or early October 2020, Willrich discovered that \$4,000–\$5,000  
19 was missing from his EDD Debit Card Account. Bank of America did not notify him of the  
20 fraud. Instead, upon learning of the fraud Willrich immediately went to a Bank of America  
21 branch and reported it to a Bank representative. The Bank representative told him that the Bank  
22 only “sponsors” the Bank’s debit cards and that he should call the phone number on the back of  
23 his EDD Debit Card.

24 121. Over the course of months, Willrich repeatedly sought assistance through Bank of  
25 America’s fraud telephone hotline, but to no avail. When Willrich was able to get through to a  
26 customer service representative, he was informed that he needed to speak with the claims  
27 department. He asked if he could file a claim online but was told by the representative that he  
28 could not. He was then transferred to the Bank’s Claims Department, where he waited on hold

1 for three-and-a-half hours before the system hung up on him. The day after that, Willrich waited  
2 on hold for another hour before he had to terminate the call due to time constraints.

3 122. On the fourth day after discovering the fraud, Willrich got up at 5:00 AM to call  
4 the Claims Department and was finally able to reach a Bank representative and submit a fraud  
5 claim regarding the unauthorized transactions. Willrich and the Bank representative spent  
6 approximately one hour going through every charge during a three-month period to ensure all  
7 fraudulent activity was accounted for.

8 123. Approximately 3–4 days after submitting his claim, Willrich received a letter  
9 from Bank of America stating that his claim had been denied due to suspected fraud. On  
10 information and belief, the Bank failed to conduct a good-faith investigation of Willrich’s fraud  
11 claim and did not have a reasonable basis for its determination that the transactions were  
12 authorized.

13 124. In early November 2020, Willrich again got up at 5:00 AM to call the Bank of  
14 America Claims Department. He spoke with a Bank representative and explained that he had  
15 submitted a fraud claim that had been denied by Bank of America. He asked the representative to  
16 explain why his claim had been denied. The representative told Willrich that the letter that was  
17 sent to him was the result of a “glitch” and that many people were calling about the same issue.  
18 The representative then re-opened Willrich’s initial claim and told Willrich to wait and see what  
19 happened.

20 125. Willrich waited as instructed, but he received no communication from the Bank.

21 126. It was not until approximately January 12, 2021, when Willrich attempted to  
22 withdraw money from his EDD Debit Card Account, that Willrich learned that money had been  
23 credited to his Account. At no point between the early November 2020 phone call and January  
24 2021 did Willrich receive any communication from Bank of America regarding the status of his  
25 fraud claim, such as the status of the Bank’s investigation or its determination.

26 127. Since January 12, 2021, there have been at least three occasions when Willrich  
27 attempted to use his EDD Debit Card to withdraw money from a Bank of America ATM and was  
28 denied. On these occasions, the ATM displayed the following message: “Your transaction has

1 been cancelled.” On at least one of these occasions, Willrich then went into the Bank of America  
2 branch where the ATM was located and asked a Bank employee for assistance. The employee  
3 told Willrich that his EDD Debit Card Account had been frozen again and that he needed to call  
4 the number on the back of his EDD Debit Card to receive assistance. Willrich called the phone  
5 number as instructed and, after a lengthy process, a Bank representative told him that the issue  
6 that had caused his Account to be frozen had been fixed. However, when Willrich returned to an  
7 ATM and attempted to use his EDD Debit Card to withdraw money from his Account, he was  
8 again denied, and the ATM displayed the same error message as it had before.

9 128. To the extent Willrich is able to obtain funds from his Account, it has only been  
10 by transferring them out of the Account electronically. Currently, Willrich is also still unable to  
11 access his EDD Debit Card Account statements due to his Account having been frozen. Because  
12 of this, he cannot identify the exact dates when improper transactions occurred on his Account,  
13 and he cannot adequately monitor his Account for additional unauthorized transaction or other  
14 potential issues.

#### 15 **6. Lindsay McClure**

16 129. McClure experienced fraud on her EDD Debit Card on or around December 1,  
17 2020, after her Card was skimmed, she believes, at a gas station where she had used her EDD  
18 Debit Card, and where reports indicated that other debit and/or credit cards had been skimmed.  
19 After becoming aware of the fraudulent and unauthorized charges on her EDD Debit Card  
20 Account, McClure repeatedly sought assistance through Bank of America’s fraud telephone  
21 hotline, to no avail.

22 130. McClure first contacted the Bank as soon as possible after discovering the  
23 unauthorized transactions to report them as fraudulent. She presented evidence over the phone  
24 regarding the unauthorized transactions, which the Bank representative acknowledged was  
25 indicative of fraud. The representative told her that a fraud investigation would take place over  
26 the following 30–45 days, yet she received a letter from Bank of America shortly thereafter  
27 indicating that the Bank had closed her fraud claim the day after she submitted it. On information  
28 and belief, the Bank failed to conduct a good-faith investigation of McClure’s fraud claim and

1 did not have a reasonable basis for its determination that transactions were authorized.

2 131. She then followed up with the Bank to inquire about her fraud claim, and a Bank  
3 representative told her that Bank of America was investigating it. When she asked how that was  
4 possible considering the Bank's letter stating the claim had been closed, the Bank representative  
5 hung up on her.

6 132. Several weeks later, without reaching any resolution regarding her fraud claim,  
7 Bank of America froze McClure's EDD Debit Card Account without any notice. McClure did  
8 not find out her Account was frozen until December 20, 2020, when she tried to use her card at a  
9 drive-through and discovered that she could not access her funds. When McClure called Bank of  
10 America to inquire about this, a Bank representative told her that EDD had frozen her Account  
11 due to fraud on the Account. When McClure then contacted EDD, an EDD representative told  
12 her that the agency had no evidence of any fraud on her Account. McClure subsequently phoned  
13 Bank of America to convey to the Bank what EDD had told her.

14 133. To date, McClure has not been reimbursed for the unauthorized transactions on  
15 her EDD Debit Card, nor has Bank of America ever provisionally credited her Account.

16 **7. Robert L. Wilson**

17 134. Wilson was approved by the EDD for UI benefits in or around April 2020, and he  
18 received an EDD Debit Card with a magnetic stripe (but no EMV chip) soon thereafter. In or  
19 about July or August 2020, he discovered that approximately \$2,600 had been stolen from his  
20 EDD Debit Card Account through unauthorized transactions. He promptly contacted Bank of  
21 America. He was informed that the unauthorized transactions had occurred in Southern  
22 California and he confirmed that he had not used his card in Southern California. The Bank  
23 representative told Wilson that the Bank would investigate the unauthorized use of the card and  
24 would, in the meantime, provide him with provisional credit.

25 135. A few weeks later, the Bank deducted that provisional credit from Wilson's EDD  
26 Debit Card Account and froze the Account, without warning or explanation. Wilson attempted to  
27 contact a Bank representative to resolve the issue approximately 30 to 40 times without success.  
28 Eventually, he was able to get the Bank to unfreeze his Account. But to date, the \$2,600 that was



1 stolen from his Account has not been repaid by the Bank.

2 **8. Christopher Mosson**

3 136. In December 2020, Mosson saw on his EDD Debit Card statement a charge from  
4 the restaurant delivery service DoorDash, for a delivery in Ontario, Canada, and for an ATM  
5 withdrawal in a part of California that Mosson had not visited.

6 137. Mosson did not receive a notification about these highly unusual transactions,  
7 indicating that Bank of America failed to detect the instances of fraud, even though Bank of  
8 America promised fraud monitoring.

9 138. Mosson reported the fraudulent charges to Bank of America. The Bank stated that  
10 it would send Mosson a new card. Mosson was able to continue to use his card for approximately  
11 a week, but in mid-December, when attempting to make a purchase, his card was declined, and  
12 he has been unable to use it since. The new card promised by Bank of America never arrived.  
13 Mosson called Bank of America to inquire about the new card and as to why his current card was  
14 not working, only to be told after numerous lengthy phone calls with Bank of America customer  
15 service that his Account had been frozen.

16 139. After being told that his Account had been frozen, Mosson called the Bank  
17 numerous times to determine how to regain access to his EDD Debit Card Account. The Bank  
18 eventually pointed the finger at EDD, saying that Mosson needed to contact the EDD. When  
19 Mosson was finally able to get through to EDD, EDD instructed him that the issue was with  
20 Bank of America. After many frustrating phone calls with Bank of America, almost two months  
21 later Mosson is still locked out of his EDD Debit Card Account.

22 140. Frustrated by the lack of responsiveness from Bank of America's customer  
23 service department, Mosson braved the pandemic by going to a Bank of America branch to  
24 attempt to regain access to his Account. After presenting multiple forms of ID, he was informed  
25 that the Bank was unable to check his Account balance. Mosson stated that he would like to  
26 withdraw his entire balance. The tellers then informed him that his Account was empty, and that  
27 the funds had been returned to the State of California. Mosson estimates that more than \$6,000  
28 should have been in the Account at the time he attempted to make the withdrawal.

1                   **9. Clara Cajas**

2           141. On or around July 2020, Cajas learned that her EDD Debit Card had been used  
3 without her knowledge or authorization to make over \$800 in charges to Google. The number of  
4 and amounts of each of the charges made, most or all of which ended in \$\_\_.99, should have  
5 generated suspicion. Cajas promptly reported these transactions to the Bank and submitted a  
6 fraud claim. She then waited patiently for the Bank to reimburse her Account and to issue her a  
7 new EDD Debit Card. While the bank initially credited her Account for some or all of the  
8 unauthorized transactions, the Bank later reversed those credits and closed her fraud claim in  
9 September 2020. Cajas subsequently attempted to reopen her claim and continued to follow up  
10 on the status of her claim, but the claim has remained closed. On information and belief, the  
11 Bank failed to conduct a good-faith investigation of Cajas's fraud claim and did not have a  
12 reasonable basis for its determination that the transactions were authorized.

13           142. Several months later, on or about January 12, 2021, an unauthorized ATM cash  
14 withdrawal in the amount of \$700 was made using Cajas's EDD Debit Card. Cajas reported the  
15 fraudulent withdrawal to the Bank within 24 hours of its occurrence. The Bank responded that it  
16 would send her a new EDD Debit Card within 24 hours. When Cajas did not receive the new  
17 Card, she called the Bank to inquire about the status of the new Card and was told that she would  
18 not receive a new Card because her Account had been frozen. Cajas subsequently also received a  
19 letter from the Bank, dated January 14, 2021, informing her that her fraud claim related to the  
20 \$700 ATM withdrawal had been closed. On information and belief, the Bank failed to conduct a  
21 good-faith investigation of Cajas's fraud claim and did not have a reasonable basis for its  
22 determination that the transaction was authorized.

23           143. Cajas did not understand how Bank of America could have concluded its  
24 investigation within 48 hours of the fraudulent ATM withdrawal. She called the Bank and was  
25 told by another Bank agent that the agent could not talk to her because her Account was frozen.

26           144. Following the fraudulent charges, the unauthorized ATM withdrawal, and the  
27 freezing of her Account, Cajas repeatedly sought assistance through Bank of America's fraud  
28 telephone hotline, to no avail. Each time Cajas called the Bank, she spoke to a different agent.

1 Even though she fully documented her claims, each call was treated as if she were calling for the  
2 first time. The agents were either unable or unwilling to assist Cajas in any meaningful way  
3 regarding reimbursing her for the funds stolen from her Account or allowing her to access any of  
4 the remaining balance in her Account. She repeatedly waited on hold for extended periods; was  
5 repeatedly disconnected from the line; waited to speak to someone only to be told to call back  
6 later; was transferred to various departments without being provided any meaningful assistance  
7 or helpful information; was sent to voicemail; dealt with unhelpful automated agents; and  
8 unsuccessfully attempted to sort out her Account in person at Bank of America branches.

9 145. To date, Cajas has not received the promised replacement EDD Debit Card, she  
10 has not been reimbursed for any of the funds stolen from her Account, and her Account remains  
11 frozen. As a result, Cajas is unable to access her much-needed EDD benefits.

#### 12 **10. Stephanie Smith**

13 146. On or about December 22, 2020, Smith discovered three unauthorized  
14 transactions with DoorDash on her EDD Debit Card Account, which had occurred over several  
15 days in late November 2020.

16 147. After discovering the unauthorized transactions, Smith promptly called Bank of  
17 America, reported the transactions, and submitted a fraud claim. Smith reached a Bank  
18 representative who asked for her full social security number over the phone, among other  
19 questions, to verify her identity, all of which Smith answered to the representative's satisfaction.  
20 While Smith made a fraud claim during the phone call, she did not receive any information to  
21 track her claim or any communication confirming that the Bank would investigate her claim.  
22 Smith's fraud claim has languished for months at the Bank without being resolved.

23 148. To date, Smith has not received any communication from the Bank regarding her  
24 fraud claim, has not been reimbursed for the unauthorized transactions, nor has Bank of America  
25 provisionally credited her EDD Debit Card Account.

#### 26 **11. Alan Karam**

27 149. In August 2020, Karam had been using his EDD Debit Card for approximately  
28 two months to make small in-person purchases at retail stores and to withdraw cash from ATMs.

1 When Karam checked his Account balance on or about August 21, 2020, he noticed over \$2,000  
2 of fraudulent unauthorized transactions that had been made in New York while he was in  
3 California.

4 150. On August 21, 2020, the same day that he discovered the unauthorized  
5 transactions on his Account, Karam called the Bank's customer service department and  
6 submitted a fraud claim over the phone. By August 24, the fraudulent charges had been credited  
7 back to his Account.

8 151. On November 17, 2020, however, Bank of America—without notice or  
9 explanation—debited the previously reimbursed funds from Karam's Account, causing his  
10 Account balance to go negative, and closed the investigation into his fraud claim.

11 152. Upon discovering this, Karam immediately called Bank of America. Despite the  
12 Bank's promises of "24/7" customer service in its Cardholder Agreement and EDD-Bank  
13 Contract, the Bank representative with whom Karam spoke informed him that the claims  
14 department was closed and to call back the next day.

15 153. The next morning at 6:30 a.m., Karam called the Bank again and was placed on  
16 hold for 45 minutes before being connected to a claims representative, who told Karam that there  
17 was nothing she could do for him and she would transfer him to someone else. Karam was then  
18 transferred to a mailbox requiring a code, which he did not know. The call then disconnected.

19 154. Karam immediately called back and waited on hold for another 45 minutes before  
20 speaking with another Bank of America representative. This time he asked for the  
21 representative's extension in case the call was disconnected. The representative responded that  
22 he did not have one. Karam then asked for the representative's identification number, and the  
23 representative said that he did not have one of those either. When Karam asked for his name, the  
24 representative hung up.

25 155. After being hung up on, Karam called back for a third time. After waiting on hold  
26 for another extended period, he spoke with a representative named Delijah, who transferred him  
27 to a representative named Jane, who transferred him to a representative named Brandon, who  
28 transferred him to a female supervisor whose name Karam does not recall. At this point, this

1 third phone call alone had lasted multiple hours. The female supervisor advised Karam to file a  
2 police report regarding the fraudulent transactions on his card, and to submit written statements  
3 about each of his fraud claims, both of which he did.

4 156. In December, Bank of America reopened one of Karam's fraud claims only to  
5 close it again without reimbursing him. For weeks, Karam continued to call Bank of America  
6 and ask why his fraud claims had been closed. He was never given a clear answer.

7 157. On or about January 28, 2021, after months of calls to Bank of America, the funds  
8 stolen from Karam in August 2020 were finally credited back to his Account without interest.

9 158. Bank of America did not provide Karam with provisional credit during the  
10 investigations into his fraud claims occurring after November 22, 2020.

## 11 12. Azuri Moon

12 159. On or around October 20, 2020, when Moon tried to buy lunch at a restaurant, he  
13 was informed that his Bank Debit Card had insufficient funds. Knowing he should have had  
14 around two thousand dollars, he immediately checked his Account and saw two separate ATM  
15 withdrawals totaling \$1,800 taken out of his Account, which left him with virtually no money in  
16 his Account.

17 160. On October 21, 2020, Moon called Bank of America to report these unauthorized  
18 transactions. He spent 11 hours on the phone before he was able to get through to the claims  
19 department. Finally, Moon submitted a fraud claim and a Bank of America representative told  
20 him that a decision would be made on his case in 30 days or so.

21 161. When Moon had not received any form of communication from the Bank nearly a  
22 month later, he reached out to get an update on his claim. Moon was shocked when a Bank of  
23 America representative told him that he was liable for the disputed transactions, and the Bank  
24 would not be returning the money. Moon was told he could file a police report, write a detailed  
25 description of what happened, and fax it to Bank of America with his name, case number, and  
26 card number. Having received no written communications from Bank of America, and thus  
27 forced to rely only on his personal notes, it was extremely difficult for him to file a police report.  
28 But he ultimately compiled everything that the Bank had asked for and faxed it to the Bank.

1           162. After nearly another month without hearing anything from the Bank, Moon called  
2 the Bank to get an update. A representative told him that the Bank never received his fax. It  
3 turned out that a Bank representative had provided Moon with his *claim* number but mistakenly  
4 told him it was his *case* number, and the information in his fax reflected this mistake, derailing  
5 his fraud claim. Moon was told the Bank would not be able to process his claim until this was  
6 corrected. He then re-faxed everything with the information they requested.

7           163. In the first week of January 2021, when the claim was still unresolved, Moon's  
8 Account was frozen with no explanation. He called the Bank, and was informed that, as a result  
9 of the freeze, the Bank could not do anything to address his fraud claim.

10           164. To date, Moon has not been reimbursed for the fraudulent transactions or received  
11 provisional credit, and his Account remains frozen.

12           165. Moon was forced to live in his car from approximately November 15 to  
13 December 15 because the funds he would have used to pay rent were stolen and not reimbursed.  
14 He had to rely on the generosity of others to begin sleeping in a bed again. He has routinely had  
15 to choose which bills to pay and which ones not to, resulting in significant late fees and  
16 excessive interest building up.

### 17                   **13. Vanessa Rivera**

18           166. On January 29, 2021, someone fraudulently withdrew \$800 from Rivera's EDD  
19 Debit Card Account at a Bank of America ATM. She received a message that the balance in her  
20 Account was \$4.17, when she knew she should have had over \$800 in the Account. (She only  
21 received this notification because she had opted to receive notifications when her Account  
22 balance fell below \$30—it was not an alert about suspected fraud.)

23           167. She logged into her online Account to see if there might have been a mistake and  
24 found that someone had conducted a balance inquiry from an ATM about an hour away from  
25 where she lives and then withdrew the \$800. She immediately called Bank of America to submit  
26 a claim disputing the transaction. The Bank representative she spoke with gave her a claim  
27 number, and Rivera assumed the claim would be investigated. But when she called Bank of  
28 America again on February 4, Rivera learned that the representative she spoke with never

1 actually submitted a claim—they just put a “note” in her Account and sent her a new Card. On  
2 February 4, a Bank representative told Rivera over the phone that she submitted her claim for  
3 investigation. The next week Rivera received a letter in the mail from the Bank stating that her  
4 claim was closed. The letter was dated February 5, one day after the claim was filed.

5 168. On February 6, Rivera received her replacement Card in the mail. She tried  
6 activating it online, but Bank of America’s website indicated she was not allowed access to her  
7 Account. Rivera then called the number on the back of the Card to activate it and a Bank  
8 representative told her that her Account had been frozen due to fraudulent charges.

9 169. Since then, Rivera’s benefits have been in an Account that she cannot access, and  
10 she has not received reimbursement or provisional credit for the \$800 that was stolen from her  
11 Account.

#### 12 **14. Candace Koole**

13 170. On December 30, 2020, Koole tried to use her Bank of America EDD Debit Card  
14 at a grocery store to buy food for her and her son, and the card was repeatedly declined at the  
15 checkout stand. She left the groceries at the store and went home to check her Account balance.  
16 She found her Account had \$7 in it, down from over \$9,000 the week before. Her online Account  
17 statement showed that someone had withdrawn \$1,000 per day at several different locations  
18 around Southern California until her Account was nearly drained. She did not authorize these  
19 withdrawals, and her Card was in her possession when they occurred.

20 171. The same day, Koole called the Bank and submitted a claim disputing the  
21 fraudulent transactions. The Bank representative Koole spoke with informed her over the phone  
22 that her EDD Debit Card Account would be frozen as a result of her reporting fraud, and Koole’s  
23 Account was frozen that day. The Bank representative told Koole that she was responsible for  
24 proving that she had not committed the fraud on her Account and advised her to file a police  
25 report in support of her fraud claim.

26 172. Immediately after speaking with the Bank, Koole attempted to file a police report  
27 with the Riverside County Sheriff’s Department. She could not complete the report, however,  
28 because she did not know the “terminal ID numbers” corresponding to the ATM machines where



1 the fraud had occurred. And because Koole's Account was frozen, she could not (and still  
2 cannot) access those details or any other details about the fraudulent transactions on her Account.

3 173. Since Koole submitted a claim disputing the fraudulent transactions on her  
4 Account nearly three months ago, she has repeatedly called the Bank looking for updates. Some  
5 Bank representatives have said the status is pending, others that she needs to communicate with  
6 EDD, and others that her Account is completely closed. Many times, Bank representatives have  
7 told Koole that she needs to contact EDD to tell the agency to communicate with the Bank to  
8 unfreeze her Account. But she has called EDD and been told that their system does not show any  
9 issues with her Account.

10 174. On January 6, 2021, Koole sent a fax to EDD asking them to distribute her  
11 unemployment benefits via paper checks, and in late February, Koole began receiving her  
12 benefits by check.

13 175. Koole's EDD Debit Card Account remains frozen, and she has not been  
14 reimbursed for the fraudulent transactions on her Account.

### 15 15. Luis Perez

16 176. In October 2020, Perez logged into his Bank of America EDD Debit Card  
17 Account online to check his Account balance. He saw that EDD had deposited \$516 into his  
18 Account on October 15, 2020 and that, on the very same day that EDD had deposited those  
19 funds, someone had made an unauthorized withdrawal of \$500 from an ATM at an Albertson's.  
20 Perez had not been to an Albertson's that day.

21 177. Perez immediately called Bank of America to report the unauthorized transaction.  
22 He opened a fraud claim with a Bank of America customer service representative on or around  
23 October 24, 2020.

24 178. About a week or two later, Perez received a letter from the Bank dated October  
25 28, 2020, stating without explanation that his fraud claim had been denied. The letter said that  
26 any temporary credits would be rescinded, even though Perez had never received any provisional  
27 credit. The letter did not describe what efforts Bank of America had undertaken, if any, to  
28 investigate Perez's claim, nor did the letter explain the basis for Bank of America's decision not

1 to refund Perez the funds stolen from his Account.

2 179. Shortly after Perez received this letter from Bank of America summarily denying  
3 his claim, Perez called the Bank again to request that his claim be reopened and investigated. A  
4 Bank of America customer service representative told him that his claim would be investigated  
5 within 30 to 90 days.

6 180. Sometime in December 2020, Perez discovered that his Bank of America EDD  
7 Debit Card Account had been frozen. He did not receive any notice that his Account had been  
8 frozen prior to him discovering the freeze.

9 181. Upon discovering that his Account had been frozen, Perez again contacted Bank  
10 of America to regain access to his Account. Bank of America told Perez that they could do  
11 nothing about the freeze and that Perez would need to contact EDD. As instructed, Perez  
12 contacted EDD, and he was eventually able to re-verify his identity both online and by physically  
13 mailing verification documents to EDD. Despite these efforts, Perez's Bank of America Account  
14 remains frozen, and Bank of America continues to blame EDD for the freeze.

15 182. On or around February 10, 2021, Perez again called Bank of America about the  
16 still unresolved \$500 fraud claim. A Bank of America representative asserted that the Bank could  
17 not provide any more information about his fraud claim due to the freeze on his Account.

18 183. On or around March 13, 2021, Perez finally received a check from EDD for all of  
19 the benefits to which he had been entitled but had not been paid between December 2020 and  
20 March 2021. He now receives his EDD benefits by paper check. To this day, his Bank of  
21 America EDD Debit Card Account remains frozen, and he still has not received provisional or  
22 permanent credit for the \$500 that was stolen from his account in October 2020.

23 184. Countless other Class Members have similarly reported not receiving any  
24 notification or communication from Bank of America regarding fraudulent transactions in their  
25 EDD Debit Card Accounts, and instead discovered it themselves. Bank of America's fraud  
26 monitoring and controls have proven to be completely inadequate and ineffectual, in direct  
27 contradiction to the Bank's representations to Plaintiffs, Class Members, and the State. As a  
28 result of the conduct and omissions alleged herein, and despite the Bank's "Zero Liability"

1 policy, Plaintiffs and Class Members have been deprived of UI, PUA, and other public benefits  
2 to which they are entitled by law, for weeks or months, causing them great, immediate, and  
3 irreparable harm.

4 **V. CLASS ACTION ALLEGATIONS**

5 185. Plaintiffs bring this lawsuit individually and as a class action pursuant to Federal  
6 Rule of Civil Procedure 23, seeking declaratory and injunctive relief and damages on behalf of a  
7 class defined as follows (the “Class”):

8 All persons who were issued or who used a Bank of America debit card for the  
9 purpose of accessing EDD benefits deposited into a Bank of America account, at  
any time from January 1, 2020 through the present (“Class Period”).

10 186. Plaintiffs reserve the right under Rule 23 to amend or modify the class  
11 descriptions and/or add one or more subclasses based on information obtained after the filing of  
12 this Complaint.

13 187. All Class Members have suffered or are threatened with imminent injury during  
14 the Class Period, caused by Defendants’ wrongful acts and omissions, as alleged herein.

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

17 a. **Numerosity (Rule 23(a)(1)):** The members of the Class are so numerous  
18 that their individual joinder is impracticable. The Bank provided millions of EDD benefits  
19 recipients with EDD Debit Cards that used outdated magnetic stripe technology and subjected  
20 these individuals to an undue risk of being subjected to fraudulent transactions on those cards.  
21 The identities of, and contact information for, those individuals may readily be obtained through  
22 the Bank’s business records or the business records of its affiliated entities.

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

27 i. Whether the Bank had or has a policy and/or practice of denying fraud  
28 claims without investigation or explanation.

- 1           ii.   Whether the Bank had or has a policy and/or practice of automatically  
2           freezing the EDD Debit Card Accounts of Cardholders who report  
3           unauthorized transactions.
- 4           iii.   Whether the Bank had or has a policy and/or practice of failing to provide  
5           its customer service representatives with the tools or authority to assist  
6           EDD Debit Cardholders who call seeking assistance in resolving their  
7           fraud claims or unfreezing their Accounts.
- 8           iv.   Whether the Bank violated the EFTA and Regulation E by having a policy  
9           and/or practice of denying fraud claims without providing the EDD Debit  
10          Cardholder a written explanation of the Bank’s findings.
- 11          v.   Whether the Bank violated the EFTA and Regulation E by having a policy  
12          and/or practice of denying EDD Debit Cardholders’ fraud claims without  
13          conducting a good-faith investigation of the alleged fraud and without  
14          having a reasonable basis for believing that no fraud occurred.
- 15          vi.   Whether the Bank violated the EFTA and Regulation E by having a policy  
16          and/or practice of not issuing provisional credit within the first 10 business  
17          days of an EDD Debit Cardholder reporting fraud despite having no intent  
18          of completing a good-faith investigation of the Cardholder’s fraud claim  
19          within 10 business days.
- 20          vii.   Whether the Bank is a state actor under the “public function” test, the  
21          “joint action” test, or any other test for state action.
- 22          viii.   Whether the Bank violated Plaintiffs’ and Class Members’ federal or state  
23          due process rights by maintaining a policy and/or practice of automatically  
24          and indefinitely freezing their EDD Debit Card Accounts when they report  
25          unauthorized transactions without adequate notice or an opportunity to be  
26          heard.
- 27          ix.   Whether the Bank owed a duty of care to Plaintiffs and Class Members,  
28          including by nature of the fiduciary relationship between the Bank and its

1 EDD Debit Cardholders, under the EDD-Bank Contract, under the  
2 Cardholder Agreement, or under any other contract between the Bank and  
3 Plaintiffs or Class Members.

4 x. Whether Plaintiffs and Class Members are third-party beneficiaries of the  
5 contract between the Bank and EDD.

6 xi. Whether the Bank breached its duties to Plaintiffs and Class Members,  
7 including by using outdated fraud-protection technology on its EDD Debit  
8 Cards, not adequately monitoring EDD Debit Cards and Accounts for  
9 suspicious activity, not conducting appropriate follow-up or investigation  
10 when fraud claims were made, failing to comply with the EFTA and its  
11 own “Zero Liability” policy, and otherwise failing to make Plaintiffs and  
12 Class Members whole for unauthorized transactions.

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

17 xiii. Whether the Bank should pay damages and interest or provide restitution,  
18 reimbursement, and/or other relief to Plaintiffs and Class Members.

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

25 d. **Adequacy of Representation (Rule 23(a)(4)):** The representative  
26 Plaintiffs will fairly and adequately represent and protect the interests of the putative Class  
27 Members and have retained competent and qualified counsel with extensive experience in  
28 complex litigation and class action litigation. There are no material conflicts between the claims

1 of the representative Plaintiffs and the members of the putative Class that would make class  
2 certification inappropriate. Counsel for the putative Class will vigorously prosecute the claims of  
3 all putative Class Members.

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

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

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

18 c. **Predominance and Superiority (Rule 23(b)(3)):** Certification under Rule  
19 23(b)(3) is appropriate because questions of law or fact common to putative Class Members  
20 predominate over any questions affecting only individual members, and because class action  
21 treatment is superior to the other available methods for the fair and efficient adjudication of this  
22 controversy.

23 d. The Class is ascertainable, and there is a well-defined community of  
24 interest in the questions of law or fact alleged herein since the rights of each Class Member were  
25 infringed or violated in the same or similar fashion.

26  
27  
28

1 **VI. CAUSES OF ACTION**

2 **FIRST CLAIM FOR RELIEF**

3 **VIOLATIONS OF THE ELECTRONIC FUNDS TRANSFER ACT**

4 **(15 U.S.C. §§1693 et seq.; 12 C.F.R. §§1005.1 et seq.)**

5 190. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
6 above, as though fully set forth here.

7 191. Plaintiffs bring this cause of action pursuant to the United States Electronic Funds  
8 Transfer Act (“EFTA”), 15 U.S.C. §§1693 et seq., and 12 C.F.R. §§1005.1–1005.20 (Regulation  
9 E of the EFTA).

10 192. Plaintiffs and Class Members provided notice to Bank of America within 60 days  
11 after Bank of America sent a period statement reflecting an unauthorized transaction (which is an  
12 “error” under Regulation E), thereby triggering the error resolution requirements of 15 U.S.C.  
13 §1693f and 12 C.F.R. §1005.11.

14 193. Bank of America violated 15 U.S.C. §1693f and Regulation E, 12 C.F.R.  
15 §1005.11, including but not limited to through its implementation of each of the following  
16 policies and/or practices:

17 a. Adopting and implementing policies and practices designed to circumvent  
18 the Bank’s statutory and regulatory obligations under 15 U.S.C. §1693f and Regulation E,  
19 including by frustrating and obstructing Plaintiffs’ and Class Members’ efforts to submit fraud  
20 claims and by denying fraud claims without investigation;

21 b. Failing to provide provisional credit to Plaintiffs and Class Members  
22 relating to error investigations that could not be resolved within 10 business days;

23 c. Not issuing provisional credit within the first 10 business days of an EDD  
24 Debit Cardholder reporting fraud despite having no intention of completing a good-faith  
25 investigation of the Cardholder’s fraud claim within 10 business days, and despite not  
26 completing a good-faith investigation of the Cardholder’s fraud claim within 10 business days;

27 d. Failing to conduct good-faith investigations into alleged errors or  
28 unauthorized transactions that were timely reported by Plaintiffs and Class Members;



1 e. Failing to conduct good-faith investigations into the alleged errors or  
2 unauthorized transactions that were timely reported by Plaintiffs and Class Members, within 45  
3 days of the date that the alleged error or unauthorized transaction was reported;

4 f. Denying Plaintiffs' and Class Members' claims of error without having  
5 conducted a good-faith investigation and without providing an explanation of its findings;

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

10 h. Failing to credit Plaintiffs' and Class Members' EDD Debit Card  
11 Accounts with interest on the amounts of the fraudulent transactions for the period during which  
12 they were without access to those funds;

13 i. Freezing Plaintiffs' and Class Members' EDD Debit Card Accounts in  
14 order to avoid the Bank's legal obligations and to prevent Plaintiffs and Class Members from  
15 accessing their funds; and

16 j. Unilaterally reopening claims of error long after they had already been  
17 resolved in the EDD Debit Cardholders' favor and debiting the amounts previously credited to  
18 the Cardholder from their Account, without basis to do so.

19 194. In situations where Bank of America has violated Regulation E by failing to  
20 provisionally recredit Plaintiffs' and Class Members' EDD Debit Card Accounts, the Bank has  
21 neither conducted a good faith investigation nor had a reasonable basis for believing that the  
22 Account was not in error. Plaintiffs and Class Members are therefore entitled to treble damages  
23 under 15 U.S.C. §1693f(e).

24 195. Bank of America knowingly and willfully concluded that Plaintiffs' and Class  
25 Members' EDD Debit Card Accounts were not in error when such conclusion could not  
26 reasonably have been drawn from the evidence available to the Bank at the time of its  
27 investigation. Plaintiffs and Class Members are therefore entitled to treble damages under 15  
28 U.S.C. §1693f(e).

1           196. Bank of America violated EFTA and Regulation E by failing to limit Plaintiffs'  
2 and Class Members' liability as required by 15 U.S.C. §1693m and 12 C.F.R. §1005.6(b).

3           197. Plaintiffs provided notice to Bank of America less than two business days after  
4 learning of the fraudulent transactions that occurred in their EDD Debit Card Accounts. Under  
5 12 C.F.R. §1005.6(b)(1), Plaintiffs' and Class Members' liability is capped at \$50 in these  
6 circumstances. Bank of America has subjected Plaintiffs and Class Members to far greater than  
7 \$50 in liability through its wrongful conduct as alleged herein.

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

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

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

27           201. As a direct and proximate result of Bank of America violations of Regulation E,  
28 Plaintiffs and Class Members have lost money.





1 and consequential damages suffered due to their inability to pay bills or otherwise use their  
2 unemployment funds; and (e) an injunction barring Bank of America from freezing EDD Debit  
3 Card Accounts without prior notice and a pre-deprivation hearing.

4 **FOURTH CLAIM FOR RELIEF**

5 **VIOLATION OF THE CALIFORNIA CONSUMER PRIVACY ACT**

6 **(Cal. Civil Code §§1798.100 et seq.)**

7 215. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
8 above, as though fully set forth here.

9 216. The California Consumer Privacy Act (“CCPA”), Cal. Civ. Code §§1798.100 et  
10 seq., imposes a duty on businesses to take reasonable steps to protect consumers’ nonencrypted  
11 and nonredacted personal information, and provides a private right of action to consumers whose  
12 nonencrypted and nonredacted personal information has been subjected to unauthorized access  
13 and exfiltration, theft, or disclosure as a result of a defendant business’s breach of its duty to take  
14 reasonable steps to protect that information.

15 217. Plaintiffs and Class Members are “consumers” as defined in the CCPA.

16 218. Bank of America is a “business” as defined in the CCPA.

17 219. Bank of America directly or indirectly collected Plaintiffs’ and Class Members’  
18 personal information as defined in Cal. Civ. Code §1798.81.5(d)(1)(A), including but not limited  
19 to Plaintiffs’ and Class Member’s first names or first initials, last names, and account numbers or  
20 credit or debit card numbers (including but not limited to Plaintiffs’ and Class Members’ EDD  
21 Debit Card and Account numbers), in combination with any required security codes, access  
22 codes, or passwords that would permit access to Plaintiffs’ and Class Members’ financial  
23 accounts.

24 220. On information and belief, Bank of America collected, stored, and/or transmitted  
25 Plaintiffs’ and Class Members’ personal information in a nonencrypted and nonredacted form or  
26 in some other form that permitted unauthorized third parties to access that information in  
27 violation of the CCPA.

28

1           221. Bank of America had a duty under CCPA to implement and maintain reasonable  
2 security procedures and practices appropriate to the nature of Plaintiffs' and Class Members'  
3 personal information.

4           222. Bank of America breached its duty to implement and maintain reasonable security  
5 procedures and practices appropriate to the nature of Plaintiffs' and Class Members' personal  
6 information by, among other things: (a) issuing EDD Debit Cards to Plaintiffs and Class  
7 Members with magnetic stripes but without EMV chip technology; (b) collecting Plaintiffs' and  
8 Class Members' personal information in an unsecure manner; (c) transmitting Plaintiffs' and  
9 Class Members' personal information in unencrypted or otherwise inadequately secured form or  
10 channels; and (d) storing Plaintiffs' and Class Members' personal information, or permitting said  
11 information to be stored on unsecured or inadequately secured data storage devices, including at  
12 EDD.

13           223. Bank of America further failed to implement and maintain reasonable security  
14 measures by transferring information regarding Plaintiffs' and Class Members' EDD Debit  
15 Cards to, and storing it on, unsecured or inadequately secured data storage devices, including at  
16 EDD.

17           224. As a direct and proximate result of Bank of America's failure to implement and  
18 maintain reasonable security procedures and practices appropriate to the nature of Plaintiffs' and  
19 Class Members' personal information, Plaintiffs and Class Members suffered unauthorized  
20 access and exfiltration, theft, or disclosure of their nonencrypted and nonredacted personal  
21 information. Plaintiffs and Class Members never authorized such disclosure of their personal  
22 information.

23           225. Bank of America knew or should have known that issuing EDD Debit Cards with  
24 magnetic stripes but without EMV chip technology was not a reasonable security procedure or  
25 practice appropriate to the nature of Plaintiffs' and Class Members' personal information and  
26 that a data breach resulting in the unauthorized access and exfiltration, theft, or disclosure of  
27 Plaintiffs' and Class Members' personal information was clearly foreseeable.

28

1           226. As a direct and proximate result of the unauthorized access and exfiltration, theft,  
2 or disclosure of Plaintiffs' and Class Members' nonencrypted and nonredacted personal  
3 information, Plaintiffs and Class Members were injured and lost and/or continue to lose money  
4 or property, including but not limited to the monetary value of unauthorized transactions on the  
5 EDD Debit Cards issued by the Bank, the loss of Plaintiffs' and Class Members' protected  
6 privacy interests in the confidentiality and privacy of their personal information, nominal  
7 damages, and additional losses as described above.

8           227. Plaintiffs and Class Members seek relief under Cal. Civ. Code §1798.150(a),  
9 including but not limited to recovery of actual damages, injunctive relief, declaratory relief, its  
10 costs of suit, attorney's fees pursuant to Cal. Code Civ. Proc. §1021.5 or other applicable law, and  
11 any other relief the Court deems proper.

12           228. On January 25, 2021, Plaintiffs Smith and Karam, through their undersigned  
13 counsel, on behalf of themselves and all others similarly situated, sent a letter to Bank of  
14 America's registered agent for service of process via FedEx, notifying Bank of America of its  
15 violations of Cal. Civ. Code §1798.150(a) and demanding that the Bank cure them. That letter  
16 was delivered by FedEx the following morning, on January 26, 2021. Bank of America did not  
17 respond to the letter, much less cure the noticed violations or provide Plaintiffs with an express  
18 written statement that the violations had been cured and that no further violations would occur,  
19 within 30 days after receiving the letter. Thereafter, on March 1, 2021, Smith and Karam filed  
20 their Class Action Complaint in an action that has now been consolidated into this matter. As a  
21 result, class-wide statutory damages may be initiated against the Bank pursuant to Cal. Civ. Code  
22 §1798.150(b).

23           229. On or about January 26, 2021, Plaintiffs Oosthuizen and Mathews, through their  
24 undersigned counsel, each submitted a notice to Bank of America pursuant to Cal. Civ. Code  
25 §1798.150(b) on behalf of themselves and all others similarly situated, informing the Bank of its  
26 violations of the CCPA. The Bank did not cure those violations or provide Plaintiffs with an  
27 express written statement that the violations have been cured and that no further violations shall  
28 occur, as required by the CCPA within 30 days after such notice. As a result, class-wide statutory



1 damages may be initiated against the Bank pursuant to Cal. Civ. Code §1798.150(b).

2 230. Plaintiffs and Class Members seek relief under Cal. Civ. Code §1798.150(a),  
3 including but not limited to recovery of actual damages, statutory damages, injunctive relief,  
4 declaratory relief, its costs of suit, attorney’s fees pursuant to Cal. Code Civ. Proc. §1021.5 or  
5 other applicable law, and any other relief the Court deems proper.

6 **FIFTH CLAIM FOR RELIEF**

7 **VIOLATION OF THE CALIFORNIA CUSTOMER RECORDS ACT**

8 **(Cal. Civil Code §§1798.80 et seq.)**

9 231. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
10 above, as though fully set forth here.

11 232. To ensure that personal information about California residents is protected, the  
12 California Legislature enacted the California Customer Records Act, which requires businesses  
13 suffering a data breach to promptly notify all persons whose “unencrypted personal information  
14 was, or is reasonably believed to have been, acquired by an unauthorized person.” Cal. Civ. Code  
15 §1798.82.

16 233. Bank of America is a “business” within the meaning of Civil Code §1798.80(a).

17 234. Plaintiffs and Class Members are “individual[s]” within the meaning of Cal. Civ.  
18 Code §1798.80(d). Pursuant to Civil Code §§1798.80(e) and 1798.82(h), “personal information”  
19 includes an individual’s name, social security number, driver’s license or state identification card  
20 number, and debit card and credit card information. “Personal information” under Civil Code  
21 §1798.80(e) also includes address, telephone number, employment, and employment history.

22 235. Bank of America maintains computerized data that includes personal information  
23 of Plaintiffs and Class Members. The security of that data was breached, resulting in  
24 unauthorized third parties fraudulently accessing Plaintiffs’ and Class Members’ EDD Debit  
25 Card Accounts.

26 236. The notification of such a breach required by Cal. Civ. Code §1798.82 must be  
27 made “immediately following discovery.”  
28

1           237. By failing to promptly notify all affected Plaintiffs and Class Members that their  
2 unencrypted personal information had been acquired (or was reasonably believed to have been  
3 acquired) by unauthorized persons, Bank of America violated Cal. Civ. Code §1798.82.

4           238. The notification required by Cal. Civ. Code §1798.82 must be made in plain  
5 language, list the information that was or is reasonably believed to have been compromised,  
6 identify the date and time of the breach, state whether law enforcement delayed the notice,  
7 provide a “general description of the breach incident,” and provide the “toll-free telephone  
8 numbers and addresses of the major credit reporting agencies if the breach exposed a social  
9 security number or a driver’s license or California identification card number.”

10           239. Bank of America was required to provide the notification required by Cal. Civ.  
11 Code §1798.82 to over 500 persons and was required to provide a sample copy of its notification  
12 to the California Attorney General.

13           240. Bank of America did not provide such notice, and thus did not provide notice “in  
14 the most expedient time possible and without unreasonable delay,” as required by Cal. Civ. Code  
15 §1798.82.

16           241. Bank of America’s conduct as alleged herein was reckless and/or deliberate.

17           242. Plaintiffs and Class Members were injured by Bank of America’s violations of  
18 Cal. Civ. Code §1798.82. Bank of America’s exposure of Plaintiffs’ and Class Members’  
19 personal information to unauthorized third parties resulted in Plaintiffs and Class Members  
20 losing access to EDD benefits to which they are entitled; exposed Plaintiffs and Class Members  
21 to increased risk of identity theft; and reduced the value of Plaintiffs’ and Class Members’  
22 personal information. Bank of America’s failure promptly to notify Plaintiffs and Class Members  
23 of the exposure of their personal information to unauthorized third parties as required by  
24 §1798.82 prevented Plaintiffs and Class Members from taking measures to prevent or mitigate  
25 these harms, including but not limited to by withdrawing or transferring funds from their  
26 Accounts before those funds were fraudulently removed or before those Accounts were frozen  
27 by Bank of America, and by closing Accounts and placing credit alerts on their Accounts to  
28 reduce the risk of identity theft.



1 denying Plaintiffs' and Class Members' claims of unauthorized transactions without  
2 investigation, explanation, or reasonable basis; (k) rescinding, without explanation or legitimate  
3 basis, "permanent" credits the Bank had previously paid to EDD Debit Cardholders upon  
4 determining fraud had occurred in their Account; (l) freezing EDD Debit Card Accounts without  
5 a reasonable basis for believing that the Accountholders themselves had committed fraud, and  
6 for longer than it would reasonably take to investigate any such belief, all while failing to  
7 provide Accountholders any reasonable means of contesting the purported basis for the Account  
8 freeze; (m) freezing EDD Debit Card Accounts not to protect the Accountholders but to protect  
9 the Bank's own interests; and (n) failing to provide reasonable or adequate customer service to  
10 Plaintiffs and other Class Members seeking assistance in obtaining reimbursement for third-party  
11 fraud on their Accounts or in accessing their frozen Accounts, despite the Bank's representation  
12 in its 2015 RFP Response that "[u]nemployment and disability payments are critical, often times  
13 providing claimants the ability to secure housing or purchase necessary medical prescriptions."

14         247. Bank of America's acts, omissions, and conduct as alleged herein are "unfair"  
15 under the UCL because those acts, omissions, and conduct offend public policy and constitute  
16 immoral, unethical, oppressive, and unscrupulous activities that caused substantial injury,  
17 including to Plaintiffs and Class Members. The harm caused by Bank of America's conduct  
18 outweighs any potential benefits attributable to such conduct. There were reasonably available  
19 alternatives to further the Bank's legitimate business interests, including issuing EDD Debit  
20 Cards with EMV chips and creating and implementing procedures and resources adequate to  
21 timely conduct good-faith investigations into reported unauthorized transactions and to otherwise  
22 timely resolve reports of fraudulent activity on EDD Debit Card Accounts.

23         248. Bank of America has engaged in "unlawful" acts and business practices by  
24 violating the Due Process Clauses of the U.S. and California Constitutions and multiple laws,  
25 including the Electronic Funds Transfer Act, 15 U.S.C. §1693, and Regulation E; the California  
26 Consumer Privacy Act, Cal. Civ. Code §§1798.100 et seq.; the Gramm-Leach-Bliley Act, 15  
27 U.S.C. §§6801 et seq.; the California Financial Information Privacy Act, Cal. Fin. Code §§4050  
28

1 et seq.; the California Consumer Records Act, Cal. Civ. Code §§1798.80 et seq.; and its common  
2 law obligations as set forth herein.

3           249. Bank of America has engaged in “fraudulent” acts and business practices because  
4 it made false representations to EDD Debit Cardholders that its prepaid debit cards are a  
5 “[f]aster, easier and more secure” way to receive benefit payments,<sup>16</sup> that Cardholders would  
6 incur “Zero Liability” for unauthorized transactions, that it would provide “dedicated customer  
7 service representatives” “available 24 hours a day, 7 days a week” to help “investigate  
8 transactions” and “process lost/stolen/damages card reports,” and that it would issue provisional  
9 credits within 10 days if unable to complete its investigation and would complete all error  
10 investigations within 45 days. These false representations were likely to deceive, and did  
11 deceive, Plaintiffs and Class Members into (a) using the Bank’s EDD Debit Card services to  
12 receive EDD benefits (instead of, for example, opting to receive EDD benefits by paper check)  
13 and (b) using the Bank’s EDD Debit Card services with a reasonable level of ordinary care that a  
14 consumer would use with a credit or debit card, rather than with a level of hyper-vigilance that a  
15 reasonable person might exercise if they knew that the card was highly susceptible to hacks, that  
16 the Bank would not hold them harmless for third-party fraud, and that the Bank would not offer  
17 them meaningful customer service support in the face of such fraud but would instead keep them  
18 on hold for hours and offer no solutions even after weeks and months of calls.

19           250. As a result of Bank of America’s violations of the UCL, Plaintiffs and Class  
20 Members have suffered injury in fact and lost money or property, including but not limited to the  
21 funds lost to fraud that have not been reimbursed, fees paid to Bank of America, and lost interest  
22 that would have accrued on funds during the period of time when the funds were unavailable due  
23 to Bank of America’s failure to timely and adequately investigate claims of unauthorized  
24 transactions and other violations of the UCL.

25           251. Plaintiffs and Class Members are entitled to restitution and other equitable relief,  
26 including injunctive relief (a) prohibiting Bank of America from continuing its unfair, unlawful,  
27 \_\_\_\_\_

28 <sup>16</sup> Bank of America prepaid website, *EDD Debit Card*, <https://www.visaprepaidprocessing.com/EddCard> (formerly at the URL: <https://prepaid.bankofamerica.com/EddCard>).

1 and deceptive business practices, and (b) requiring Bank of America to take reasonable measures  
2 to prevent future unauthorized use of EDD Debit Cards and Accounts, and (c) requiring Bank of  
3 America to ensure timely and adequate processing of EDD Debit Cardholders' claims regarding  
4 unauthorized or fraudulent use of their EDD Debit Cards or Accounts.

5 **SEVENTH CLAIM FOR RELIEF**

6 **NEGLIGENCE AND NEGLIGENCE PER SE**

7 252. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
8 above, as though fully set forth here.

9 253. Bank of America owed a duty to Plaintiffs and other Class Members to act  
10 reasonably to: (a) safeguard their UI and other EDD benefits; (b) protect them from fraudulent  
11 access by unauthorized third parties to the funds paid into their EDD Debit Card Accounts,  
12 including by timely and accurately warning them of suspicious activity in those Accounts;  
13 (c) protect them from unreasonable interference with their right and ability to continue to collect,  
14 receive, and access the EDD benefits to which they were entitled; (d) ensure that the Bank's  
15 customer service staffing levels, technology, and operations were capable of providing Plaintiffs  
16 and Class Members reasonably timely and effective customer service, including to address those  
17 customers' concerns about fraudulent or unauthorized transactions related to their EDD Debit  
18 Cards or Accounts; (e) provide Plaintiffs and Class Members reasonable and adequate notice that  
19 their EDD Debit Cards and Accounts were at risk of being subject to unauthorized use or had  
20 been subjected to unauthorized use; (f) timely and adequately investigate and resolve Plaintiffs'  
21 and Class Members' claims regarding unauthorized or fraudulent transactions; and (g) extend to  
22 Plaintiffs and Class Members provisional credit in cases where Bank of America failed to timely  
23 resolve their fraud-related claims.

24 254. Bank of America breached its duty to Plaintiffs and Class Members by, among  
25 other things: (a) failing to transfer or store their EDD Debit Card and Account information in a  
26 secure manner; (b) failing to issue Plaintiffs and Class Members EDD Debit Cards with EMV  
27 chips, despite having been well aware for years of the risks associated with magnetic stripe  
28 technology; (c) failing to protect Plaintiffs and Class Members from fraudulent access by

1 unauthorized third parties to the funds paid into their EDD Debit Card Accounts, including by  
2 providing timely and accurate warnings of suspicious activity in those Accounts; (d) failing to  
3 respond to the dramatic increase in EDD benefits and EDD benefits recipients caused by or  
4 related to the COVID-19 pandemic by issuing EDD Debit Cards with EMV chips to all new and  
5 existing EDD Debit Cardholders and by taking other reasonably prudent security measures to  
6 prevent fraudulent and unauthorized transactions; (e) failing to ensure its customer service  
7 operation was capable of providing reasonably timely and effective assistance to Plaintiffs and  
8 Class Members, including when they were victims of fraudulent or unauthorized transactions;  
9 (f) failing to give reasonable and adequate notice to Plaintiffs and Class Members that their EDD  
10 benefits were and remain at risk of being vulnerable to fraudulent and unauthorized transactions;  
11 (g) failing to process EDD Debit Cardholders' claims regarding fraudulent or unauthorized  
12 transactions in a reasonably timely and adequate manner, including by unreasonably  
13 automatically freezing EDD Debit Card Accounts without prior notice, reasonable investigation,  
14 or an opportunity to be heard; and (h) failing to extend provisional credit to Plaintiffs and Class  
15 Members when Bank of America failed to resolve their claims regarding fraudulent or  
16 unauthorized transactions in a reasonably timely and adequate manner.

17 255. Bank of America's misconduct concerning its failure to safeguard EDD Debit  
18 Cardholders' funds is inconsistent with industry standards, which prescribe using EMV chip  
19 technology in debit cards.

20 256. Bank of America's misconduct concerning its failure to adequately protect  
21 Plaintiffs' and Class Members' data is inconsistent with its obligations under the California  
22 Consumer Privacy Act, Cal. Civ. Code §§1798.100 et seq., the Gramm-Leach-Bliley Act, 15  
23 U.S.C. §§6801 et seq., the California Financial Information Privacy Act, Cal. Fin. Code §§4050  
24 et seq., the California Consumer Records Act, Cal. Civ. Code §§1798.80 et seq., and customary  
25 industry practice, as well as its own policies and procedures for its *non*-EDD debit and credit  
26 card accounts, each of which are secured through EMV chip technology. Plaintiffs and Class  
27 Members are within the classes of persons that each of the aforementioned statutes are designed  
28



1 to protect, and Bank of America's conduct caused the precise harm to Plaintiffs and Class  
2 Members that each statute was designed to prevent.

3 257. Bank of America's failure to comply with the California Consumer Privacy Act,  
4 Cal. Civ. Code §§1798.100 et seq., the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801 et seq., the  
5 California Financial Information Privacy Act, Cal. Fin. Code §§4050 et seq., and the California  
6 Consumer Records Act, Cal. Civ. Code §§1798.80 et seq. constitutes negligence per se.

7 258. The harms inflicted upon Plaintiffs and other Class Members were reasonably  
8 foreseeable because the Bank was and is well aware of the security risks associated with  
9 magnetic stripe technology, and knew or should have known that its customer service resources  
10 and/or procedures were insufficient to consider, evaluate, and appropriately resolve issues  
11 stemming from the significant increase in EDD benefits and EDD benefits recipients due to the  
12 sharp rise in unemployment in the State of California caused by or related to the COVID-19  
13 pandemic, as well as the well-publicized sharp rise in financial fraud during the COVID-19  
14 pandemic, both of which would foreseeably lead to an increased demand for customer service by  
15 Plaintiffs and Class Members for all purposes, including for the purpose of reporting and  
16 attempting to resolve claims of fraudulent or unauthorized transactions.

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

## 20 **EIGHTH CLAIM FOR RELIEF**

### 21 **BREACH OF CONTRACT**

22 260. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
23 above, as though fully set forth here.

24 261. Each Plaintiff and Class Member entered into a Cardholder Agreement with the  
25 Bank that requires the Bank to administer EDD benefits to them through prepaid debit cards.

26 262. The Cardholder Agreement provides, among other things: "Under the Bank of  
27 America 'zero liability' policy, you may incur no liability for unauthorized use of your Card up  
28 to the amount of the transaction, provided you notify us within a reasonable time of the loss or

1 theft of your Card, Card number or PIN or its unauthorized use, subject to the following terms  
2 and conditions.” The Cardholder Agreement further provides: “We will determine whether an  
3 error occurred within 10 business days after we hear from you — and will correct any error  
4 promptly. If we need more time, however, we may take up to 45 days to investigate your  
5 complaint or question. If we decide to do this, we will credit your Account within 10 business  
6 days for the amount you think is in error, so that you will have the money during the time it takes  
7 us to complete our investigation.”

8         263. The Cardholder Agreement also provides that the Bank “will add funds to your  
9 Account . . . in accordance with instructions from the EDD” and that “[f]unds are available for  
10 your use on the day we have been instructed by the EDD to fund your Account.” Those also limit  
11 the circumstances under which the Bank may deprive EDD Debit Cardholders of access to their  
12 funds by freezing their EDD Debit Card Accounts. As relevant here, the Cardholder Agreement  
13 provides that if the Bank “suspect[s] irregular, unauthorized, or unlawful activities may be  
14 involved” with the Account, it may freeze the Account, but only “pending an investigation of  
15 such suspected activities.”

16         264. Plaintiffs and Class Members performed all or substantially all of the material  
17 requirements that their Cardholder Agreement with Bank of America imposed on them, and they  
18 fulfilled all conditions precedent to Bank of America’s performance, including, among other  
19 things, by contacting or attempting to contact Bank of America to reimburse them for  
20 fraudulently appropriated funds within the time specified in the Cardholder Agreement.

21         265. Bank of America breached its promises to Plaintiffs and Class Members in its  
22 Cardholder Agreement by, among other things: (a) failing to timely investigate and resolve their  
23 fraud claims; (b) failing to reimburse them for unauthorized transactions; (c) failing to provide  
24 them with provisional credit when the Bank’s investigation into their fraud claims exceeds 10  
25 business days; (d) failing to limit their liability for unauthorized transactions; (e) freezing their  
26 EDD Debit Card Accounts without a reasonable basis for suspecting irregular, unauthorized, or  
27 unlawful activities in the Account, and beyond the length of time necessary for a reasonable  
28 investigation; (f) freezing their EDD Debit Card Accounts for reasons other than those specified

1 in the Cardholder Agreement; (g) failing to make funds available to them for their use on the day  
2 the Bank has been instructed by the EDD to fund their Accounts; and (h) and otherwise failing to  
3 make funds available to them in accordance with EDD's instructions.

4 266. Plaintiffs and Class Members were harmed by Bank of America's conduct and  
5 have suffered actual damages in an amount equal to the difference in the value of the banking  
6 services for which they provided valuable consideration and the banking services they received.

7 **NINTH CLAIM FOR RELIEF**

8 **BREACH OF IMPLIED CONTRACT**

9 267. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
10 above, as though fully set forth here.

11 268. Bank of America agreed to and was obligated to take reasonable steps to ensure  
12 that Bank's EDD Debit Card Accounts were secure against unauthorized transactions and that  
13 any claims regarding unauthorized transactions were adequately investigated and resolved.

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

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

22 271. Bank of America did not take reasonable steps to protect Plaintiffs' and Class  
23 Members' deposited funds from unauthorized transactions or to adequately investigate or resolve  
24 claims regarding unauthorized transactions. In fact, Bank of America willfully violated those  
25 interests by electing to issue EDD Debit Cards with outdated magnetic stripe technology, which  
26 it knows to 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 more than six  
28 years, for the express purpose of protecting against fraud.



1 transactions involving Plaintiffs' and Class Members' EDD Debit Cards or Accounts; (e) to  
2 extend provisional credit to Plaintiffs and Class Members in cases where their fraud claims are  
3 not timely resolved; (f) to freeze EDD Debit Card Accounts only to protect them from third-  
4 party fraud and only for the period necessary to conduct a reasonable investigation into whether  
5 third-party fraud occurred; (g) to make EDD benefits deposited into EDD Debit Card Accounts  
6 immediately available to Accountholders and not to freeze Accounts without a reasonable basis  
7 for believing that the Accountholders themselves have committed fraud; and (h) to not freeze  
8 Accounts out of concern for the Bank's own potential liability for third-party fraud.

9       277. Bank of America breached the implied covenant of good faith and fair dealing by,  
10 among other things: (a) failing to take reasonable and necessary steps to safeguard Plaintiffs' and  
11 Class Members' EDD benefits, including but not limited to (i) failing to issue EDD Debit Cards  
12 with EMV chip technology, (ii) failing to secure Plaintiffs' and Class Members' EDD Debit  
13 Card and Account information and other sensitive personal information that could be used by  
14 third parties to effect unauthorized transactions, (iii) failing to adequately monitor for fraudulent  
15 or suspected fraudulent transactions on EDD Debit Cards and Accounts, and (iv) failing to  
16 promptly issue EDD Debit Cards with EMV chips and to increase its efforts with respect to  
17 securing personal information, fraud monitoring, and otherwise safeguarding benefits in light of  
18 the foreseeable and actual rise in the number of EDD Debit Cardholders and the amount of  
19 financial fraud caused by or related to the COVID-19 pandemic; (b) failing to ensure its  
20 customer service operation was capable of providing effective assistance to EDD Debit  
21 Cardholders who experience fraud on their EDD Debit Card or Account, including during the  
22 COVID-19 pandemic; (c) failing to warn or notify EDD Debit Cardholders that their EDD  
23 benefits were and remain subject to, or at risk of being subject to, actual or suspected  
24 unauthorized use; (d) failing to timely or adequately process and investigate EDD Debit  
25 Cardholders' claims regarding unauthorized transactions; (e) failing to extend provisional credit  
26 in cases where EDD Debit Cardholders' fraud claims are not timely resolved; (f) freezing EDD  
27 Debit Card Accounts without a reasonable basis for believing that the Accountholders  
28 themselves had committed fraud, and for longer than it would reasonably take to investigate any

1 such belief; (g) failing to provide EDD Debit Cardholders any reasonable means of contesting  
2 the Bank's purported basis for freezing their EDD Debit Card Accounts or for otherwise getting  
3 their Accounts unfrozen; and (h) freezing EDD Debit Card Accounts not to protect the  
4 Accountholders, but rather to protect the Bank itself, from liability for third-party fraud.

5 278. As a direct and proximate result of Bank of America's breaches of the implied  
6 covenant of good faith and fair dealing, Plaintiffs and other Class Members have suffered actual  
7 losses and damages.

8 **ELEVENTH CLAIM FOR RELIEF**

9 **BREACH OF FIDUCIARY DUTY**

10 279. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
11 above, as though fully set forth here.

12 280. Plaintiffs and Class Members, as public benefits recipients, are members of a  
13 uniquely vulnerable segment of the population, who depend on the prompt and accurate payment  
14 of the UI, PUA, and other EDD benefits to obtain their basic necessities of life, including food  
15 and shelter.

16 281. When Plaintiffs and Class Members submitted their claims for UI, PUA, and  
17 other EDD benefits to EDD and were found eligible to receive those benefits, they were not  
18 given the choice of receiving those benefits through debit cards issued by any financial  
19 institution other than Bank of America. Bank of America holds the exclusive contract to  
20 implement and administer EDD's public benefits programs and is the only financial institution  
21 authorized to pay EDD benefits to program beneficiaries through the use of bank-issued prepaid  
22 debit cards.

23 282. In order to obtain the Bank-issued EDD Debit Cards needed to access their EDD  
24 Debit Card Accounts, which is the default way of receiving EDD benefits, Plaintiffs and Class  
25 Members were required to provide the Bank with a broad range of private and confidential  
26 information, including information pertaining to their income, public benefits, employment  
27 status, finances, social security numbers, addresses, emails, telephone numbers, and all debit card  
28 account information.

1           283. The Bank, in turn, was provided access to all such personal, confidential, and  
2 financial information from Plaintiffs and Class Members, which the Bank stored and maintained,  
3 purportedly in confidence, and which the Bank was required to strictly maintain in confidence  
4 without public access or other disclosure absent the EDD Debit Cardholders' written consent.  
5 The Bank was also delegated the responsibility and authority to determine when, why, and how  
6 to deny Plaintiffs and Class Members access to EDD benefits to which they are entitled by  
7 freezing EDD Debit Card Accounts.

8           284. Plaintiffs and Class Members, as EDD benefits recipients who did not opt out of  
9 the default option of receiving their EDD benefits payments through EDD Debit Cards, were  
10 repeatedly assured that a EDD Debit Card was a "[f]aster, easier and more secure" way to  
11 receive their benefit payments and that the EDD Debit Cards and Accounts were secure from  
12 fraud, and they reposed their trust and confidence in the Bank at all material times, including  
13 with respect to all of their personal, confidential, and financial information and with respect to  
14 the Bank's ongoing maintenance of that information in confidence, without secretion or  
15 divulgence absent Plaintiffs' and Class Members' express written consent.

16           285. Bank of America owes and continues to owe a fiduciary duty to Plaintiffs and  
17 Class Members. By virtue of its position as the financial institution charged with implementing  
18 EDD benefits programs, which gave the Bank delegated authority to determine when, why, and  
19 how to deny Plaintiffs and Class Members access to EDD benefits to which they are entitled by  
20 freezing EDD Debit Card Accounts, as well as unbridled access to Plaintiffs' and Class  
21 Members' personal, confidential, and financial information, and because of the Bank's superior  
22 knowledge, business responsibilities and duties—including those provided by law or statute—  
23 and its absolute ability to control or otherwise manipulate Plaintiffs' and Class Members' EDD  
24 Debit Card Account data in its system, the Bank assumed a fiduciary duty to Plaintiffs and Class  
25 Members not to deny them access to their Account funds without reasonable basis, and to secure  
26 and maintain the personal, confidential, and financial information that it received from Plaintiffs  
27 and Class Members, free from unauthorized intrusion, theft, or other disclosure.

28



1           286. As a result of this relationship of trust and confidence, the unique nature of the  
2 EDD Debit Card Accounts that contain only EDD benefits, and the highly confidential nature of  
3 the records and data pertaining to Plaintiffs' and Class Members' EDD Debit Cards Accounts,  
4 and the Bank's duties to maintain the privacy of such information, the Bank owed Plaintiffs and  
5 Class Members the highest degree of loyalty, honesty, fidelity, trust, and due care in its fiduciary  
6 obligations with respect to ensuring legitimate benefits recipients are not denied access to their  
7 Account funds, and with respect to securing and maintaining the privacy of their personal,  
8 confidential, and financial data in the Bank's possession. In order to comply with such duty, the  
9 Bank was required to use its utmost ability to ensure that legitimate benefits recipients are not  
10 denied access to their Account funds, and to protect, preserve, and secure Plaintiffs' and Class  
11 Members' private data and confidential information from unauthorized access, fraud, or theft and  
12 to take all necessary steps in order to do so, including encrypting such information and deploying  
13 sufficient data access security controls, EMV chips, and other measures, to frustrate and disable  
14 hackers, skimmers, cloners, or others from accessing such information for their personal profit or  
15 unlawful goals.

16           287. Based on the acts or omissions alleged above, Bank of America breached its  
17 fiduciary duties to Plaintiffs and Class Members by failing to take all adequate and necessary  
18 steps to ensure legitimate benefits recipients are not denied access to their Account funds without  
19 reasonable basis, and to preserve, secure, and maintain the confidentiality and privacy of their  
20 EDD Debit Cards and Accounts and their personal, confidential, and financial data. The Bank  
21 independently breached its fiduciary duties to Plaintiffs and Class Members by failing to timely,  
22 fully, and adequately disclose that it had not taken the necessary steps to protect such  
23 information from unauthorized or fraudulent access and theft and that such information was at a  
24 heightened risk of breach by virtue of the Bank's data security failings and policies.

25           288. Bank of America recklessly or knowingly breached its fiduciary duty and  
26 consciously denied legitimate EDD benefits recipients' access to their EDD Debit Card Account  
27 funds without reasonable basis, and it created an environment that made its data systems and  
28 Plaintiffs' and Class Members' EDD Debit Card Accounts and their access to EDD benefits prey

1 to criminal hackers and thieves. Alternatively, and without prejudice to the foregoing, the Bank  
2 also breached its fiduciary duty by placing its own desire to achieve greater profits ahead of the  
3 financial security, privacy, and data security interests of Plaintiffs and Class Members.

4 289. As a direct and proximate result of the Bank's violations of its fiduciary duty,  
5 Plaintiffs and Class Members have been injured and have suffered and will continue to suffer  
6 economic and non-economic losses in an amount to be determined according to proof at trial,  
7 and a constructive trust has been formed in which the Bank is an involuntary trustee for the  
8 benefit of Plaintiffs and Class Members concerning the Account funds that Plaintiffs and Class  
9 Members have lost or been unable to access.

10 **TWELFTH CLAIM FOR RELIEF**

11 **BREACH OF CONTRACT (THIRD-PARTY BENEFICIARIES)**

12 290. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
13 above, as though fully set forth here.

14 291. Bank of America and the State of California EDD entered into the EDD-Bank  
15 Contract, which is a valid and legally enforceable contract that requires Bank of America to  
16 administer EDD benefits to Plaintiffs and Class Members through EDD Debit Cards and  
17 Accounts.

18 292. In seeking to obtain the Bank-EDD Contract and as a material term of that  
19 contract, the Bank represented to EDD that the Bank would protect the EDD benefits deposited  
20 into EDD Debit Card Accounts by implementing strict and secure anti-fraud measures, and that  
21 it would provide reasonable and adequate customer service to EDD Debit Cardholders sufficient  
22 to ensure that any claims of fraud would be promptly considered, fully and fairly investigated,  
23 and timely resolved without hardship or cost to blameless Cardholders, including Plaintiffs and  
24 Class Members.

25 293. As EDD benefits recipients, EDD Debit Cardholders, and EDD Debit Card  
26 Accountholders, Plaintiffs and Class Members are intended third-party beneficiaries of the EDD-  
27 Bank Contract. Plaintiffs and Class Members would benefit from performance of the contract,  
28 providing that benefit was a motivating purpose of the contracting parties entering into the

1 contract, and permitting Plaintiffs and Class Members to pursue a claim for breach of the  
2 contract seeking specific performance is consistent with the contract's objectives and the  
3 reasonable expectations of the contracting parties at the time of contracting.

4 294. Plaintiff, Class Members, and the EDD performed all or substantially all of the  
5 material conditions imposed on them by the Bank-EDD Contract and fulfilled any and all  
6 conditions precedent to Bank of America's performance.

7 295. Bank of America failed to perform as promised in the Bank-EDD Contract by,  
8 among other things: (a) failing to take adequate steps to prevent fraud on EDD Debit Cards and  
9 Accounts, including but not limited to failing to adequately monitor for fraudulent and suspected  
10 fraudulent transactions, failing to adequately detect fraudulent and suspected fraudulent  
11 transactions, failing to deploy reasonable and adequate technologies and human resources to  
12 monitor for and detect fraudulent and suspected fraudulent transactions, failing to promptly  
13 notify Plaintiffs and Class Members of Bank-detected fraudulent or suspected fraudulent  
14 transactions, and failing to issue EDD Debit Cards that incorporate EMV chip technology;  
15 (b) failing to timely perform good-faith investigations of unauthorized transactions involving  
16 EDD Debit Cards and Accounts; (c) failing to timely resolve claims of unauthorized transactions  
17 involving EDD Debit Cards and Accounts, including failing to have a reasonable basis for its  
18 determinations that challenged transactions were in fact authorized by the relevant EDD Debit  
19 Cardholder; (d) failing to timely reimburse Plaintiffs and Class Members for unauthorized  
20 transactions on their EDD Debit Cards and Accounts; (e) failing to timely provide provisional  
21 credit to Plaintiffs and Class Members when the Bank's investigation of fraud claims exceeds 10  
22 business days; (f) failing to provide EDD Debit Cardholders with the kinds, levels, amount, and  
23 quality of customer service specified in the EDD-Bank Contract; and (g) failing to make  
24 commercially reasonable efforts in the context of the COVID-19 pandemic to provide the kinds,  
25 levels, amount, and quality of customer service to EDD Debit Cardholders that reasonably  
26 should have been provided to them in the context of the COVID-19 pandemic.

27 296. Plaintiffs and Class Members were harmed by Bank of America's conduct in  
28 breaching the EDD-Bank Contract and have suffered actual damages in an amount equal to the

1 difference in the value of the banking services that EDD Debit Cardholders were contractually  
2 entitled to receive and the value of banking services that EDD Debit Cardholders actually  
3 received.

4 **THIRTEENTH CLAIM FOR RELIEF**

5 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**  
6 **(THIRD-PARTY BENEFICIARIES)**

7 297. Plaintiffs repeat and incorporate by reference each and every allegation set forth  
8 above, as though fully set forth here.

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

14 299. The covenant of good faith and fair dealing implied in the EDD-Bank Contract  
15 obligated the Bank, at a minimum: (a) to take reasonable and necessary steps to safeguard  
16 Plaintiffs' and Class Members' EDD benefits, including in light of the foreseeable and actual rise  
17 in the number of EDD Debit Cardholders and the amount of financial fraud caused by or related  
18 to the COVID-19 pandemic; (b) to ensure that its customer service operation was capable of  
19 providing reasonably adequate and effective assistance to EDD Debit Cardholders who  
20 experienced or claimed to have experienced fraud on their EDD Debit Cards or Accounts; (c) to  
21 warn or notify Plaintiffs and Class Members if their EDD benefit funds were subject to, or at risk  
22 of being subject to, actual or suspected unauthorized use; (d) to timely and adequately investigate  
23 and resolve claims of unauthorized transactions involving Plaintiffs' and Class Members' EDD  
24 Debit Cards or Accounts; (e) to extend provisional credit to Plaintiffs and Class Members in  
25 cases where their fraud claims are not timely resolved; (f) to freeze EDD Debit Card Accounts  
26 only to protect them from third-party fraud and only for the period necessary to conduct a  
27 reasonable investigation into whether third-party fraud occurred; (g) to make EDD benefits  
28 deposited into EDD Debit Card Accounts immediately available to Accountholders and not to

1 freeze Accounts without a reasonable basis for believing that the Accountholders themselves  
2 have committed fraud; and (h) to not freeze Accounts out of concern for the Bank's own  
3 potential liability for third-party fraud.

4 300. Bank of America breached the implied covenant of good faith and fair dealing by,  
5 among other things: (a) failing to take reasonable and necessary steps to safeguard Plaintiffs' and  
6 Class Members' EDD benefits, including but not limited to (i) failing to issue EDD Debit Cards  
7 with EMV chip technology, (ii) failing to secure Plaintiffs' and Class Members' EDD Debit  
8 Card and Account information and other sensitive personal information that could be used by  
9 third parties to effect unauthorized transactions, (iii) failing to adequately monitor for fraudulent  
10 or suspected fraudulent transactions on EDD Debit Cards and Accounts, and (iv) failing to  
11 promptly issue EDD Debit Cards with EMV chips and to increase its efforts with respect to  
12 securing personal information, fraud monitoring, and otherwise safeguarding benefits in light of  
13 the foreseeable and actual rise in the number of EDD Debit Cardholders and the amount of  
14 financial fraud caused by or related to the COVID-19 pandemic; (b) failing to ensure its  
15 customer service operation was capable of providing effective assistance to EDD Debit  
16 Cardholders who experience fraud on their EDD Debit Card or Account, including during the  
17 COVID-19 pandemic; (c) failing to warn or notify EDD Debit Cardholders that their EDD  
18 benefits were and remain subject to, or at risk of being subject to, actual or suspected  
19 unauthorized use; (d) failing to timely or adequately process and investigate EDD Debit  
20 Cardholders' claims regarding unauthorized transactions; (e) failing to extend provisional credit  
21 in cases where EDD Debit Cardholders' fraud claims are not timely resolved; (f) freezing EDD  
22 Debit Card Accounts without a reasonable basis for believing that the Accountholders  
23 themselves had committed fraud, and for longer than it would reasonably take to investigate any  
24 such belief, (g) failing to provide EDD Debit Cardholders any reasonable means of contesting  
25 the Bank's purported basis for freezing their EDD Debit Card Accounts or for otherwise getting  
26 their Accounts unfrozen; and (h) freezing EDD Debit Card Accounts not to protect the  
27 Accountholders, but rather to protect the Bank itself, from liability for third-party fraud.

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1 there was no unauthorized transaction and provides documentation of that evidence to the  
2 Class Member;

3 (f) For any investigation that is not completed within 10 days after initiation  
4 or reopening of the fraud claim, provisionally credit the Class Member's EDD Debit Card  
5 Account for the full claim amount pending the Bank's reasonable and good-faith  
6 investigation of the claim;

7 (g) Unfreeze all Class Members' EDD Debit Card Accounts that were frozen  
8 by the Bank based on the Class Member's report of unauthorized transactions on the  
9 Account, unless either the Class Member or the California EDD requests that the Bank  
10 keep the Account frozen;

11 (h) Refrain from freezing any Class Member's EDD Debit Card Account  
12 based on the Class Member's report of unauthorized transactions on the Account;

13 (i) Refrain from freezing any Class Member's EDD Debit Card Account  
14 unless the Bank has first provided the Class Member: (i) Advance written notice  
15 explaining the basis for the intended freeze and explaining that the Class Member has the  
16 right to request EDD to issue future benefits payments by paper check instead of by the  
17 EDD Debit Card, and (ii) A reasonable opportunity to contest the stated basis for the  
18 intended freeze;

19 (j) Take all necessary measures to ensure that no Class Member who contacts  
20 the Bank's customer service hotline to report a fraudulent transaction, to reopen or  
21 inquire about the status of a fraud claim, or to inquire about the status of a frozen EDD  
22 Debit Card Account, is disconnected, automatically sent to voicemail, or kept on hold for  
23 more than a total of five minutes;

24 (k) Take all necessary measures to ensure that the Bank's customer service  
25 representatives are authorized and equipped, and do, provide meaningful 24/7 assistance  
26 to all class members who contact the Bank's customer service hotline to report a  
27 fraudulent transaction, to open or inquire about the status of a fraud claim, or to inquire  
28 about the status of a frozen EDD Debit Card Account; and





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Dated: April 1, 2021

By: /s/ Brian Danitz  
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**SIGNATURE ATTESTATION**

Pursuant to Local Rule 5-1(i)(3), I, Brian Danitz, attest that the other signatories listed, and on whose behalf this filing is submitted, concur in the filing content and have authorized this filing.

By:     /s/ Brian Danitz      
Brian Danitz