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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JULIE HICKS, KUANG TING
CHONG, and STEPHANIE MOORE,
individuals;

Plaintiffs,

v.

BANK OF AMERICA, N.A., a
Delaware corporation; and DOES 1-10,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION

COMPLAINT

1. NEGLIGENCE;
2. VIOLATION OF THE ELECTRONIC FUNDS TRANSFER ACT;
3. BREACH OF CONTRACT;
4. VIOLATION OF THE CALIFORNIA CONSUMER PRIVACY ACT;
5. BREACH OF IMPLIED DUTY OF COMPETENCE; and
6. VIOLATION OF UNFAIR COMPETITION LAW

(Jury Trial Demanded)

1 Julie Hicks (“Hicks”), Kuang Ting Chong (“Chong”), and Stephanie Moore
2 (“Moore”) (“Hicks”) (collectively, “Plaintiffs”), through undersigned counsel, on behalf
3 of themselves and all others similarly situated, bring this Class Action Complaint against
4 Bank of America, N.A. (“BOA”) and DOE Defendants 1-10 (the “DOE Defendants”)
5 (collectively, “Defendants”), and allege upon personal knowledge as to their own
6 actions, and upon information and belief as to counsel’s investigations and all other
7 matters, as follows:

8 NATURE OF ACTION

9 1. This class action seeks recovery for California residents who experienced
10 interruptions in access to their unemployment benefits because of intentional and
11 negligent misconduct by BOA.

12 2. Starting in 2020, numerous individuals began exploiting BOA’s lax security
13 measures to gain unauthorized access to Employment Development Department
14 (“EDD”) debit cards (“EDD Cards”).

15 3. These debit cards were all issued by BOA. California residents receiving
16 EDD benefits are issued a debit card from BOA along with a corresponding BOA
17 account. EDD benefits are directly deposited into these BOA accounts. Beneficiaries
18 own their accounts. The BOA account and debit card are the only means of accessing
19 unemployment benefits for hundreds of thousands of Californians.

20 4. BOA chose to respond to the systemic failures in its security measures by
21 either transferring funds out of recipients’ accounts, revoking credits to the accounts to
22 create negative balances, or simply locking debit cards and preventing access to benefits.
23 As a result, tens of thousands of Californians were deprived of access to their only source
24 of income during a global pandemic.

25 PARTIES

26 5. Plaintiff Julie Hicks is, and at all times mentioned herein was, an individual
27 residing in the State of California, County of Santa Clara.

28 6. Plaintiff Kuang Ting Chong is, and at all times mentioned herein was, an

1 individual residing in the State of California, County of Los Angeles. He receives
2 unemployment benefits from the State of California.

3 7. Plaintiff Stephanie Moore is, and at all times mentioned herein was, an
4 individual residing in the State of California, County of Los Angeles. She receives
5 unemployment benefits from the State of California.

6 8. Defendant Bank of America, N.A. (“BOA”) is a Delaware corporation. Its
7 principal place of business is located at 100 North Tryon Street, Charlotte, North
8 Carolina 28255.

9 9. Plaintiffs do not know the true names and capacities of the defendants sued
10 herein as DOES 1 through 10 (“DOE Defendants”), inclusive, and therefore sue said
11 DOE Defendants by fictitious names. Plaintiffs are informed and believe and based on
12 such information and belief allege that each of the DOE Defendants are contractually,
13 strictly, negligently, intentionally, vicariously liable and or otherwise legally responsible
14 in some manner for the acts and omissions described herein. Plaintiffs will amend this
15 Complaint to set forth the true names and capacities of each DOE Defendant when the
16 same are ascertained.

17 10. Plaintiffs are informed and believe and based on such information and belief
18 allege that BOA and the DOE Defendants, inclusive, and each of them, are and at all
19 material times have been, the agents, servants or employees of each other, purporting to
20 act within the scope of said agency, service or employment in performing the acts and
21 omitting to act as averred herein. Each of the Defendants named herein are believed to,
22 and are alleged to have been acting in concert with, as employee, agent, co-conspirator or
23 member of a joint venture of, each of the other Defendants, and are therefore alleged to
24 be jointly and severally liable for the claims set forth herein, except as otherwise alleged.

25 JURISDICTION AND VENUE

26 11. This Court has original jurisdiction over this matter under 28 U.S. Code §
27 1332(a) because Plaintiffs are residents of California, BOA is a Delaware corporation
28 with its principal place of business in North Carolina, and the amount in controversy

1 exceeds \$75,000 exclusive of interest and costs. This Court also has jurisdiction under
2 the Class Action Fairness Act, 28 U.S. Code § 1332(d), because the parties are minimally
3 diverse and the amount in controversy exceeds \$5,000,000.

4 12. Venue is proper as this action is part of a multidistrict litigation assigned to
5 the Southern District of California.

6 **FACTUAL ALLEGATIONS**

7 13. Plaintiffs are unemployed California residents. At all relevant times they
8 received unemployment benefits from EDD. These unemployment benefits were
9 provided to them through EDD Cards.

10 14. All EDD Cards are linked to BOA accounts. EDD distributes benefits to
11 holders of EDD Cards by depositing money in the BOA accounts associated with the
12 beneficiary.

13 15. Beneficiaries who receive their benefits using an EDD Card must agree to
14 the “California Employment Development Department Debit Card Account Agreement”
15 (the “Account Agreement”). The Account Agreement states that the beneficiary’s
16 relationship to BOA is governed by Regulation E, and that, at a minimum, holders of
17 EDD Cards have the same protections from risk of loss as those provided by Regulation
18 E.

19 16. No EDD Cards issued by BOA prior to 2021 have an “EMV” chip. EMV
20 stands for “Europay, Mastercard, and Visa.” EMV chips are small, metallic squares that
21 create unique transaction data each time the chip is used to make a purchase. This differs
22 from obsolete magnetic-stripe cards, which use the same transaction data each time a
23 purchase is made.

24 17. Debit cards without chips are extremely easy for thieves to duplicate. All a
25 thief needs to create a duplicate card is data from a single debit card purchase.

26 18. As identical data from magnetic-stripe purchases is provided every time the
27 cardholder makes a purchase, the information commonly finds its way to online “dark
28 web” brokers. In contrast, data from post-EMV chip purchases is essentially useless to

1 would-be thieves.

2 19. As debit cards with EMV chips are far more secure, in recent years they
3 have become ubiquitous for credit card and debit card issuers. They are also inexpensive
4 to produce. Indeed, on information and belief, EDD Cards are the only cards BOA issues
5 that do not have an EMV chip.

6 20. In 2020, large numbers of individuals targeted the security weaknesses in
7 BOA's EDD Cards. These individuals used clone cards, likely created from information
8 obtained on the dark web, to initiate fraudulent ATM withdrawals throughout California.
9 *See, e.g.,* <<https://losangeles.cbslocal.com/2020/10/29/bank-of-america-freezes-edd-accounts-of-nearly-350000-unemployed-californians-for-suspected-fraud/>>.

10
11 21. In October 2020, BOA decided to respond to this uptick in fraudulent
12 withdrawals by preventing nearly 350,000 unemployed Californians from accessing their
13 unemployment benefits. *Id.*

14 22. BOA denied EDD benefits recipients access to funds by freezing accounts
15 and by reversing credits for fraudulent withdrawals that BOA had previously granted.
16 BOA reversed credits to create negative balances in the accounts, thereby preventing
17 anyone—including the accounts' lawful beneficiaries—from accessing funds already in
18 the account or new funds deposited into the accounts by EDD.

19 23. On or about July 20, 2020, an unknown person used a cloned EDD Card to
20 steal \$1,000 in unemployment benefits from Chong's account. Chong learned of the
21 fraud on July 20, 2020 and contacted BOA to report the theft the same day.

22 24. On July 21, 2020, Chong filed a police report with the Alhambra police
23 department. The officer Chong spoke to initially confused him with another holder of an
24 EDD Card who had also just had funds stolen.

25 25. On July 31, 2020, BOA credited \$1,000 to the account associated with
26 Chong's EDD Card.

27 26. On September 2, 2020, Chong received a notice from BOA that it had
28 completed its investigation and that the \$1,000 credit to his account was now permanent.

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