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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE BANK OF AMERICA CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION

This Document Relates to All Actions

Case No. 3:21-md-02992-GPC-MSB

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION

Judge: Hon. Gonzalo P. Curiel
Ctrm: 2D (2nd Floor)
Date:
Time:

ORAL ARGUMENT REQUESTED

REDACTED PUBLIC VERSION

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on a date and time to be determined, in Courtroom 2D, 2nd Floor, of the United States Courthouse located at 333 West Broadway, San Diego, CA 92101, plaintiffs Kuang Ting Chong, Candace Koole, Lindsey McClure, Azuri Moon, Stephanie Moore, Roland Oosthuizen, Vanessa Rivera, J. Michael Willrich, and Alex Yuan ("Plaintiffs") will and hereby do move the Court for an Order (i) certifying this action as a class action on behalf of Plaintiffs and the five classes identified below; (ii) appointing Plaintiffs as class representatives for each of those classes; and (iii) appointing Cotchett Pitre & McCarthy LLP and Altshuler Berzon LLP to serve as co-lead class counsel.

Classes

Plaintiffs seek to certify the following five classes:

Claim Denial Class: All Bank of America EDD cardholders who notified the Bank that an unauthorized transaction had occurred on their Bank of America EDD debit card account ("Claim") at an automated teller machine ("ATM"), and whose Claim the Bank denied or closed at any time from September 28, 2020 through June 8, 2021, based solely on Indicator 1 of the Bank's Claim Fraud Filter ("CFF").

Credit Rescission Class: All Bank of America EDD cardholders who received permanent credit from the Bank in connection with their Claim before September 28, 2020, which credit the Bank rescinded at any time from September 28, 2020 through June 8, 2021, based solely on Indicator 1 of the Bank's CFF.

Account Freeze Class: All Bank of America EDD cardholders whose EDD debit card account ("Account") the Bank froze at any time from September 28, 2020 through March 17, 2021, based solely on Indicator 1 of the Bank's CFF, and whose Account the Bank (i) subsequently unfroze, or (ii) subsequently converted from frozen to blocked status on or after March 18, 2021 and then unblocked.

Customer Service Class: All members of the Claim Denial class and/or the Credit Rescission class who telephoned the Bank's customer service telephone number for its

EDD cardholders at any time from September 13, 2020 through November 21, 2020, and whose telephone call was routed to the Bank's Claims call center.

EMV Chip Class: All members of the Claim Denial class and/or Credit Rescission cass whose EDD debit card did not include an EMV chip prior to June 9, 2021.

Excluded from each class is any person whom the Bank has determined, pursuant to its Remediation Plan with the United States Consumer Financial Protection Bureau (CFPB) and Office of the Comptroller of the Currency (OCC), "(i) has been disqualified by the [S]tate [of California] from Program eligibility;[1] (ii) has previously engaged in fraudulent Program conduct, such as submission of fraudulent claims or other abuses of the claims process; or (iii) has had their card frozen due to legal order processes, as a result of Internal/Vendor fraud investigations, or by Global Financial Crimes Compliance." Ex. 74 at 3.[2] Also excluded from each class is any person whose Claim or Account the Bank closed, in whole or in part, because the State of California requested the Bank to close that person's Claim or Account.

Plaintiffs seek the appointment of Plaintiffs Koole, McClure, Moon, Oosthuizen, Rivera, Willrich, and Yuan as class representatives for the Claim Denial class; the appointment of Plaintiffs Chong and Moore as class representatives for the Credit Rescission class; the appointment of Plaintiffs Chong, Koole, McClure, Moon, Moore, Rivera, and Yuan as class representatives for the Account Freeze class; the appointment of Plaintiffs Chong, Moon, Moore, Oosthuizen, Willrich, and Yuan as class representatives for the Customer Service class; and the appointment of Plaintiffs Chong, Koole, McClure, Moon, Moore, Oosthuizen, Rivera, Willrich, and Yuan as class representatives for the EMV Chip class.

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[1] The Remediation Plan defines "Program" as "the Bank's Unemployment Benefits Prepaid Card Program." Ex. 74 at _.

[2] "Ex." in this motion and the accompanying brief refers to exhibits attached to the Declaration of Connie K. Chan ("Chan Decl."), which are also listed in Plaintiffs' concurrently filed Appendix of Exhibits.

Claims for Relief

Plaintiffs seek certification of the designated classes to pursue their claims for relief pursuant to: (1) the Electronic Fund Transfers Act ("EFTA"), 15 U.S.C. §§1693(a)-(r), and its implementing Regulation E ("Reg E"), 12 C.F.R. pt. 1005 (Claim Denial and Credit Rescission classes); (2) the due process clauses of the United States Constitution, amend. XIV (42 U.S.C. §1983), and California Constitution, art. I §7(a) (Credit Rescission and Account Freeze classes); (3) breach of fiduciary duty (all classes); (4) breach of the implied covenant of good faith and fair dealing under the Bank's account agreement with EDD cardholders (Claim Denial, Credit Rescission, Account Freeze, and Customer Service classes); (5) California Consumer Privacy Act ("CCPA"), Cal. Civ. Code §§1798.100-.199 (EMV Chip class); (6) negligence and negligence per se (all classes); and (7) the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§17200-17210. (Claim Denial, Credit Rescission, and Account Freeze classes).

Basis for the Motion

This Motion is made under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and in the alternative Rule 23(c)(4), on the grounds that:

(a) *Numerosity*: Joinder of all class members is impracticable because each class consists of many thousands of similarly situated Bank of America EDD cardholders;

(b) *Commonality*: The Bank's common conduct presents core questions of law and fact common to all members of each class arising out of the Bank's conduct during the relevant time period as alleged herein, including: (i) summarily denying EDD cardholders' claims of unauthorized ATM withdrawals based solely on Indicator 1 of the Bank's CFF, without conducting a reasonable investigation; (ii) summarily rescinding permanent credits previously paid on EDD cardholders' claims of unauthorized ATM withdrawals, based solely on a retroactive application of Indicator 1 of the Bank's CFF; (iii) summarily freezing the EDD debit card accounts of EDD cardholders who submitted claims of unauthorized ATM withdrawals, based solely on Indicator 1 of the Bank's CFF, without providing a reasonable process for affected cardholders to seek to have their accounts unfrozen; (iv) grossly understaffing the Bank's Claims call center, which handled telephone calls from EDD cardholders pertaining to their unauthorized-transaction claims; and (v) failing to provide reasonable security to EDD cardholders by issuing them debit cards that relied on outdated magnetic-stripe technology and lacked an embedded EMV chip.

(c) *Typicality*: Plaintiffs' claims are typical of the claims of each class of which they are a member;

(d) *Adequacy*: Plaintiffs and their attorneys have fairly and adequately protected the interests of each class and will continue to do so;

(e) *Predominance*: The questions of law and fact that are common to each class predominate over any individualized issues that might exist; and

(f) *Superiority*: A class action is superior to any other method of adjudicating Plaintiffs' class claims.

Plaintiffs' Motion is based upon this notice of motion, the accompanying memorandum of points and authorities, the supporting declarations of each Plaintiff seeking to be a class representative, the supporting declaration of Connie K. Chan and all exhibits thereto (including the expert reports of J. Daniel Kreis, Jane Cloninger, Jay Minnucci, and Greg Regan), the Joint Declaration of Brian Danitz and Michael Rubin ("Joint Decl."), any reply memorandum or other memorandum Plaintiffs may file, all filings in this action, and such other filings and arguments as may be presented to the Court.

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Respectfully submitted,

Dated: August 29, 2024

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ *Brian Danitz*
JOSEPH W. COTCHETT
BRIAN DANITZ
KARIN B. SWOPE
ANDREW F. KIRTLEY
VASTI S. MONTIEL

Co-Lead Counsel for Plaintiffs and the Proposed Class

Dated: August 29, 2024

ALTSHULER BERZON LLP

By: /s/ *Michael Rubin*
MICHAEL RUBIN
STACEY M. LEYTON
CONNIE K. CHAN
KATHERINE G. BASS
COLIN C. JONES

Co-Lead Counsel for Plaintiffs and the Proposed Class

SIGNATURE ATTESTATION

Pursuant to section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, 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.

Dated: August 29, 2024

<u>/s/ Brian Danitz</u>
Brian Danitz