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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**SEP 14 1998**

RONALD G. OVERHOLT, Clerk of Court  
By Robbie McIntosh

9  
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 PAUL MILLER, individually and on behalf )  
13 of others similarly situated, )  
14 Plaintiff, )

15 vs.

16 BANK OF AMERICA N.T. & S.A. )  
17 a California corporation, and DOES 1 - 50, )  
18 Defendants. )

**CASE NO. 801882-I**

**CLASS ACTION**

**FIRST AMENDED COMPLAINT  
FOR FRAUD; VIOLATION OF  
CODE OF CIVIL PROCEDURE §  
704.080; VIOLATION OF CODE  
OF CIVIL PROCEDURE 5 1750 et  
m; INTENTIONAL. INFLICTION  
OF EMOTIONAL DISTRESS;  
VIOLATION OF BUSINESS AND  
PROFESSIONS CODE § 17200 &  
seq.; VIOLATION OF BUSINESS  
AND PROFESSIONS CODE §  
17500.**

**JURY TRIAL DEMANDED**

**Type of Case: Unfair Business  
Practices**

19  
20  
21 **INTRODUCTION**

22 Plaintiff PAUL MILLER, by his attorneys, brings this action on behalf of  
23 himself and a class of similarly-situated persons to challenge defendant's unlawful  
24 and unfair practice of debiting Social Security direct deposit accounts for amounts  
25 protected from levy by law, and assessing unfair and unconscionable overdraft and  
26 return item fees from Social Security Direct Deposit accounts. Plaintiff seeks  
27 compensatory and punitive damages, restitution, declaratory and injunctive relief,  
28 and attorneys' fees, costs and expenses.

PARTIES

1  
2           1.       Plaintiff PAUL MILLER ("MILLER") is an individual, residing at all  
3 relevant times in the City and County of San Francisco, California. Plaintiff is a  
4 consumer who has a Social Security Direct Deposit Account with defendant BANK  
5 OF AMERICA. At all times material herein, Plaintiff MILLER's Social Security  
6 payments from the U.S. government were directly deposited into his account with  
7 defendant BANK OF AMERICA once each month. Defendant BANK OF AMERICA  
8 has repeatedly levied upon plaintiff MILLER's Social Security Direct Deposit account  
9 for debts allegedly owed to BANK OF AMERICA by MILLER, although BANK OF  
10 AMERICA erroneously credited MILLER' account with funds that it later attempted  
11 to collect, and BANK OF AMERICA is prohibited by law from levying upon Social  
12 Security Direct Deposit funds. BANK OF AMERICA has imposed service charges on  
13 MILLER's account as a result of these improper levies and overdrafts resulting  
14 therefrom.

15           2.       At all material times, defendant BANK OF AMERICA N.T.& S.A. ("BANK  
16 OF AMERICA") was, and is, a California corporation, with its principal place of  
17 business in San Francisco, California. BANK OF AMERICA is engaged in a  
18 nationwide business of marketing and providing banking and other financial  
19 services, including Social Security Direct Deposit Accounts. BANK OF AMERICA  
20 has offices throughout California, including in Alameda County. BANK OF  
21 AMERICA affirmatively solicits Social Security Direct Deposit customers residing in  
22 the State of California, and provides services to and collects payments from such  
23 customers.

24           3       Plaintiff is ignorant of the true names and capacities of defendants  
25 sued herein as DOES 1-50, and therefore sues these defendants by such fictitious  
26 names. Plaintiff will amend his complaint to state the true names and capacities  
27 when ascertained. Plaintiff is informed and believes that each of the fictitiously  
28 named defendants is responsible in some manner for the occurrences and damages

1 alleged herein, and that plaintiff's damages as hereinafter set forth were  
2 proximately caused by said defendants.

3 4. Plaintiff is informed and believes and thereon alleges that each of the  
4 defendants acted in concert with each and every other defendant, intended to and  
5 did participate in the events, acts, practices and courses of conduct alleged herein,  
6 and was a proximate cause of damage and injury thereby to plaintiff as alleged  
7 herein.

8 5. At all times herein mentioned, each defendant was the agent or  
9 employee of each of the other defendants and was acting within the course and  
10 scope of such agency or employment.

11  
12 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13 6. On or about January 29, 1993, MILLER began receiving benefit  
14 payments from the Social Security Administration in the form of 'Social Security  
15 Disability Income and Supplemental Security Income (hereinafter collectively  
16 referred to as "SSI"). Individuals qualify for such benefit payments when they are  
17 permanently disabled and are unable to remain gainfully employed as a result of an  
18 ongoing physical or mental impairment. MILLER was physically assaulted in or  
19 around 1989 and suffered brain damage as a result of the assault. MILLER's sole  
20 source of income is his social security benefits, which he receives in the total  
21 amount of \$670.40 per month. MILLER resides in a rent controlled apartment for  
22 which he pays approximately \$530.60 per month in rent.

23 7.-- Plaintiff receives SSI benefits because of head injuries he received  
24 during a violent assault in 1989, resulting in brain damage. As a result, he suffers  
25 from recurrent depression, insomnia and other symptoms for which he takes  
26 medication on a regular basis and for which he is under the care of a physician, and  
27 sees a psychiatric counselor on a regular basis.

28 8. MILLER established a Social Security Direct Deposit account ,in or

1 around June 1994, with BANK OF AMERICA. Through May..1 4, 1998,' MILLER  
2 paid a monthly service charge of approximately \$2.50 to maintain this account.  
3 Plaintiff elected to have his Social Security benefits directly deposited into his  
4 account because of the safety, security and convenience of that procedure. He  
5 believed that he would not have to wait to receive the check in the mail and then  
6 go to the bank to deposit it. He also believed that the check would never get lost  
7 or stolen as it could have been if delivered by regular mail.

8 9. BANK OF AMERICA knew at all times relevant herein that MILLER  
9 received Social Security benefit payments from the federal government.

10 IO. On or about January 30, 1998, BANK OF AMERICA, through no fault  
11 of MILLER, erroneously credited MILLER's account with an amount of \$1,799.83.  
12 This erroneous credit or deposit was made on the same date on which MILLER's  
13 regular monthly SSI payment was deposited. The erroneous deposit was assumed  
14 by MILLER to be a retroactive lump sum payment from the Social Security  
15 Administration for a possible underpayment during previous months.

16 11. Without prior notice, on or about April 16, 1998, BANK OF AMERICA  
17 reversed the \$1,799.83 entry in MILLER's account. Plaintiff did not read or see any  
18 Debit Adjustment Notice concerning this transaction prior to May 3, 1998.

19 12. On or about May 1, 1998, Plaintiff's May Social Security benefits  
20 totaling \$670.40 were deposited into the account. Unknown to Plaintiff, the  
21 account then still had a negative balance because of the April levy by BANK OF  
22 AMERICA. Also unknown to plaintiff, defendant BANK OF AMERICA appropriated  
23 these funds and applied them to the negative balance on plaintiff's account that  
24 had been created the the Bank's reversal of its January mistake.

25 13. On or about May 3, 1998, Plaintiff learned through BANK OF  
26 AMERICA's automated telephone system that his account was overdrawn by an  
27 amount in excess of \$1500.00. He immediately sought assistance from Bank of  
28 America representatives. BANK OF AMERICA personnel at his servicing branch

1 told him that he needed to find a source of funds to repay RANK OF AMERICA, and  
2 suggested that he apply for a credit card.

3 14. On or about May 6, 1998, after an attorney had spoken with BANK OF  
4 AMERICA's legal department on his behalf, Plaintiff was advised that BANK OF  
5 AMERICA had agreed to release his Social Security benefits that had been received  
6 for the month of May . Plaintiff was told by personnel at his servicing BANK OF  
7 AMERICA branch that a new account could be opened and his Social Security  
8 benefits could be placed in the new account. A new VERSATEL checking account,  
9 Number 21987-02761, was opened and the \$670.40 Social Security benefits for  
10 May'that had been levied by BANK OF AMERICA earlier were placed in the  
11 account. Plaintiff was told by BANK OF AMERICA personnel that money would not  
12 be taken from the new account to pay the debt on the old account.

13 15. Despite BANK OF AMERICA's promises, in June, 1998, BANK OF  
14 AMERICA levied upon Plaintiff's Social Security benefits deposited in the new  
15 account to satisfy its own claim against him. Once again, after an attorney  
16 intervened, the funds were returned to Plaintiff's account. Plaintiff was caused  
17 considerable inconvenience and hardship, as well as financial difficulties, because  
18 of defendant's actions.

19 16. For a third consecutive month, in July, 1998, BANK OF AMERICA levied  
20 upon the Social Security benefits deposited in Plaintiff's new account to pay the  
21 debt on the old account. After an attorney again intervened, the funds were  
22 returned to the new account. As a result of this action by BANK OF AMERICA  
23 Plaintiff's-rent check was returned unpaid for lack of funds. Had BANK OF --  
24 AMERICA not continued its unlawful levies upon Plaintiff's Social Security Direct  
25 Deposit funds, there would have been sufficient funds in the account to cover the  
26 rent check. After the intervention of an attorney; the rent check was paid.  
27 Thereafter, Plaintiff was told by BANK OF AMERICA personnel that his Social  
28 Security funds would probably continue to be seized by the bank's collection.

1 system without notice in future months, so long as the debt remained unpaid.

2 17. Pursuant to Title 31, United States Code, section 3332, since 1995  
3 Federal wage, salary, and retirement payments have been paid to authorized  
4 recipients by direct deposit electronic funds transfer, with certain exceptions.  
5 Effective January 1, 1999, all Federal payments shall be made by direct deposit  
6 electronic funds transfer, unless waiver is granted by the Secretary of the Treasury.  
7 Electronic funds transfer direct deposits thus have become, and will continue to be,  
8 a lucrative source of income for banks and other financial institutions, including  
9 without limitation BANK OF AMERICA, because of the large number of recipients of  
10 Federal wages, salaries, retirement benefits and other benefits and payments.  
11 Plaintiff is informed and believes and thereon alleges that this revenue stream is a  
12 significant incentive for BANK OF AMERICA to keep direct deposit accounts open  
13 despite overdraft and return activity that would otherwise warrant closing the  
14 accounts and to continue to levy charges upon the accounts for unpaid debts.  
15 BANK OF AMERICA has the power to close accounts without notice if, in the  
16 discretion of BANK OF AMERICA, overdraft and return activity or outstanding  
17 obligations warrant such action.

18 18. Plaintiff is informed and believes and thereon alleges that BANK OF  
19 AMERICA has established thousands of direct deposit accounts for recipients  
20 Government benefits, including but not limited to Social Security benefits. BANK  
21 OF AMERICA charges and collects substantial service fees for each of these  
22 accounts.

23 19. Plaintiff is informed and believes and thereon alleges that many of the  
24 recipients of Government benefits who have direct deposit accounts with BANK OF  
25 AMERICA for such benefits are Senior citizens, as defined by California Civil Code §  
26 1761 (f) and California Business and Professions Code § 17206.1 (b) (1) and/or  
27 disabled persons, as defined by California Civil Code § 1761 (g) and California  
28 Business and Professions Code 0 17206 (b) (2). Plaintiff is further informed and

1 believes and thereon alleges that BANK OF AMERICA, through advertising,  
2 brochures and other promotional materials, has represented to its direct deposit  
3 customers and applicants for such accounts that its direct deposit accounts are  
4 safe and secure and that direct deposit is the safest and most reliable way to  
5 deposit pension or annuity checks, among others. Plaintiff is further informed and  
6 believes and thereon alleges that many of the BANK OF AMERICA customers who  
7 own, maintain and use Government benefit direct deposit accounts are unable,  
8 through age, infirmity and/or lack of understanding, fully to comprehend the nature  
9 and extent of charges, including but not limited to substantial recurring and  
10 escalating overdraft and return charges, and unauthorized levies, and other adverse  
11 consequences that could be and/or have been imposed upon direct deposit account  
12 holders by BANK OF AMERICA.

13 20. As a result of the practices described above, plaintiff PAUL MILLER and  
14 other BANK OF AMERICA customers have been damaged in that BANK OF  
15 AMERICA has knowingly and willfully debited their Government benefit direct  
16 deposit accounts for levies that are unconscionable and contrary to statute and  
17 therefore unlawful, and have further been damaged in that they have been deprived  
18 of access to the funds in their accounts and thus have been unable to purchase the  
19 goods and services for which Government benefits are provided.

20  
21 **CLASS ACTION ALLEGATIONS**

22 21. Pursuant to California Code of Civil Procedure § 382 and California  
23 Civil Code- § 1781, plaintiff brings this action on behalf of himself and all other  
24 persons similarly situated. The class that plaintiff represents (hereinafter the  
25 "Plaintiff Class") is composed of all California residents who have or have had a  
26 BANK OF AMERICA Government benefits direct deposit account at any time within  
27 four years preceding the filing of this lawsuit. A subclass of the Plaintiff Class  
28 (hereinafter the "Subclass") is composed of all members of the Plaintiff Class who

1 are Senior citizens as defined by California Civil Code § 176q (f) and California  
2 Business and Professions Code § 17206.1 (b) (1) and/or disabled persons as  
3 defined by California Civil Code § 1761 (g) and California Business and Professions  
4 Code § 17206 (b) (2). Plaintiff and the Plaintiff Class, including the subclass, are  
5 hereinafter referred to jointly as "plaintiffs."

6 22. Plaintiffs are unable to state the precise number of potential members  
7 of the Plaintiff Class because that information is in the possession of defendant  
8 BANK OF AMERICA. Plaintiffs are informed and believe and,thereon allege that the  
9 Plaintiff Class numbers at least in the tens of thousands and is so numerous that  
10 joinder of all members would be impracticable. The exact size of the Plaintiff Class,  
11 and the subclass, and the identity of the members thereof, would be readily  
12 ascertainable from the business records of BANK OF AMERICA.'

13 23. Questions of law and fact common to the Plaintiff Class exist that  
14 predominate over questions affecting only individual members, including, *inter alia*,  
15 the following:

16 a. Whether BANK OF AMERICA has knowingly and willfully, and/or  
17 negligently, deducted from the Government benefit accounts of the Plaintiff Class  
18 charges that are unconscionable and therefore unlawful;

19 b. Whether the actions of BANK OF AMERICA as hereinabove  
20 described violated California Code of Civil Procedure § 704.080;

21 c. Whether the actions of BANK OF AMERICA as hereinabove  
22 described violated the Consumer Legal Remedies Act, California Civil Code § 1750  
23 et seq.- -

24 d. Whether the actions of BANK OF AMERICA as hereinabove  
25 described were fraudulent;

26 e. Whether plaintiff and the other members of the Plaintiff Class were  
27 injured in their business or property by reason of the unlawful, unfair and/or  
28 fraudulent conduct of BANK OF AMERICA and the class-wide measure of damages;

1 f. Whether plaintiff and the other members of the Plaintiff Class are  
2 entitled to injunctive relief and restitution.

3 24. The claims asserted by plaintiff MILLER in this action are typical of  
4 the claims of the members of the Plaintiff Class as described above, the claims  
5 arise from the same course of conduct by BANK OF AMERICA, and the relief  
6 sought is common.

7 25. Plaintiff MILLER will fairly and adequately represent and protect the  
8 interests of the members of the Plaintiff Class. Plaintiffs have retained counsel  
9 competent and experienced in both consumer protection and class action litigation.

10 26. A class action is superior to other methods for the fair and efficient  
11 adjudication of this controversy, since joinder of all members is impracticable.  
12 Furthermore, because the economic damages suffered by the individual class  
13 members may be relatively modest, albeit significant, compared to, the expense and  
14 burden of individual litigation, it would be impracticable for most Plaintiff Class  
15 members to seek redress individually for the wrongful conduct alleged herein.  
16 There will be no real difficulty in the management of this litigation as a class action.

17  
18 **FIRST CAUSE OF ACTION FOR DAMAGES AND PUNITIVE DAMAGES**  
19 **(Violation of California Civil Code 0 § 1709, 1710 (Fraud) Asserted on Behalf of**  
20 **Plaintiff and the Plaintiff Class)**

21 27. Plaintiffs reallege and incorporate herein. by reference the allegations  
22 set forth in paragraphs 1 through 26 above as if fully alleged herein.

23 28-. At all times herein mentioned, defendant BANK OF AMERICA was in  
24 the business of providing banking services, including but not limited to bank deposit  
25 accounts, to the general public, Among the accounts provided were accounts into  
26 which direct deposits of Government benefits could be and were made.

27 29. At all times herein mentioned, BANK OF AMERICA represented to the  
28 public through brochures, advertisements, and other means that their direct deposit

1 accounts were safe and secure. BANK OF AMERICA further represented to the  
2 public that direct deposit is the safest, most reliable way to deposit annuity,  
3 pension or retirement checks, including but not limited to Social Security benefits  
4 and Veterans' benefits.

5 30. BANK OF AMERICA's representations concerning safety and security  
6 were untrue in that at all times material herein BANK OF AMERICA imposed  
7 unexpected and unlawful levies, in violation of Californian Code of Civil Procedure  
8 9704.080 upon its direct deposit account holders, rendering the direct deposit  
9 accounts unsafe and insecure.

10 31. BANK OF AMERICA made the representations herein alleged with the  
11 intention of inducing the public, including but not limited to plaintiffs, to purchase,  
12 maintain, and use BANK OF AMERICA's direct deposit accounts.

13 32. Plaintiffs were aware of BANK OF AMERICA's representations herein  
14 alleged and relied on them in purchasing and maintaining their direct deposit  
15 Government benefit accounts with BANK OF AMERICA.

16 33. At the time BANK OF AMERICA made the representations herein  
-17 alleged, BANK OF AMERICA knew that the representations were false.

18 34. BANK OF AMERICA made the representations herein alleged with the  
19 intention of depriving plaintiffs of property or legal rights, to wit: the use of some  
20 or all of their direct deposit Government benefits, or otherwise causing injury, and  
21 was guilty of fraud.

22 35. As a proximate result of BANK OF AMERICA's intentional  
23 misrepresentations, plaintiffs were damaged by suffering the loss of some of their  
24 Government benefits and by being unable to acquire, possess, and use the goods  
25 and services ordinarily paid for by their Government benefits, in an amount to be  
26 proved at trial.

27 36. The wrongful conduct of BANK OF AMERICA, as herein alleged, was  
28 intentional and was done with malicious, oppressive or fraudulent intent. Plaintiffs

1 are therefore entitled to recover punitive damages.

2  
3 **SECOND CAUSE OF ACTION FOR DAMAGES**

4 **(Violation of California Civil Code 5 § 1709, 1710 (Negligent Misrepresentation)**  
5 **Asserted on Behalf of Plaintiff and the Plaintiff Class)**

6 37. Plaintiffs reallege and incorporate herein by reference the allegations  
7 set forth in paragraphs 1 through 32 above as if fully alleged herein.

8 38. At the time BANK OF AMERICA made the misrepresentations herein  
9 alleged, BANK OF AMERICA had no reasonable grounds for believing the  
10 representations to be true.

11 39. As a proximate result of BANK OF AMERICA's negligent  
12 misrepresentations, plaintiffs were damaged by suffering the loss of some of their  
13 Government benefits and by being unable to acquire, possess, and use the goods  
14 and services ordinarily paid for by their Government benefits, in an amount to be  
15 proved at trial.

16  
17 c

18 **(Violation of Code of Civil Procedure §704.080;**

19 **Asserted on behalf of Plaintiff and the Plaintiff Class)**

20 40. Plaintiffs reallege and incorporate herein by reference the allegations  
21 set forth in paragraphs 1 through 39 above as if fully alleged herein.

22 41. California Code of Civil Procedure § 704.080 provides that Social  
23 Security payments that are directly deposited by the U.S. government into a bank  
24 account are exempt from levy, regardless of the amount of the deposit. The statute  
25 further establishes that Social Security Direct Deposit accounts are exempt from  
26 levy, without the consumer having to make a claim of exemption, for amounts up  
27 to \$2,000 for a single depositor account and for amounts up to \$3,000 for an  
28 account with two or more depositors.

1           4 2 .       California Code of Civil Procedure § 704.080(d) also specifically  
2 requires a financial institution that holds a Social Security Direct Deposit account to  
3 follow certain procedures when processing a levy such that no exempt funds are  
4 seized.

5           43.       Defendant BANK OF AMERICA has engaged and is continuing to  
6 engage in a business practice of unlawfully debiting accounts of Social Security  
7 Direct Deposit account holders for amounts sought through levy by alleged  
8 creditors including, without limitation, defendant BANK OF AMERICA and assessing  
9 service fees for the processing of such levies. Such practices violate California  
10 Code of Civil Procedure § 704.080 in that Social Security Direct Deposit funds are  
11 exempt from levy.

12           44.       Defendants' violation of Code of Civil Procedure § 704.080  
13 constitutes a tort in that it is a breach of a non-consensual duty owed to another.  
14 Code of Civil Procedure §704.080 was enacted for the protection of plaintiffs and  
15 embodies a public policy that Social Security Direct Deposit accounts shall not be  
16 subject to levy. Accordingly, defendant's violation of said statute constitutes a tort  
-17 and defendants are therefore liable for all damages suffered by plaintiffs.

18           45.       As a result of defendants' unlawful practice, plaintiffs were denied  
19 funds to which they are statutorily entitled and were charged improper service fees,  
20 and have suffered substantial damages, including without limitation, monetary  
21 losses.

22           46.       Defendants have engaged in the aforementioned conduct willfully and  
23 for the specific purpose of denying plaintiffs rightful access to the funds in their  
24 accounts and collecting substantial bank service fees. Defendants have thus acted  
25 with oppression and malice in that they have deliberately engaged in conduct that  
26 has subjected plaintiffs and members of the plaintiff class to cruel and unjust  
27 hardship in conscious disregard of such individual's statutory rights; and have  
28 carried out such conduct with a willful and conscious disregard of the rights of

1 plaintiffs. Accordingly, plaintiffs are entitled to an award of punitive damages  
2 according to proof at the time of trial.

3  
4 **FOURTH CAUSE OF ACTION FOR DAMAGES AND INJUNCTIVE RELIEF**

5 **(Violation of the Consumer Legal Remedies Act, California Civil Code § 1750, et**  
6 **sea., Asserted on Behalf of Plaintiff and the Plaintiff Class)**

7 4 7 . Plaintiffs reallege and incorporate herein by reference the allegations  
8 set forth in paragraphs 1 through 46 above as if fully alleged herein.

9 48. The Consumer Legal Remedies Act, California Civil Code § 1750, et  
10 sea. (hereinafter "the CLRA"), was designed to protect consumers from unfair and  
11 deceptive business practices. To this end, the CLRA sets forth a list of unfair and  
12 deceptive acts and practices that are specifically prohibited in any transaction  
13 intended to result in the sale or lease of goods or services to a consumer. Cal. Civil  
14 Code § 1770. Defendant BANK OF AMERICA's acts and practices, as hereinabove  
15 descri,bed, violate the following provisions of the CLRA, without limitation:

16 a. § 1770 (a) (5) in that BANK OF AMERICA represented that the  
-17 services (direct deposit accounts) have characteristics, uses, benefits or quantities  
18 which they do not have, to wit: safety and security;

19 b. § 1770 (a) (7) in that BANK OF AMERICA represented that the  
20 services (direct deposit accounts) are of a particular standard and quality of safety  
21 and security that the accounts did not possess;

22 c. § 1770 (a) (13) in that BANK OF AMERICA made false and  
23 misleading statements concerning the safety and security of its direct deposit  
24 accounts;

25 d. § 1770 (a) (14) in that BANK OF AMERICA represented that the  
26 banking transactions arising out of its direct deposit accounts conferred rights and  
27 remedies which they did not have or which are prohibited by law;

28 e. § 1770 (a) (19) in that BANK OF AMERICA inserted unconscionable

1 provisions in the contract for the provision of direct deposit accounts for  
2 Government benefits concerning assessment and collection of fees for overdrafts  
3 and return items.

4 49. On or about August 10, 1998, plaintiff MILLER, through counsel, sent  
5 a preliminary notice and demand to defendant BANK OF AMERICA, pursuant to  
6 § 1782 of the CLRA, notifying said defendant that it was alleged to have committed  
7 the acts and practices as hereinabove described, and violated the CLRA in the  
8 a manner set forth above. Plaintiff demanded that BANK OF AMERICA take  
9 corrective action to discontinue the unlawful acts and practices and to remedy past  
10 violations. As of the date of the filing of this First Amended Complaint, defendant  
11 Bank of America has not responded by letter or otherwise to plaintiff's preliminary  
12 notice and demand. Plaintiff is informed and believes, and thereon alleges, that  
13 defendant BANK OF AMERICA has neither discontinued the unlawful acts alleged  
14 herein, nor remedied past violations.

15 49. As a result of the unfair and deceptive acts and practices of BANK OF  
16 AMERICA hereinabove described, plaintiff PAUL MILLER and members of the  
17 Plaintiff Class have suffered substantial economic losses in an amount to be proven  
18 at trial.

19 50. Pursuant to California Civil Code § § 1780 and 1781, plaintiff and the  
20 Plaintiff Class hereby request certification of the Plaintiff Class, damages, injunctive  
21 relief, restitution and attorneys' fees, costs and expenses pursuant to California  
22 Civil Code § 1780 (d) and California Code of Civil Procedure § 1021.5.

23 **FIFTH CAUSE OF ACTION FOR DAMAGE AND PUNITIVE DAMAGES--**

24 **(Intentional Infliction of Emotional Distress;**

25 **Asserted on Behalf of Plaintiff)**

26 51. Plaintiff realleges and incorporates herein by reference the allegations set  
27 forth in paragraphs 1 through 20 and 27 through 50 as if fully alleged herein.

28 52. Defendants knew at all relevant times that debiting a Social Security

1 Direct Deposit account pursuant to a levy and collecting substantial bank service fees  
2 for processing such levy, were contrary to the law and .policy of the State of  
3 California, and in violation of the statutory rights of the plaintiff. Defendants further  
4 knew that plaintiff had limited income and that such acts would cause him  
5 considerable hardship and emotional distress. Nevertheless, defendants committed  
6 such acts deliberately and repeatedly, and with conscious disregard for the rights of  
7 the plaintiff.

8 53. As a result of defendants' acts as hereinabove desc'ribed, plaintiff MILLER  
9 has suffered severe emotional distress, including without limitation, anger, stress,  
10 worry, anxiety, humiliation, fear, depression, fatigue and frustration.

11 54. Defendants committed the above-described wrongful and intentional acts  
12 because they felt confident in their position of wealth, sophistication and power, and  
13 in their ability to manipulate plaintiff and to coerce him into relinquishing rights  
14 guaranteed to them by law. Defendants deliberately, willfully- and maliciously pursued  
15 this course of conduct because they had no fear that the plaintiff would understand  
16 the nature of the transactions and/or be able to assert his,legal rights. Defendants  
-17 have thus acted with oppression and malice in that they have engaged in despicable  
18 conduct, intended to cause cruel and unjust hardship to plaintiff, and have carried out  
19 such conduct with a willful and conscious disregard of the rights of plaintiff.  
20 Accordingly, plaintiff seeks and is entitled to awards of compensatory and punitive  
21 damages according to proof at the time of trial.

22  
23 **SIXTH CAUSE OF ACTION FOR RESTITUTION AND INJUNCTIVE RELIEF**

24 **(Violation of California Business and Professions Code 5 17200, et seq.,**  
25 **Asserted on Behalf of Plaintiffs and All Affected Members of the General Public)**

26 55. Plaintiffs reallege and incorporate herein by reference the allegations  
27 set forth in paragraphs 1 through 20 and 27 through 50 above as if fully alleged  
28 herein.

1           56. Plaintiffs bring this cause of action acting as a-private attorney general  
2 on behalf of the public challenge defendant's business practices. California  
3 Business and Professions Code § 17200, The Unfair Competition Law ("UCL"),  
4 defines unfair competition to include any unlawful, unfair or \*fraudulent business act  
5 or practice. The UCL provides that a Court may order injunctive relief and  
6 restitution to affected members of the general public as remedies for any violation  
7 of the Act.

8           57. The business acts and practices of defendant BANK OF AMERICA, as  
9 hereinabove and hereinafter described, constitute an unlawful business practice in  
10 violation of the UCL for the reasons set forth below, without limitation:

11               a. The acts and practices violate California Civil Code § § 1709 and  
12 1710 for the reasons set forth in the First and Second Causes of Action, and are  
13 therefore unlawful;

14               b. The acts and practices violate California Civil Code § 1750, et  
15 sea., for the reasons set forth in the Fourth Cause of Action and are therefore  
16 unlawful.

17               c. The acts and practices constitute violate California Business and  
18 Professions Code § 17500 for the reasons set forth in the Seventh Cause of Action  
19 and are therefore unlawful.

20           58. The business acts and practices of defendant BANK OF AMERICA as  
21 hereinabove described also constitute an unfair business practice in violation of the  
22 UCL in that such acts and practices are substantially injurious to consumers and  
23 offensive to established California public policy.

24           59. In addition, the business acts and practices of defendant BANK OF  
25 AMERICA as hereinabove described constitute a fraudulent business practice in  
26 violation of the UCL in that such acts and practices are likely to deceive California  
27 consumers as to their legal rights and obligations with respect to protection from  
28 evies on their Government benefit direct deposit accounts and protection from the

1 consequences of excessive overdrafts.

2       **60.** Pursuant to California Business and Professions Code § 17203  
3 plaintiffs seek to enjoin these acts and practices and to obtain restitution of all  
4 funds seized from plaintiffs by reason of and through the use of such unlawful,  
5 unfair and fraudulent acts and practices. Pursuant to California Business and  
6 Professions Code § 17203, plaintiff, individually, and on behalf of all members of  
7 the general public who are, have been or may be, subjected to these unlawful,  
8 unfair, and fraudulent business acts and practices of defendants, hereby requests  
9 preliminary and permanent injunctive relief prohibiting such practices in the future,  
10 and such other orders as may be necessary to restore to any person in interest, any  
11 money or property, real or personal, which may have been seized from plaintiffs by  
12 means of such unlawful, unfair and fraudulent business practices, and to disgorge  
13 all profits defendants have earned thereby. In addition, pursuant to California Code  
14 of Civil Procedure 0 1021.5, plaintiffs are entitled to recover their reasonable  
15 attorney's fees, costs and expenses incurred in bringing this action.

16  
17       **SEVENTH CAUSE OF ACTION FOR RESTITUTION AND INJUNCTIVE RELIEF**

18       **(Violation of California Business and Professions Code § 17500, et seq.;**

19       **Asserted on Behalf of Plaintiffs and All Affected Members of the General Public)**

20       **61.** Plaintiffs reallege and incorporate herein by reference the allegations  
21 set forth in paragraphs 1 through 20, 27 through 50 and 56 through 60 above as if  
22 fully alleged herein.

23       **62.** Plaintiff brings this Cause of Action acting as a private attorney  
24 general on behalf of the public to challenge defendant's advertising practices.  
25 California Business and Professions Code § 17500, prohibits untrue or misleading  
26 advertising. A Court may order injunctive relief and restitution to affected members  
27 of the general public as remedies for any violations of Business and Professions  
28 Code § 17500 as part of the UCL.

1           63.       At all times material herein defendant BANK OF AMERICA has  
2 engaged in advertising to the public, including plaintiffs, and offering to the public  
3 bank accounts that include a direct deposit feature ("direct deposit accounts.") The  
4 advertisements include, without limitation, brochures stating, 'I Bank of America's  
5 Direct Deposit is a safe and convenient means to deposit your money, no matter  
6 where you are. No more trips to the bank on payday to deposit regular monthly  
7 payments such as salary, pension, Social Security or Supplemental Security Income  
8 (SSI) checks. With direct deposit, your funds are electronically deposited into your  
9 designated bank and are instantly available," or words to that effect. The  
10 advertisements were disseminated to and received by the public in California.

11           64.       Defendant BANK OF AMERICA engaged in the advertising herein  
12 alleged with the intent to induce the public to open, maintain and use BANK OF  
13 AMERICA direct deposit accounts for their Government benefits.

14           65.       Defendant BANK OF AMERICA's advertising was untrue or  
15 misleading and likely to deceive the public in that while BANK OF AMERICA stated  
16 and implied that direct deposit accounts were safe and secure, the aforesaid  
17 accounts were subject to appropriation by defendant BANK OF AMERICA itself for  
18 alleged debts owed to the bank, as well as excessive, escalating, recurring and  
19 Inconscionable levies, overdraft and return charges, rendering the direct deposit  
20 accounts unsafe and insecure. BANK OF AMERICA continued to keep open and  
21 collect fees from direct deposit accounts with excessive overdraft activity, thereby  
22 depriving the owners of those accounts of Government benefits of access to some  
23 or all of the funds in their accounts, thus impairing their ability to purchase the  
24 goods and services for which the Government benefits were provided.

25           66.       In making and disseminating the statements herein alleged, BANK OF  
26 AMERICA knew, or by the exercise of reasonable care should have known, that the  
27 statements were and are untrue or misleading and so acted in violation of California  
28 Business and Professions Code § 17500.



1 described herein to be unlawful,\*unfair and fraudulent;

2 iii. That plaintiffs and the Plaintiff Class be awarded compensatory damages  
3 according to proof at trial;

4 iv. That plaintiffs and the Plaintiff Class be awarded punitive damages  
5 according to proof at trial;

6 v. That the Subclass be awarded treble damages pursuant to California Civil  
7 Code § 3345;

8 vi. That defendants be preliminarily and permanently enjoined from  
9 engaging in the unlawful, unfair and fraudulent acts and practices alleged herein;

10 vii. That defendants be ordered to make restitution to all affected members  
11 of the general public;

12 viii. That plaintiffs be awarded attorneys' fees and expenses pursuant to  
13 California Code of Civil Procedure § 1021.5 and California Civil Code § 1780;

14 ix. That plaintiffs and the Plaintiff Class be awarded pre-judgment interest  
15 on all sums collected;

16 x For costs of suit herein incurred; and

17 xi. For such other and further relief as the Court may deem proper.

18  
19 DATED: September 8, 1998

Respectfully submitted,

20  
21 THE STURDEVANT LAW FIRM

22 A Professional Corporation

23  
24 By:



25 MARK T. J O H N S U

26 Attorneys for Plaintiff  
27

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