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APR 28 1999

THE STURDEVANT LAW FIRM

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9 Attorneys for Defendant  
BANK OF AMERICA NT&SA

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 CITY AND COUNTY OF SAN FRANCISCO  
14

15  
16 Paul Miller, individually and on behalf  
of others similarly situated,,

No. 301917

17 Plaintiff,

ANSWER BY DEFENDANT  
BANK OF AMERICA' NT&SA TO  
UNVERIFIED COMPLAINT

18 v.

19 Bank of America NT&SA, ,

20 Defendant.  
21

22  
23 Defendant Bank of America NT&SA ("Bank of America") answers  
24 plaintiff's unverified complaint as follows:

25 **General Denial**

26 Bank of America generally denies each and every allegation and each and  
27 every purported cause of action of the unverified complaint. The Bank further  
28 denies that plaintiff or any person whom he purportedly represents has been

1 injured or is entitled to recovery in the amount or manner claimed or in any  
2 amount or manner.

3 **Affirmative Defenses**

4 1. The unverified complaint and each purported cause of action thereof  
5 fails to state a claim on which relief can be granted.

6 2. The complaint and each purported cause of action thereof fails to state  
7 facts sufficient to support a request for an award of punitive damages.

8 3. The complaint and each purported cause of action thereof is barred in  
9 whole or in part by plaintiff's unclean hands.

10 4. The complaint and each purported cause of action thereof is barred by  
11 lathes.

12 5. The complaint and each purported cause of action thereof is barred by  
13 the doctrines of waiver and estoppel.

14 6. Plaintiff lacks standing and is not an adequate representative to  
15 represent anyone other than himself.

16 7. The complaint and each purported cause of action .thereof is barred, in  
17 whole or in part, by the applicable statutes of limitations, including without  
18 limitation California CCP Sections 337(1), 338(a) and (h), 339(1), 340(1) and (3)  
19 and 343.

20 8. To the extent plaintiff or any other person whom he purportedly  
21 represents is entitled to an award of damages or other monetary recovery, Bank of  
22 America is entitled to a setoff.

23 9. Plaintiff withdrew from his account and appropriated for his own use  
24 monies which he knew or should have known did not belong to him. Plaintiff  
25 failed and refused to repay any portion of such funds despite his promise to do so,  
26 causing monetary injury to Bank of America. Plaintiff's claims for recovery of  
27 damages or other monetary amounts are barred, or must be offset, as a result of his  
28 foregoing conduct.

1           10. The complaint and each purported cause of action thereof is in  
2 violation of 12 U.S.C. Section 484, which permits only the Comptroller of the  
3 Currency to exercise visitorial powers over a national bank. Bank of America is a  
4 national bank. Plaintiff's complaint is an attempt to examine Bank of America's  
5 books, records, activities and manner of conducting business, and to regulate,  
6 direct or control the manner in which Bank of America conducts business, and is  
7 therefore barred.

8           11. Plaintiff and the persons whom he purportedly represents were given  
9 notice of charges that would be assessed against their deposit accounts. Plaintiff  
10 and the persons whom he purportedly represents knew or should have known of  
11 such charges, and acquiesced in them and continued to maintain their accounts and  
12 receive the benefits thereof. Plaintiff and the persons whom he purportedly  
13 represents are therefore estopped from complaining about such charges and have  
14 waived such complaints.

15           12. Plaintiff's attempted application of Business and Professions Code  
16 Section 17200 et seq. to bind Bank of America as against persons not named in the  
17 Complaint, who themselves are not bound as against Bank of America, violates  
18 Bank of America's right to due process within the meaning of the Constitutions of  
19 the United States and California.

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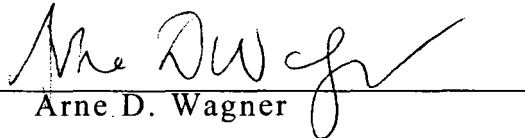
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1           13. The complaint and each purported cause of action thereof is preempted  
2 by the National Bank Act and regulations promulgated thereunder, which regulate  
#3 national banks and their business of maintaining deposit accounts.

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Dated: April 21, 1999

ARNE D. WAGNER  
MORRISON & FOERSTER LLP

By:   
Arne D. Wagner

GREGORY SCOTT SPENCER  
PRESTON DUFAUCHARD, JR.  
OFFICE OF GENERAL COUNSEL  
BANK OF AMERICA NT&SA

Attorneys-for Defendant  
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**PROOF OF SERVICE BY MAIL**

(FRCivP 5(b)) or  
(CCP 1013a, 2015.5) or  
(FRAP 25(d))

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**ANSWER BY DEFENDANT BANK OF AMERICA NT&&A TO UNVERIFIED COMPLAINT**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

Mark T. Johnson  
The Sturdevant Law Firm  
475 Sansome Street  
Suite 1750  
San Francisco, California 94 111

Thomas J. Brandi  
44 Montgomery Street, Suite 900  
San Francisco, CA 94104

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 27th day of April, 1999.

\_\_\_\_\_  
Maria Rohner Storniolo

(typed)

\_\_\_\_\_  
(signature)