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THE STURDEVANT LAW FIRM

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 12 KNOWN AS BANK OF AMERICA NT & SA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

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

18 Plaintiff,

19 v.

20 Bank of America, NT & SA,

21 Defendant.

No. 301917

**BANK OF AMERICA N.A.'S
 SEPARATE STATEMENT OF
 UNDISPUTED FACTS IN SUPPORT
 OF MOTION FOR SUMMARY
 JUDGMENT OR ALTERNATIVELY
 SUMMARY ADJUDICATION**

Date: June 8, 2001
 Time: 2:00 p.m.
 Dept: 624
 The Honorable Anne Bouliane

Complaint Filed: September 16, 1998
 Trial: Not Set

-1 Pursuant to California Code of Civil Procedure 5 437c(b), defendant Bank of America N.A.
 2 (“Bank of America” or the “Bank”) submits this separate statement of undisputed facts, together with
 3 references to supporting evidence, in support of Bank of America’s motion for summary judgment or
 4 alternatively summary adjudication against plaintiff Paul Miller (“Miller”).
 5

6 **THIRD CAUSE OF ACTION**
 7 **(Violation of Code of Civil Procedure 5 704.080)**

Undisputed Material Fact(s)	Evidentiary Support
9 1. Bank of America (the “Bank”) is a national 10 bank organized and existing pursuant to the 11 National Bank Act, 12 U.S.C. 0 21, et seq.	Declaration of Kheloud Bader in Support of Bank of America’s Motion for Summary Judgment or Alternatively Summary Adjudication (“Bader Decl.”) at 12.
12 2. In June of 1994, plaintiff Paul Miller elected 13 to have his Social Security Disability Income 14 and Supplemental Security Income (“Social 15 Security funds”) deposited directly into his 16 Bank of America account by means of electronic transfer.	Plaintiff Paul Miller’s First Amended Complaint (“Compl.” at fi 8; Bader Decl. at T[4
17 3. On or about January 30,1998, the Bank 18 erroneously credited \$1,799.83 to Miller’s 19 account. Miller withdrew and spent the erroneously credited funds.	Compl. at T[10; Bader Decl. at fil6-8.
20 4. On or about April 16,1998, the Bank 21 discovered its error and reversed the 22 \$1,799.83 credit, which overdrew Miller’s account.	Compl. at qT[11, 12; Bader Decl. at 7’1[8.
23 5. In May of 1998, when Miller’s monthly 24 Social Security payment of \$670 was 25 electronically deposited into his account, that 26 deposit was applied against the overdraft.	Bader Decl. at 7 10.
27 6. When Miller complained, the Bank replaced 28 the old checking account with a new one, and	Bader Decl. at f 11.

11	deposited the \$670 of May Social Security funds into the successor account.	
12		
13	7. Because an overdraft remained in Miller's predecessor account, the Bank's collection system continued to debit the successor account for the overdraft.	Bader Decl. at 1 14.
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15	8. When Miller again complained, the Bank reversed the debit and again credited the Social Security funds to Miller's successor account.	Bader Decl. at 7 15.
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FIRST CAUSE OF ACTION
(Violation of California Civil Code §5 1709,1710 (Fraud))

Undisputed Material Fact(s)	Evidentiary Support
9. As material facts in support of its motion as to the First Cause of Action, the Bank incorporates Material Facts 1-8, as set forth above.	See Material Facts, 1-8

SECOND CAUSE OF ACTION
(Violation of California Civil Code @j 1709,1710 (Negligent Misrepresentation))

Undisputed Material Fact(s)	Evidentiary Support
10. As material facts in support of its motion as to the Second Cause of Action, the Bank incorporates Material Facts 1-8, as set forth above.	See Material Facts 1-8

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FOURTH CAUSE OF ACTION
(Violation of California Civil Code § 1750, et seq.)

Undisputed Material Fact(s)	Evidentiary Support
11. As material facts in support of its motion as to the Fourth Cause of Action, the Bank incorporates Material Facts 1-8, as set forth above.	See Material Facts 1-8

FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

Undisputed Material Fact(s)	Evidentiary Support
12. As material facts in support of its motion as to the Fifth Cause of Action, the Bank incorporates Material Facts 1-8, as set forth above.	See Material Facts 1-8

SIXTH CAUSE OF ACTION
(Violation of Bus. & Prof. Code § 17200, et seq.)

Undisputed Material Fact(s)	Evidentiary Support
13. As material facts in support of its motion as to the Sixth Cause of Action, the Bank incorporates Material Facts 1-8, as set forth above.	See Material Facts 1-8

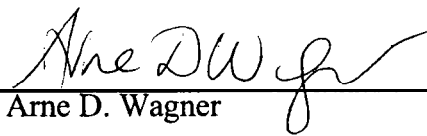
SEVENTH CAUSE OF ACTION
(Violation of Bus. & Prof. Code § 17500, et seq.)

Undisputed Material Fact(s)	Evidentiary Support
14. As material facts in support of its motion as to the Seventh Cause of Action, the Bank incorporates Material Facts 1-8, as set forth above.	See Material Facts 1-8

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Dated: April 25, 2001

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By: 
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