

Honorable Thomas O. Rice

John T. John, WSBA #5461  
Daniel J. Oates, WSBA #39334  
GRAHAM & DUNN PC  
2801 Alaskan Way, Suite 300  
Seattle, Washington 98121  
Telephone: (206) 624-8300  
Email: jjohn@grahamdunn.com  
doates@grahamdunn.com

Attorney for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHELAN COUNTY, WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BANK OF AMERICA CORPORATION, )  
 a Delaware Corporation; and BANK OF )  
 AMERICA, N.A., a national banking )  
 association, )  
 )  
 Defendants. )

No. 2:14-CV-00044-TOR  
DEFENDANTS BANK OF AMERICA  
CORPORATION AND BANK OF  
AMERICA, N.A.'S ANSWER TO  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT

Defendants Bank of America Corporation and Bank of America, N.A. (referred to collectively as "BANA"), hereby answer the Plaintiff's Second Amended Complaint ("Complaint") as follows:

**I. PARTIES**

1. BANA admits the allegations contained in Paragraph 1 of the Complaint.
2. BANA admits the allegations contained in first sentence of Paragraph 2 of the Complaint. No response is required to the second sentence of Paragraph 2

1 of the Complaint. BANA admits that Bank of America, N.A. conducts business in  
2 this district. The remainder of the allegations in Paragraph 3 of the Complaint are  
3 denied. BANA further denies that Bank of America Corporation is a proper party  
4 to this action.

5 **II. JURISDICTION AND VENUE**

6 3. BANA admits that Bank of America Corporation is a Delaware  
7 corporation. In answering paragraph 3, BANA admits that this Court has  
8 jurisdiction and that venue is proper. Any remaining allegations in Paragraphs 3  
9 are denied.

10 4. In answering paragraph 4, BANA admits that this Court has  
11 jurisdiction and venue is proper. Any remaining allegations in Paragraphs 4 are  
12 denied.

13 5. In answering paragraph 5, BANA admits that this Court has  
14 jurisdiction and venue is proper. Any remaining allegations in Paragraphs 5 are  
15 denied.

16 **III. FACTS**

17 6. BANA is without sufficient knowledge or information to form a belief  
18 as to the truth or falsity of the allegations contained in Paragraph 6 of the  
19 Complaint and, therefore, denies the same.

20 7. BANA is without sufficient knowledge or information to form a belief  
21 as to the truth or falsity of the allegations contained in Paragraph 7 of the  
22 Complaint and, therefore, denies the same.

23 8. BANA admits that Chelan County maintained accounts with BANA.  
24 BANA is without sufficient knowledge or information to form a belief as to the  
25 truth or falsity of the remainder of the allegations contained in Paragraph 8 of the  
26

1 Complaint and, therefore, denies the same.

2 9. The allegations contained in Paragraph 9 of the Complaint refer to  
3 documents which speak for themselves. To the extent the allegations contained in  
4 Paragraph 9 are inconsistent with the contents of said documents, said allegations  
5 are denied.

6 10. The allegations contained in Paragraph 10 of the Complaint refer to  
7 documents which speak for themselves. To the extent the allegations contained in  
8 Paragraph 10 are inconsistent with the contents of said documents, said allegations  
9 are denied.

10 11. BANA is without sufficient knowledge or information to form a belief  
11 as to the truth or falsity of the allegations contained in Paragraph 11 of the  
12 Complaint and, therefore, denies the same.

13 12. BANA admits the allegations contained in the first sentence of  
14 Paragraph 12 of the Complaint. BANA is without sufficient knowledge or  
15 information to form a belief as to the truth or falsity of the allegations contained in  
16 the second sentence of Paragraph 12 of the Complaint and, therefore, denies the  
17 same.

18 13. BANA admits that on April 18, 2013, two ACH payment orders were  
19 received by BANA from the Chelan County Disbursement Account in the amount  
20 of \$288,194 and \$111,300. BANA further admits that the payment orders were  
21 processed by BANA. BANA denies the remainder of the allegations contained in  
22 Paragraph 13 of the Complaint.

23 14. BANA admits that on April 19, 2013, an ACH payment order was  
24 received by BANA from the Chelan County Disbursement Account in the amount  
25 of \$603,575. BANA further admits that the payment order was processed by  
26

1 BANA. BANA denies the remainder of the allegations contained in Paragraph 14  
2 of the Complaint.

3 15. Paragraph 15 of the Complaint contains no factual allegations and  
4 therefore no response is required. To the extent a response is required, BANA  
5 denies the same. BANA objects to Plaintiff's characterization of the transfers as  
6 unauthorized and will refer to the three transfers on April 18 and 19, totaling  
7 approximately \$1,003,069.00 as the "Transfers."

8 **Discovery of Fraud and Partial Recovery**

9 16. BANA is without sufficient knowledge or information to form a belief  
10 as to the truth or falsity of the allegations contained in the first sentence of  
11 Paragraph 16 of the Complaint and, therefore, denies the same. BANA admits  
12 that on Monday, April 22, 2013, Chelan County contacted BANA regarding the  
13 payment orders initiated. The remainder of the allegations contained in Paragraph  
14 16 are denied.

15 17. BANA denies the allegations contained in Paragraph 17 of the  
16 Complaint.

17 18. BANA admits that it recovered approximately \$408,000 of the  
18 Transfers. The remainder of the allegations in Paragraph 18 of the Complaint are  
19 denied.

20 19. BANA is without sufficient knowledge or information to form a belief  
21 as to the truth or falsity of the allegations contained in Paragraph 19 of the  
22 Complaint and, therefore, denies the same.

23 **COUNT ONE- LIABILITY PURSUANT TO**

24 **RCW 62A.4A-201, ET SEQ.**

25 20. BANA incorporates its answer to Paragraphs 1 through 19 of the  
26

1 Complaint as if fully set forth.

2 21. Paragraph 21 of the Complaint contains a legal conclusion and  
3 therefore no response is required. To the extent a response is required, BANA  
4 denies the same.

5 22. BANA denies the allegations contained in Paragraph 22 of the  
6 Complaint.

7 23. BANA denies the allegations contained in Paragraph 23 of the  
8 Complaint.

9 24. BANA denies the allegations contained in Paragraph 24 of the  
10 Complaint.

11 **COUNT TWO - BREACH OF CONTRACT**

12 25. BANA incorporates its answer to Paragraphs 1 through 24 of the  
13 Complaint as if fully set forth.

14 26. The allegations contained in Paragraph 26 of the Complaint refer to  
15 documents or rules which speak for themselves. To the extent the allegations  
16 contained in Paragraph 26 are inconsistent with the contents of said documents or  
17 rules, said allegations are denied.

18 27. Paragraph 27 of the Complaint contains a legal conclusion and  
19 therefore no response is required. To the extent a response is required, BANA  
20 denies the same.

21 28. BANA denies the allegations contained in Paragraph 28 of the  
22 Complaint.

23 29. BANA denies the allegations contained in Paragraph 29 of the  
24 Complaint.

25 30. BANA denies the allegations contained in Paragraph 30 of the  
26

1 Complaint.

2 31. BANA denies the allegations contained in Paragraph 31 of the  
3 Complaint.

4 32. BANA denies the allegations contained in Paragraph 32 of the  
5 Complaint.

6 33. BANA denies the allegations contained in Paragraph 33 of the  
7 Complaint.

8 34. BANA denies the allegations contained in Paragraph 34 of the  
9 Complaint.

10 35. BANA denies the allegations contained in Paragraph 35 of the  
11 Complaint.

12 36. BANA denies the allegations contained in Paragraph 36 of the  
13 Complaint.

14  
15 **IV. AFFIRMATIVE DEFENSES**

16 BANA further answers Plaintiff's Complaint and reserves (1) its right to  
17 amend or supplement its response to Plaintiff's Complaint as information is  
18 gathered through discovery; and (2) the right to rely upon the following affirmative  
19 defenses to the extent supported by the evidence developed, without assuming the  
20 burden of proof on any such defense that would otherwise rest on Plaintiff:

21 **FIRST AFFIRMATIVE DEFENSE**

22 Plaintiff's Complaint fails in whole or in part to state a claim upon which  
23 relief can be granted.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred because Plaintiff's alleged injuries were caused  
26 by other events, conditions, instrumentalities, and/or acts or omissions of an

1 individual or entity over whom BANA exercised no control.

2 **THIRD AFFIRMATIVE DEFENSE**

3 To the extent fault is attributed to such instrumentality, person, or entity, this  
4 defendant relies upon the provisions of the Revised Code of Washington 4.22.070  
5 and other statutes for the apportionment of fault.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 Plaintiff's claims are barred in whole or in part in Plaintiff's own negligence  
8 which proximately caused any alleged damage.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred to the extent that Plaintiff failed to mitigate,  
11 minimize, or avoid any damages allegedly sustained.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 Plaintiff's claims are barred by the Uniform Commercial Code.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims are barred by the terms of the agreements between Plaintiff  
16 and BANA.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 BANA denies that it breached any duty or obligations alleged owed to  
19 Plaintiff.

20 **NINTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claims are barred for failure to join an indispensable party.

22 **TENTH AFFIRMATIVE DEFENSE**

23 At all material times, BANA acted with due care and complied with  
24 applicable statutory, regulatory, and common law requirements. Accordingly,  
25 some or all of Plaintiff's claims are barred and/or pre-empted by BANA's  
26

1 compliance with applicable state, federal and local laws and regulations.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 Plaintiff's injuries and damages, if any, were solely and proximately caused  
4 by intervening and superseding events over which this defendant had no control;

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 BANA is entitled to all amounts of all permissible deductions and/or setoffs  
7 including all payments made by any collateral source and funds paid in settlement  
8 on behalf of other alleged joint tortfeasors and settling parties, if any.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 Defendant Bank of America Corporation is not a proper party to this action.  
11 Bank of America, N.A. and Bank of America Corporation are separate legal  
12 entities. Bank of America Corporation is not a bank; it is a holding company.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 BANA specifically reserves all separate or affirmative defenses that it may  
15 have.

16 **RELIEF REQUESTED**

17 Having answered Plaintiff's Second Amended Complaint, BANA asks the  
18 Court for the following relief:

19 1. That Plaintiff's Second Amended Complaint be dismissed; Plaintiff  
20 take nothing thereby; and BANA be awarded its costs, disbursements, and  
21 attorneys' fees incurred herein.

22 2. That the Court order such other relief as is just and equitable.

23 ///

24 ///

25 ///



1 Dated: August 4, 2014.

2 **BANK OF AMERICA, N.A.**

3  
4 *By Counsel*

5  
6 s/ Daniel J. Oates

7 Daniel J. Oates, Esquire

8 John T. John, Esquire

9 GRAHAM & DUNN, P.C.

10 Pier 70

11 Alaskan Way- Suite 300

12 Seattle, Washington 98121

13 Tel: 206-340-9631

14 Fax: 206-340-9599

15 DOates@GrahamDunn.com

16 JJohn@GrahamDunn.com

17 Heather A. Britton, Esquire

18 *Admitted pro hac vice*

19 McGUIREWOODS LLP

20 1750 Tysons Boulevard, Suite 1800

21 Tysons Corner, Virginia 22102

22 hbritton@mcguirewoods.com

23 *Counsel for Defendants*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to each of the following:

Spencer Hall  
Colin M. George  
Hall Zanzig Claflin McEachern  
1200 Fifth Avenue, Suite 1414  
Seattle, WA 98101

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

Signed this 4<sup>th</sup> day of August, 2014 at Seattle, Washington.

s/ Daniel J. Oates  
Daniel J. Oates, WSBA #39334