

Honorable Thomas O. Rice

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

CHELAN COUNTY, WASHINGTON,

Plaintiff,

v.

BANK OF AMERICA CORPORATION, a
Delaware corporation; and BANK OF
AMERICA, N.A., a national banking
association,

Defendants.

CASE NO. 2:14-CV-00044-TOR

SECOND AMENDED COMPLAINT

Plaintiff alleges:

PARTIES

1. Plaintiff, Chelan County, Washington (“Chelan County”), is a domestic public entity organized under the laws of the State of Washington.

2. Defendant Bank of America Corporation is the holding company of defendant Bank of America, N.A., a multinational banking and financial services corporation headquartered in Charlotte, North Carolina. Bank

1 of America Corporation and Bank of America, N.A. are referred to collectively in
2 this Second Amended Complaint as “Bank of America.” At all relevant times,
3 Bank of America regularly conducted substantial business in this district.
4

5 JURISDICTION AND VENUE

6 3. Chelan County is a citizen of Washington and Bank of
7 America is a Delaware corporation. Chelan County seeks recovery of damages in
8 excess of \$75,000, exclusive of interest and costs. Because complete diversity exists
9 and the amount in controversy exceeds the jurisdictional minimum, this Court has
10 subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332(a).
11

12 4. Bank of America has sufficient contacts with Washington or
13 otherwise has purposefully availed itself of benefits in Washington so as to render
14 the exercise of personal jurisdiction over it consistent with traditional notions of
15 fair play and substantial justice. Bank of America’s wrongful acts or omissions
16 occurred in whole or in part in Washington. Bank of America conducts
17 substantial business in Washington State and maintains offices in this state.
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19 5. Venue is proper in this district because Bank of America’s
20 wrongful conduct and Chelan County’s injury occurred in whole or in part in this
21 district.
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23 FACTS

24 6. Chelan County, Washington is a county of approximately
25 72,000 people. The county seat is Wenatchee.
26

1 7. The office of the Chelan County Treasurer is created by
2 statute, RCW 36.29. Among the duties of the Chelan County Treasurer is the
3 receipt and deposit of county funds.
4

5 8. From 1995 to 2013, Chelan County maintained more than
6 twenty-seven accounts with Bank of America (the "BOA Accounts").
7

8 9. The contractual rights and obligations of Bank of America and
9 Chelan County relating to the BOA Accounts are set forth, in part, in documents
10 titled "Authorization and Agreement for Treasury Services," "Treasury Services
11 Delegation of Authority Form," "Authorization and Agreement for Certification,"
12 and "Treasury Services Terms and Conditions."
13

14 10. Various contractual provisions relating to the BOA Accounts
15 are not addressed in the "Authorization and Agreement for Treasury Services,"
16 the "Treasury Services Delegation of Authority Form," the "Authorization and
17 Agreement for Certification," or the "Treasury Services Terms and Conditions."
18 Among the provisions not contained in these agreements are the following:
19

- 20 (a) The quantity or description of the BOA Accounts;
21 (b) The fee schedule for the BOA Accounts;
22 (c) The interest rates for the BOA Accounts;
23 (d) Bank of America's obligation to record and hold the funds in
24 the BOA Accounts;
25 (e) Bank of America's obligation to fulfill payment orders on the
26

1 BOA Accounts; or

2 (f) The circumstances in which Bank of America is obligated to
3 provide Chelan County with notices pertaining to the BOA Accounts.
4

5 11. Among the accounts Chelan County maintained with Bank of
6 America were accounts intended to cover the payroll and healthcare needs of four
7 municipal groups of public employees: Chelan County Public Hospital District 1;
8 Chelan County Public Hospital District 2; a group of Chelan County Public School
9 Districts; and Chelan County itself, which included public employees from several
10 smaller organizations. Each of these four municipal groups of public employees is
11 referred to in this amended complaint as a "Taxing District."
12

13 The Unauthorized Transfers

14 12. Bank of America provided Chelan County and the Taxing
15 Districts with Bank of America software for use in processing payroll requests via
16 direct deposit. At all times material to this lawsuit, Chelan County and the Taxing
17 Districts used the software provided by Bank of America.
18

19 13. On April 18, 2013, computer hackers initiated two
20 unauthorized payroll requests from the account of Chelan County Public Hospital
21 District 1 for \$288,194.00 and \$111,300.00. Bank of America processed these
22 unauthorized requests and transferred funds as directed by the hackers.
23

24 14. On April 19, 2013, computer hackers again initiated an
25 unauthorized payroll request from the account of Chelan County Public Hospital
26

1 District 1 for \$603,575.00. Bank of America processed this request and transferred
2 funds as directed by the hackers.

3 15. The three unauthorized transfers on April 18 and 19, totaling
4 approximately \$1,003,069.00, are referred to in this Second Amended Complaint as
5 the Unauthorized Transfers.
6

7 Discovery of Fraud and Partial Recovery

8 16. On Monday, April 22, the Chelan County Treasurer's staff
9 became aware of suspicious activity in their accounts. The Chelan County
10 Treasurer's staff contacted Bank of America and alerted the Bank to the suspicious
11 activity.
12

13 17. Craig Scott, a Bank of America employee, contacted the
14 Chelan County Treasurer's office later that morning and asked if a pending
15 transfer request of \$603,575.00 was authorized. No funds had been transferred at
16 the time of the phone call. Theresa Pinneo, an employee in the Chelan County
17 Treasurer's Office, responded immediately that the \$603,575.00 transfer request
18 was *not* authorized. Nonetheless, Bank of America processed the \$603,575.00
19 transfer request and transferred funds as directed by the hackers.
20
21

22 18. Bank of America was ultimately able to recover only a portion
23 of the Unauthorized Transfers.
24

25 19. The total loss to the Chelan County Treasurer's Office is not
26 less than \$600,000.

1 COUNT ONE - LIABILITY PURSUANT TO RCW 62A.4A-201, ET SEQ.

2 20. Chelan County realleges and incorporates by reference all of
3 its previous allegations.

4 21. Pursuant to RCW 62A.4A-204, a bank is obligated to
5 reimburse a customer for funds transferred pursuant to a payment order that is
6 not authorized and not effective as an order of the customer under RCW 62A.4A-
7 202.
8

9 22. The payment orders relating to the Unauthorized Transfers
10 were not authorized and not effective as an order of Chelan County pursuant to
11 RCW 62A.4A-202.
12

13 23. Bank of America has refused to reimburse Chelan County for
14 the Unauthorized Transfers as required by RCW 62A.4A-204.
15

16 24. Bank of America is liable to Chelan County for all losses
17 sustained as a result of the Unauthorized Transfers.

18 COUNT TWO - BREACH OF CONTRACT

19 25. Chelan County realleges and incorporates by reference all of
20 its previous allegations.
21

22 26. The "Authorization and Agreement for Treasury Services,"
23 the "Treasury Services Delegation of Authority Form," the "Authorization and
24 Agreement for Certification," and the "Treasury Services Terms and Conditions."
25 incorporate the rules of the National Automated Clearinghouse Association (the
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1 “NACHA Rules”). The NACHA Rules require Bank of America, *inter alia*: to
2 implement a risk management program for ACH activities, to assess the nature of
3 Chelan County’s ACH activity, to implement an exposure limit for Chelan
4 County, to monitor Chelan County’s ACH activity across multiple settlement
5 dates, and to enforce the exposure limit.
6

7 27. Bank of America’s contractual obligations to Chelan County
8 include express or implied duties of good faith and fair dealing and the duty to
9 comply with best industry practices.
10

11 28. Bank of America breached its obligations to implement a risk
12 management program for ACH activities.

13 29. Bank of America breached its obligations to assess the nature
14 of Chelan County’s ACH activity.
15

16 30. Bank of America breached its obligations to implement an
17 exposure limit for Chelan County.

18 31. Bank of America breached its obligations to monitor Chelan
19 County’s ACH activity across multiple settlement dates.
20

21 32. Bank of America breached its obligations to enforce Chelan
22 County’s exposure limit.

23 33. Bank of America breached its obligations of good faith and
24 fair dealing.
25

26 34. Bank of America breached its obligations to comply with best

