

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

BRIAN GALLANT, individually and on	)
behalf of all others similarly situated,	)
	)
Plaintiff,	)
	)
v.	)
	)
TD BANK, N.A.,	)
	)
Defendant.	)
	)

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE THAT, for the reasons stated below, Defendant TD Bank, N.A. (“TD Bank”) hereby removes the above-captioned action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the “State Court”) to the United States District Court for the Southern District of Florida. As grounds for removal, TD Bank states as follows:

**I. BACKGROUND**

1. Plaintiff Brian Gallant (“Plaintiff”) filed this putative class action, captioned *Gallant v. TD Bank, N.A.*, in the State Court on April 19, 2022 (the “Action”). The State Court assigned the Action Case Number 2022-006836-CA-01.

2. TD Bank was served with a copy of the Complaint and Summons in this Action on May 6, 2022. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Complaint and all process, pleadings, and orders on file with the State Court is attached hereto as Exhibit A.

3. Plaintiff purports to bring a class action on behalf of himself and “[a]ll TD Bank accountholders who used the Zelle Service and incurred overdraft or NSF Fees as a result of a

Zelle transaction on their account,” and “[a]ll TD Bank accountholders in Florida who used the Zelle Service and incurred overdraft or NSF Fees as a result of a Zelle transaction on their account.” Ex. A. at Compl. ¶ 50.

4. Plaintiff seeks, *inter alia*, “restitution of all fees at issue paid to TD Bank by Plaintiff and the Classes,” and attorneys’ fees and costs. *See* Ex. A at Compl., Prayer for Relief.

## **II. BASIS FOR REMOVAL UNDER CAFA**

5. This Action is removable under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4. CAFA provides that the federal district courts “shall have original jurisdiction of any civil action” (1) which is a “class action” (2) “in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant,” and (3) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” provided that (4) the members of the putative plaintiff class number at least 100. 28 U.S.C § 1332(d)(2), (5). All four conditions are met here.

### **A. The Complaint Is A Class Action.**

6. Plaintiff brings this putative class action pursuant to Florida Rule of Civil Procedure 1.220 (“Class Actions”) on behalf of himself and “[a]ll TD Bank accountholders who used the Zelle Service and incurred overdraft or NSF Fees as a result of a Zelle transaction on their account,” and “[a]ll TD Bank accountholders in Florida who used the Zelle Service and incurred overdraft or NSF Fees as a result of a Zelle transaction on their account.” Ex. A. at Compl. ¶¶ 13, 50. Plaintiff alleges that the putative classes include “thousands of similarly situated TD Bank accountholders who have been deceived into using the Zelle money transfer service by TD Bank’s misrepresentations and omissions[.]” *Id.* ¶ 1.

7. This is a “class action,” defined under CAFA as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

**B. CAFA’s Requirement Of Minimal Diversity Is Met.**

8. The putative classes include “citizen[s] of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

9. TD Bank is a national banking association whose main office is located in Delaware as set forth in its articles of association. Accordingly, TD Bank is “located” in Delaware and is a citizen of Delaware. *See* 28 U.S.C. § 1348 (“All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.”); *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006) (“[A] national bank, for [Section] 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located.”); *Hunt v. Nationstar Mortg., LLC*, 684 F. App’x 938, 942 (11th Cir. 2017) (same). An excerpt from the Office of the Comptroller of the Currency, List of National Banks Active as of 4/30/2022, indicating TD Bank’s Delaware main office location, is attached as Exhibit B, and available at <https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html>. *See also Blount v. TD Bank, N.A.*, No. 20-18805, 2021 WL 2651760, at \*1 n.1 (D.N.J. June 28, 2021) (“TD Bank is a national bank association organized under the laws of the United States of America, with its main offices, as designated in its articles of association, located in the State of Delaware at 2035 Limestone Road, Wilmington.

Accordingly, TD Bank is a citizen of Delaware for purposes of determining diversity jurisdiction.”).

10. Plaintiff alleges he is a citizen and resident of Florida and purports to bring suit on behalf of a nationwide class and Florida subclass of TD Bank accountholders who were assessed overdraft fees for Zelle money transfer transactions. Ex. A at Compl. ¶¶ 11, 50.

**C. The Amount in Controversy Exceeds \$5 Million.**

11. Under CAFA, the claims of individual class members are aggregated to determine the amount in controversy. *See* 28 U.S.C. § 1332(d)(6).

12. Although TD Bank denies liability and denies Plaintiff’s theories and claims of damages, the Complaint seeks class-wide damages, in the aggregate, that exceed the \$5,000,000 amount in controversy requirement set forth in 28 U.S.C. § 1332(d)(2). The Complaint seeks actual damages and restitution on behalf of putative class members nationwide who were charged allegedly improper overdraft and NSF Fees for Zelle money transfer transactions during the applicable statute of limitations. *See* Ex. A. at Compl. ¶ 50 & Prayer for Relief. Solely for the purposes of establishing the amount in controversy for CAFA jurisdiction, TD Bank states that the amount of overdraft and NSF Fees charged to putative class members in the scenario alleged by Plaintiff exceeds \$5,000,000. *See* Declaration of John Bunzel, ¶ 4 (stating that the total amount of overdraft-paid and overdraft-return (NSF) fees assessed to TD consumer deposit account holders for Zelle transactions for the period April 2020 through April 2022 was \$6,314,630), attached as Exhibit C.

**D. Class Membership Exceeds 100 Persons**

13. Plaintiff purports to bring suit on behalf of himself and putative classes consisting of “thousands of similarly situated TD Bank accountholders who have been deceived into using

the Zelle money transfer service by TD Bank’s misrepresentations and omissions[.]” Ex. A at Compl. ¶ 1; *see also id.* at ¶ 53 (estimating “the Classes number is greater than one hundred individuals”).

14. Accordingly, the numerosity requirement of 28 U.S.C. § 1332(d)(5) is satisfied.

**III. ALL OTHER REQUIREMENTS FOR REMOVAL ARE ALSO SATISFIED**

15. This Notice of Removal is filed within thirty days of May 6, 2022, the date on which TD Bank was served with a copy of the Summons and Complaint. *See* Exhibit A. Pursuant to Fed. R. Civ. P. 6(a) and 28 U.S.C. § 1446(b), the Notice is timely. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

16. The State Court is within the Southern District of Florida, as required by 28 U.S.C. § 1446(a) and 1441(a).

17. TD Bank will provide Plaintiff with written notice of this filing and will file a copy with the State Court, as required by 28 U.S.C. § 1446(d).

**III. CONCLUSION**

18. No admission of fact, law, or liability is intended by this Notice of Removal, and TD Bank expressly reserves all defenses, affirmative defenses, and motions.

WHEREFORE, for the reasons stated above, TD Bank submits this Notice of Removal and respectfully requests this Action proceed in this Court.

Dated: June 3, 2022

/s/ Jamie Zysk Isani  
Jamie Zysk Isani  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 3, 2022, a true and correct copy of the foregoing was served via email and U.S. Mail on Plaintiff's counsel at the addresses below:

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*/s/ Jamie Zysk Isani* \_\_\_\_\_  
Jamie Zysk Isani  
Florida Bar No. 728861  
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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS BRIAN GALLANT DEFENDANTS TD BANK, N.A.

(b) County of Residence of First Listed Plaintiff MIAMI-DADE COUNTY (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) SEE ATTACHED Attorneys (If Known) SEE ATTACHED

(d) Check County Where Action Arose: [X] MIAMI-DADE [ ] MONROE [ ] BROWARD [ ] PALM BEACH [ ] MARTIN [ ] ST. LUCIE [ ] INDIAN RIVER [ ] OKEECHOBEE [ ] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Med. Malpractice.
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property.
CIVIL RIGHTS: 440 Other Civil Rights, 441 Voting, 442 Employment, 443 Housing/Accommodations, 445 Amer. w/Disabilities - Employment, 446 Amer. w/Disabilities - Other, 448 Education.
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence. Other: 530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729 (a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act (TCPA), 490 Cable/Sat TV, 450 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding [X] 2 Removed from State Court [ ] 3 Re-filed (See VI below) [ ] 4 Reinstated or Reopened [ ] 5 Transferred from another district (specify) [ ] 6 Multidistrict Litigation Transfer [ ] 7 Appeal to District Judge from Magistrate Judgment [ ] 8 Multidistrict Litigation - Direct File [ ] 9 Remanded from Appellate Court [ ]

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [ ] YES [X] NO b) Related Cases [ ] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d); putative class action alleging FDUTPA, breach of contract and unjust enrichment LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X] DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 6/3/22 SIGNATURE OF ATTORNEY OF RECORD [Signature]

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# EXHIBIT A

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

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**I. CASE STYLE**

IN THE CIRCUIT/COUNTY COURT OF THE ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Brian Gallant  
Plaintiff

Case # \_\_\_\_\_  
Judge \_\_\_\_\_

vs.

TD Bank, N.A.  
Defendant

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**II. AMOUNT OF CLAIM**

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

**III. TYPE OF CASE** (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

## **CIRCUIT CIVIL**

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability—commercial
  - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure
  - Homestead residential foreclosure
  - Non-homestead residential foreclosure
  - Other real property actions
- Professional malpractice
  - Malpractice—business
  - Malpractice—medical
  - Malpractice—other professional
- Other
  - Antitrust/Trade regulation
  - Business transactions
  - Constitutional challenge—statute or ordinance
  - Constitutional challenge—proposed amendment
  - Corporate trusts
  - Discrimination—employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

## **COUNTY CIVIL**

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
  - Residential Evictions
  - Non-residential Evictions
- Other civil (non-monetary)

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

**IV. REMEDIES SOUGHT (check all that apply):**

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

**V. NUMBER OF CAUSES OF ACTION: [ ]**

(Specify)

3

**VI. IS THIS CASE A CLASS ACTION LAWSUIT?**

- yes
- no

**VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- no
- yes If “yes,” list all related cases by name, case number, and court.

**VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- yes
- no

**IX. DOES THIS CASE INVOLVE ALLEGATIONS OF SEXUAL ABUSE?**

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Angelica Gentile Gentile  
Attorney or party

Fla. Bar # 102630  
(Bar # if attorney)

Angelica Gentile Gentile  
(type or print name)

04/13/2022  
Date

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE, COUNTY**

BRIAN GALLANT, individually, and on behalf  
of all others similarly situated,

Plaintiff,

v.

TD BANK, N.A.,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Brian Gallant, individually and on behalf of all others similarly situated, hereby brings this Class Action Complaint against Defendant TD Bank, N.A. (“TD Bank” or “TD”) and alleges as follows:

**INTRODUCTION**

1. This lawsuit is brought as a class action on behalf of Plaintiff and thousands of similarly situated TD Bank accountholders who have been deceived into using the Zelle money transfer service by TD Bank’s misrepresentations and omissions, in marketing and contract materials, regarding the true operation and risks of that service. These risks include the real and repeated risk of insufficient funds fees (“NSF fees”) or overdraft fees (“OD Fees”) imposed by TD Bank as a result of Zelle transfers from consumers’ checking accounts.

2. TD Bank markets Zelle to its accountholders as a way for consumers to send money they have in their account fast and “free,” and that the service “won’t cost you any extra money for the transaction.” In short, TD Bank markets Zelle as an effortless, totally free way to send money. This is false. In fact, there are huge, undisclosed risks of using the service.

3. Moreover, Zelle in some cases operates as a credit device, sending money consumers don’t have at the cost of high OD Fees assessed by their banks. Transactions may be

approved even when there are insufficient funds in an account. But TD Bank never discloses that Zelle acts as a credit device, nor warns that it can do so.

4. Zelle's services cause unsuspecting consumers like Plaintiff to incur significant overdraft and NSF fees on their linked bank accounts.

5. Unfortunately, Zelle's operation, along with deceptive and incomplete marketing materials promulgated by TD Bank, means that users like Plaintiff end up paying huge amounts of bank fees, which TD Bank falsely assures users they will not receive and/or fails to warn users about.

6. TD Bank touts the Zelle service as convenient, simple, and totally free. But it misrepresents and fails to disclose that overdraft and NSF fees are a likely and devastating consequence of the use of the Zelle service.

7. Zelle prominently touts itself as offering "free" and "won't cost you any extra money for the transaction" money transfers. In light of these misrepresentations, Plaintiff and other reasonable consumers have no idea the service comes with these damaging risks.

8. These risks are known to TD Bank but is omitted from all of its marketing.

9. Had Plaintiff and the Class members known of the true operation and risks of the Zelle service—risks TD Bank alone was aware of and actively misrepresented—they would not have signed up for and used the Zelle service.

10. Plaintiff and the Class members have been injured by TD Bank's practices. Plaintiff brings this action on behalf of himself, the putative Class, and the general public. Plaintiff seeks actual damages, punitive damages, restitution, and an injunction on behalf of the general public to prevent TD Bank and Zelle from continuing to engage in its illegal practices as described herein.

## **PARTIES**

11. Plaintiff Brian Gallant is a citizen and resident of Miami-Dade County, Florida.

12. Defendant TD Bank, N.A., is federally chartered bank with its principal place of business in Cherry Hill, New Jersey.

## **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney's fees.

14. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant is authorized to do business in the State of Florida and maintains a network of retail branches doing business in Florida that operates, conducts, engages in, and/or carries on business and business activities in Florida and engages in substantial and not isolated activity in Florida.

15. Venue for this action is proper in this Court pursuant to Fla. Stat. §47.011 and §47.051 because Defendant has an agent or other representative and a substantial part of the events and omissions giving rise to this action occurred in Miami-Dade County, Florida.

## **FACTUAL ALLEGATIONS**

### **A. Overview**

16. It is free for TD Bank accountholders to sign up with Zelle, and in fact Zelle is integrated into the websites and mobile apps of TD Bank. In marketing and within the website and app itself, TD Bank encourages its accountholders to sign up for the Zelle service—a sign up that occurs quickly within the TD Bank website or mobile app. During that sign-up process, a user provides basic information to Zelle to link into the Zelle network.

17. Signing up allows the fast transfer of account funds to other Zelle users.

18. Created in 2017 by the largest banks in the U.S. to enable instant digital money transfers, Zelle is the country's most widely used money transfer service. Last year, people sent \$490 billion in immediate payment transfers through Zelle.

19. The Zelle network is operated by Early Warning Services, a company created and owned by seven banks: Bank of America, Capital One, JPMorgan Chase, PNC, Truist, U.S. Bank and Wells Fargo.

**B. TD Bank Falsely Markets Zelle as a Fast and Free Way to Transfer Money**

20. In its marketing about Zelle and during the Zelle signup process within TD Bank's mobile app or website, TD Bank makes repeated promises that Zelle is a fast and "free" way to send money. For example, TD Bank's website and mobile interface state:

**Send Money with Zelle<sup>®</sup> is easy, fast and free for TD customers**

21. TD Bank also promises about Zelle: "Move funds between your accounts and schedule transfers, plus use Send Money with Zelle to pay friends quickly, easily and for *free*" (emphasis added).

22. At no time in its marketing or during the sign-up process does TD Bank warn potential users of the true risks of using the Zelle service—including the risk of incurring NSF and overdraft fees by TD Bank. To the contrary, in its marketing and during the sign-up processes, TD Bank repeatedly touts Zelle as a vehicle for simple, fast and free money transfers—without a credit feature.

23. But Zelle's services can cause unsuspecting consumers like Plaintiff to incur massive fees on their linked bank accounts—fees imposed by TD Bank. TD Bank is thus well aware of the risk that such fees will occur.



24. TD Bank misrepresents (and omits facts about) the true nature, benefits, and risks of the Zelle service, the functioning of which means that users are at extreme and undisclosed risk of expensive bank fees when using Zelle. Had Plaintiff been adequately informed of these risks, he would not have signed up for or used Zelle.

25. As alleged herein, Plaintiff had no idea that Zelle transfer could cause \$35-each overdraft fees from TD Bank, and was never informed thereof.

26. In marketing and promotions, TD Bank describes the Zelle service as simple, convenient, and easy—a no-fee way for consumers to transfer money.

27. TD Bank’s marketing never warns consumers of the extreme and crushing NSF and overdraft fee risk of using the service.

28. TD Bank conceals from users the punishing risk of NSF and overdraft fees on small dollar Zelle transactions.

29. TD Bank’s marketing materials—including within its app and website—never disclose these risks and material facts, instead luring consumers to sign up for and use the service with promises of ease and lack of any cost.

30. TD Bank knows that the Zelle service is likely to cause its accountholders to incur large bank fees.

31. TD Bank’s representations regarding Zelle—which all users view during the sign-up process—are false and contain material omissions.

**C. TD Bank Never Informs Consumers Zelle has a Credit Feature**

32. As occurred with Plaintiff, Zelle transfers often cause hefty overdraft or NSF Fees from accountholders' banks or credit unions.

33. When a Zelle transfer occurs despite insufficient funds on an account, a user is being loaned funds to execute such a transfer.

34. While touting Zelle, TD Bank never informed Plaintiff and other reasonable consumers were never informed Zelle had a credit feature. To the contrary, TD Bank misrepresented that only funds already possessed by accountholders could be transferred via Zelle.

35. When a bank pays an overdraft requested on funds transferred via Zelle, it is extending credit. It is very expensive credit, indeed, according to the FDIC:

For almost all study population banks operating an automated overdraft program, the main fee associated with the program was an NSF usage fee. Usage fees reported by these banks ranged from \$10 to \$38; the median fee was \$27, charged on a per-transaction basis in almost all cases. In this context, a \$27 fee charged for a single advance of \$60 that was repaid in two weeks **roughly translated into an APR of 1,173 percent**. Many surveyed banks (24.6 percent) assessed additional fees on accounts that remained in negative balance status in the form of flat fees or interest charged on a percentage basis.

FDIC Study of Bank Overdraft Programs, 2008 (emphasis added).

36. But TD Bank never warns users that Zelle may act as a credit device, either in marketing materials or during the sign-up process.

37. Plaintiff and other reasonable consumers were not informed that TD Bank would make Zelle transfers for which they had insufficient funds—in effect, that TD Bank and Zelle would seek a loan on their behalf.

38. In fact, TD Bank makes marketing representations directly to the contrary. For example:

Move money in the moment.

With *Zelle*, you can move money from your account to someone else's within minutes, so it's important you know and trust the person you're sending it to. Whether you're settling up IOUs before heading back from the beach or paying the babysitter before curfew hits, **your money is where you need it to be**, when you need it to be.

(emphasis added).

39. And again:

**Your money travels safely** from the minute you hit send to the minute it hits their account. Straight from you to them. So you get peace of mind and so does your nanny, your neighbor, and your friend Ned who sold you his old TV.

(emphasis added).

40. The references to “your money” can have only one meaning: a Zelle transfer moves funds already possessed and owned by the accountholder—not loaned funds from the Bank.

41. TD's marketing materials regarding the Zelle service were especially misleading in combination with its contract promises in the TD Deposit Agreement (Ex. A hereto). In that document, TD states:

We do not have to allow you to make an overdraft. It may be a crime to intentionally withdraw funds from an Account when there are not enough funds in the Account to cover the withdrawal or when the funds are not yet available for withdrawal.

42. Read in conjunction with its marketing representations regarding Zelle, this provision reasonably promised to Plaintiff and other accountholders that TD would not create or “allow” overdrafts on Zelle transfers for which there were not sufficient funds in an account.

43. By “allowing” overdrafts for Zelle transfers that it promised in marketing would be “free” and would only transfer money already possessed by an accountholder (not loaned by

TD Bank), TD both violated its marketing promises and violated its contract promises, including the implied covenant of good faith and fair dealing.

**D. Plaintiff Gallant's Experience**

44. When Plaintiff signed up for Zelle he was not informed that Zelle's service had a significant "catch" and that significant fees and costs could result from use of this supposedly "free" service.

45. While Plaintiff has sometimes used Zelle without incident, on other occasions he has incurred expensive overdraft fees or NSF Fees from TD Bank as a result of using the service—penalties that far outweigh the benefits of the service.

46. For example, on May 20, 2021, Plaintiff transferred \$150 using Zelle through TD Bank's mobile app.

47. That transfer resulted in a \$35 OD/NSF Fee.

48. On August 30, 2021, Plaintiff transferred \$120 using Zelle through TD Bank's mobile app.

49. That transfer resulted in a \$35 OD/NSF Fee.

**CLASS ALLEGATIONS**

50. Plaintiff brings this action individually and as representatives of all those similarly situated, on behalf of the below-defined Classes:

All TD Bank accountholders who used the Zelle Service and incurred overdraft or NSF Fees as a result of a Zelle transaction on their account (the "Class").

All TD Bank accountholders in Florida who used the Zelle Service and incurred overdraft or NSF Fees as a result of a Zelle transaction on their account (the "Florida Class").

51. Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staffs.

52. This case is appropriate for class treatment because Plaintiff can prove the elements of their claims on a class wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

53. **Numerosity:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The precise membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number is greater than one hundred individuals. The identity of such membership is readily ascertainable via inspection of Defendant's books and records or other approved methods. Class members may be notified of the pendency of this action by mail, email, internet postings, and/or publication.

54. **Common Questions of Law or Fact:** There are common questions of law and fact as to Plaintiff and all other similarly situated persons, which predominate over questions affecting only individual Class members, including, without limitation:

- a) Whether TD Bank's representations and omissions about Zelle are false, misleading, deceptive, or likely to deceive;
- b) Whether TD Bank misrepresented the NSF and overdraft fee risks of using the Zelle service;
- c) Whether Plaintiff and the Class members were damaged by TD Bank's conduct;
- d) Whether TD Bank's actions violated the consumer protection statute invoked herein; and

- e) Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining TD Bank's conduct.

55. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendant's uniform practices applicable to each individual Class member. As such, these common questions predominate over individual questions concerning each Class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

56. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, Plaintiff and all Class members were similarly injured through Defendant's uniform misconduct as alleged above. As alleged herein, Plaintiff, like the members of the Classes, was deprived of monies that rightfully belonged to him. Further, there are no defenses available to TD Bank that are unique to Plaintiff.

57. **Adequacy of Representation:** Plaintiff is an adequate class representative because he is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes, and because their interests do not conflict with the interests of the other Class members they seek to represent. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's attorneys are experienced in complex class action litigation, and they will prosecute this action vigorously.

58. **Superiority:** The nature of this action and the claims available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each Class member were required to file an individual lawsuit, Defendant would necessarily gain an unconscionable advantage since it would

be able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly superior financial and legal resources. Moreover, the prosecution of separate actions by individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendant, and which would establish potentially incompatible standards of conduct for Defendant and/or legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interests of the other Class members not parties to adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) Fla. Stat. § 501.201, *et seq.* (On Behalf of Plaintiff and the Classes)**

59. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

60. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* The stated purpose of the FDUTPA is to “protect the consuming public ... from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

61. Plaintiff and members of the classes are “consumers” as defined by Fla. Stat. § 501.203(7).

62. TD Bank engaged in “trade or commerce” as defined by Fla. Stat. § 501.203(8) by offering the Zelle money transfer services through its website and mobile app.

63. As described herein, TD Bank's misrepresentations that it provides free money transfer services via Zelle through its website and mobile app constitutes an unconscionable, unfair and/or deceptive act in trade or commerce in violation of Fla. Stat. § 501.201.

64. As described herein, TD Bank's material omission that Zelle may operate as a credit device when a Zelle transfer occurs despite insufficient funds on an account constitutes an unconscionable, unfair and/or deceptive act in trade or commerce in violation of Fla. Stat. § 501.201.

65. TD Bank's practice of assessing NSF and overdraft fees on its accountholders' Zelle transactions is deceptive because of TD Bank's marketing and representations that Zelle transfers from consumers' accounts are free.

66. TD Bank's material omission that Zelle may operate as a credit device when a Zelle transfer occurs despite insufficient funds on an account is deceptive because of TD Bank's marketing and representations that Zelle money transfers moves funds already possessed and owned by the accountholder.

67. TD Bank's deceptive misrepresentations of the material risks of the Zelle service, including the risk of incurring expensive NSF and overdraft fees, is a practice that is likely to mislead a consumer acting reasonable under the circumstances, to the consumer's detriment.

68. As a direct and proximate result of TD Bank's unfair, unconscionable, and/or deceptive acts or practices, Plaintiff and members of the Class have been harmed and suffered actual damages.

## **COUNT II**

### **Breach of Contract Including the Covenant of Good Faith and Fair Dealing (On Behalf of Plaintiff and the Classes)**

69. Plaintiff repeats and realleges the above allegations as if fully set forth herein.



70. Plaintiff and members of the Classes contracted with TD Bank for checking account services, as embodied in the Deposit Agreement. In marketing and during the sign-up process, TD Bank repeatedly promises Zelle as a vehicle for simple, fast and *free* money transfers for consumers.

71. As described herein, TD Bank breached the terms of the contract and promises that Zelle is free, no-fee way for accountholders to transfer money.

72. Further, Florida mandates that an implied covenant of good faith and fair dealing govern every contract. For banking transactions, this is also mandated by the Uniform Commercial Code that has been adopted in each state. The covenant of good faith and fair dealing constrains Defendant's discretion to abuse self-granted contractual powers.

73. This good faith requirement extends to the manner in which a party employs discretion conferred by a contract.

74. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

75. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes his conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Other examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

76. TD Bank breached the covenant of good faith and fair dealing as explained herein.

77. Each of Defendant's actions was done in bad faith and was arbitrary and capricious.

78. Plaintiff and members of the Classes have performed all of the obligations imposed on them pursuant to the Bank's agreements.

79. Plaintiff and members of the putative Classes have sustained monetary damages as a result of each of Defendant's breaches.

**COUNT III**  
**Unjust Enrichment**  
**(In the Alternative to COUNT II)**  
**(On Behalf of Plaintiff and the Classes)**

80. Plaintiff repeats and realleges the above allegations as if fully set forth herein.

81. This count is brought solely in the alternative. Plaintiff acknowledges that his breach of contract claim cannot be tried along with unjust enrichment.

82. To the detriment of Plaintiff and the Classes, Defendant has been, and continues to be, unjustly enriched as a result of its deceptive and wrongful conduct alleged herein.

83. Plaintiff and the Classes conferred a benefit on Defendant when they paid Defendant the fees that were not disclosed or allowed for in the Deposit Agreement or marketing materials.

84. Defendant unfairly, deceptively, unjustly, and/or unlawfully accepted said benefits, which under the circumstances, would be unjust to allow Defendant to retain.

85. Plaintiff and the Classes, therefore, seek disgorgement of all wrongfully obtained fees received by Defendant as a result of its inequitable conduct as more fully stated herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Classes, demands a jury trial on all claims so triable and judgment as follows:

A. Certifying the proposed Classes, appointing Plaintiff as representative of the Classes, and appointing counsel for Plaintiff as lead counsel for the respective Classes;

B. Declaring that TD Bank's policies and practices as described herein constitute a breach of contract, a breach of the covenant of good faith and fair dealing or unjust enrichment, and/or a violation of the Florida Deceptive and Unfair Trade Practices Act;

C. Enjoining TD Bank from the wrongful conduct as described herein;

D. Awarding restitution of all fees at issue paid to TD Bank by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

E. Compelling disgorgement of the ill-gotten gains derived by Defendant from its misconduct;

F. Awarding actual and/or compensatory damages in an amount according to proof;

G. Punitive and exemplary damages;

H. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

I. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to applicable law and any other basis; and

J. Awarding such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this Class Action Complaint that are so triable.

Dated: April 13, 2022

Respectfully submitted,

**SHAMIS & GENTILE, P.A.**

By: /s/ Andrew J. Shamis  
Andrew J. Shamis, Esq.  
Florida Bar No. 101754  
ashamis@shamisgentile.com  
Edwin E. Elliott, Esq.  
Florida Bar No. 1024900  
edwine@shamisgentile.com  
14 NE 1st Avenue, Suite 705  
Miami, Florida 33132  
(t) (305) 479-2299

**EDELSBERG LAW, P.A.**

Scott Edelsberg, Esq.  
Florida Bar No. 0100537  
Christopher Gold, Esq.  
Florida Bar No. 088733  
scott@edelsberglaw.com  
chris@edelsberglaw.com  
20900 NE 30th Ave., Suite 417  
Aventura, FL 33180  
Office: (786) 289-9471  
Direct: (305) 975-3320  
Fax: (786) 623-0915

*Counsel for Plaintiff and the Proposed Class*

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2022-006836-CA-01

BRIAN GALLANT, individually and on behalf of all  
others similarly situated,

CLASS ACTION

*Plaintiff,*

JURY TRIAL DEMANDED

vs.

TD BANK, N.A.,

*Defendant.*

\_\_\_\_\_ /

**SUMMONS**

THE STATE OF FLORIDA:  
To Each Sheriff/Certified Process Server of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the Complaint, in this  
action on Defendant:

TD BANK, N.A.  
c/o United States Corporation Company- Registered Agent  
1201 Hays St  
Tallahassee, FL 32301

Each Defendant is required to serve written defenses to the Complaint or petition on:  
**Andrew Shamis, Esq, Shamis & Gentile, P.A., 14 NE 1st Ave STE 705, Miami, Florida  
33132**, within **twenty (20) days** after service of this summons on that Defendant, exclusive of  
the date of service, and to file the original of the defenses with the Clerk of this Court either  
before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a  
default will be entered against that Defendant for the relief demanded in the complaint or  
petition.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

As Clerk of the Court

By: \_\_\_\_\_  
As Deputy Clerk

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2022-006836-CA-01

BRIAN GALLANT, individually and on behalf of all  
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petition.

4/20/2022

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

Harvey Ruvlin,  
Clerk of Courts

As Clerk of the Court

By: 217043  
*Jaren Bethel*  
As Deputy Clerk



**RETURN OF SERVICE**

State of Florida

County of Miami-Dade

Circuit Court

Case Number: 2022-006836-CA-01

Plaintiff:  
**BRIAN GALLANT**

vs.

Defendant:  
**TD BANK, N.A.**

For:  
SHAMIS & GENTILE, P.A.



Received by GLOBAL PROCESS SERVICES CORP. on the 6th day of May, 2022 at 10:55 am to be served on **TD BANK, N.A. UNITED STATES CORPORATE SERVICE COMPANY - REGISTERED AGENT, 1201 HAYS STREET, TALLAHASSEE, FL 32301.**

I, Wyatt Kady, do hereby affirm that on the **6th day of May, 2022 at 11:30 am, I:**

served a **CORPORATE, PARTNERSHIP, ASSOCIATION OR GOVERNMENT SERVICE** by delivering a true copy of the **SUMMONS, CLASS ACTION COMPLAINT, AND JURY TRIAL DEMAND** with the date and hour of service endorsed thereon by me, to: **SHEENA BLACK** as **SERVICE LIAISON** authorized to accept service, of the within named corporation, at the address of: **1201 HAYS STREET, TALLAHASSEE, FL 32301** on behalf of **TD BANK, N.A.**, and informed said person of the contents therein, in compliance with state statutes.

**Description** of Person Served: Age: 30, Sex: F, Race/Skin Color: WHITE, Height: 5'7", Weight: 120, Hair: BROWN, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served. "Under penalties of perjury, I declare that I have read the foregoing document and that the facts in it are true" F.S. 92.525. NOTARY NOT REQUIRED PURSUANT TO FS 92.525

Wyatt Kady  
Process Server 249

**GLOBAL PROCESS SERVICES CORP.**  
P.O. Box 961556  
Miami, FL 33296  
(786) 287-0606

Our Job Serial Number: KDY-2022016396  
Ref: 22-1022

*Wk  
11:30am*

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 2022-006836-CA-01**

BRIAN GALLANT, individually and on behalf of all  
others similarly situated,

CLASS ACTION

*Plaintiff,*

JURY TRIAL DEMANDED

vs.

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petition.

4/20/2022

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

Harvey Ruvin,  
Clerk of Courts

As Clerk of the Court

By: *Jaren Bethel*  
217043  
As Deputy Clerk





IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2022-006836-CA-01

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petition.

4/20/2022

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

Harvey Ruvin,  
Clerk of Courts

As Clerk of the Court

By: 217043  
*Jaren Bethel*  
As Deputy Clerk



# EXHIBIT B

## National Banks Active As of 4/30/2022

## CHARTER

NO	NAME	ADDRESS (LOC)	CITY	STATE	CERT	RSSD
14369	Stillman Bancorp National Association	101 East Main Street	Stillman Valley	IL	9263	407645
14302	Stockmens National Bank in Cotulla	206 N. Main Street	Cotulla	TX	14864	818652
12044	Stride Bank, National Association	324 West Broadway	Enid	OK	4091	278555
18154	Summit National Bank	133 Main Street	Hulett	WY	25054	78559
4742	Sunflower Bank, National Association	1400 16th St.	Denver	CO	4767	474759
14991	Sunrise Banks, National Association	200 University Avenue West	St. Paul	MN	18561	860053
9087	Superior National Bank	235 Quincy Street	Hancock	MI	5058	245557
24350	Synovus Trust Company, National Association	1148 Broadway	Columbus	GA	33962	2262718
24467	T Bank, National Association	16200 Dallas Parkway, Suite 190	Dallas	TX	57703	3284445
23363	TCM Bank, National Association	3501 E. Frontage Road	Tampa	FL	34535	2687487
22611	TD Bank USA, National Association	2035 Limestone Road	Wilmington	DE	33947	2121196
24096	TD Bank, National Association	2035 Limestone Road	Wilmington	DE	18409	497404
20157	Terrabank National Association	3191 Coral Way	Miami	FL	26442	238737
10476	Texana Bank, National Association	124 East Rush	Linden	TX	3302	809650
24693	Texas Advantage Community Bank, National Association	1701 Fairway Plaza, Suite 18	Alvin	TX	58450	3485215
10420	Texas Gulf Bank, National Association	1626 South Voss Road	Houston	TX	3206	514655
4701	Texas Heritage National Bank	107 Webb	Daingerfield	TX	3161	824653
11879	Texas National Bank	201 S. Texas	Mercedes	TX	3337	497954
22807	Texas National Bank	400 East Broadway	Sweetwater	TX	34014	1435092
18594	Texas National Bank of Jacksonville	300 Neches Street	Jacksonville	TX	26181	739355
12308	Texas Republic Bank, National Association	2595 Preston Road, Building 100	Frisco	TX	3400	735067
24465	TexStar National Bank	600 Pat Booker Road	Universal City	TX	57704	3211937
16799	The American National Bank of Mount Pleasant	301 South Madison Avenue	Mount Pleasant	TX	22942	764067
17043	The American National Bank of Texas	102 West Moore Avenue	Terrell	TX	23474	599764
3711	The Atlanta National Bank	105 Southwest Church Street	Atlanta	IL	3601	672238
13770	The Bank National Association	2nd and Carl Albert Parkway	McAlester	OK	4146	829050
24526	The Bank of New York Mellon Trust Company, National Associati	333 South Hope Street, Suite 252	Los Angeles	CA	23472	398668
9734	The Bradford National Bank of Greenville	100 East College Avenue	Greenville	IL	3799	720746
7827	The Brady National Bank	101 S. Blackburn	Brady	TX	3109	101952
13678	The Brenham National Bank	2211 South Day Street	Brenham	TX	3113	227357
2311	The Camden National Bank	2 Elm Street	Camden	ME	4255	593007
3817	The Canandaigua National Bank and Trust Company	72 South Main Street	Canandaigua	NY	6985	161602
12158	The Central National Bank of Poteau	209 Clayton	Poteau	OK	4181	459354
23690	The Chicago Trust Company, National Association	727 North Bank Lane	Lake Forest	IL	35063	2719810
10034	The Citizens First National Bank of Storm Lake	529 Lake Avenue	Storm Lake	IA	4511	424240
10789	The Citizens National Bank	417 Commercial	Greenleaf	KS	4678	991555
11573	The Citizens National Bank of Bluffton	102 South Main Street	Bluffton	OH	6531	738013
10216	The Citizens National Bank of Hammond	19 Main Street	Hammond	NY	14820	855303
4900	The Citizens National Bank of Hillsboro	200 E. Elm Street	Hillsboro	TX	3255	184656
3988	The Citizens National Bank of Lebanon	149 W. Main Street	Lebanon	KY	2753	641449
5259	The Citizens National Bank of McConnelsville	100 East Main Street	McConnelsville	OH	6638	685023
7266	The Citizens National Bank of Meridian	512 22nd Avenue	Meridian	MS	4993	69333
13692	The Citizens National Bank of Park Rapids	300 West First Street	Park Rapids	MN	5223	877752
14255	The Citizens National Bank of Quitman	100 East Stevens Street	Quitman	GA	14731	774235
11544	The Citizens National Bank of Somerset	44 Public Square	Somerset	KY	2725	410917
13847	The Citizens National Bank of Woodsfield	143 S. Main Street	Woodsfield	OH	6732	386825
5753	The City National Bank and Trust Company of Lawton, Oklahor	500 Montgomery Square	Lawton	OK	4132	294751
5276	The City National Bank of Colorado City	228 Elm	Colorado City	TX	3144	799854
8745	The City National Bank of Metropolis	423 Ferry Street	Metropolis	IL	3814	298245
10806	The City National Bank of San Saba	209 E. Brown	San Saba	TX	5518	714165
3989	The City National Bank of Sulphur Springs	201 Connally Street	Sulphur Springs	TX	5544	596062
5275	The City National Bank of Taylor	212 North Main Street	Taylor	TX	5548	181963
994	The Clinton National Bank	235 Sixth Avenue South	Clinton	IA	4439	773443
8573	The Commercial National Bank of Brady	105 East Second Street	Brady	TX	3110	42354
10536	The Conway National Bank	1400 Third Avenue	Conway	SC	2102	631422
1323	The Delaware National Bank of Delhi	124 Main Street	Delhi	NY	7025	236603
2515	The Ephrata National Bank	31 East Main Street	Ephrata	PA	7493	425911
6609	The Fairfield National Bank	220 East Main Street	Fairfield	IL	3792	640246
8606	The Falls City National Bank	100 S Front Street	Falls City	TX	3193	441050

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

BRIAN GALLANT, individually and on	)
behalf of all others similarly situated,	)
	)
Plaintiff,	)
	)
v.	)
	)
TD BANK, N.A.,	)
	)
Defendant.	)
	)

**DECLARATION OF JOHN BUNZEL**

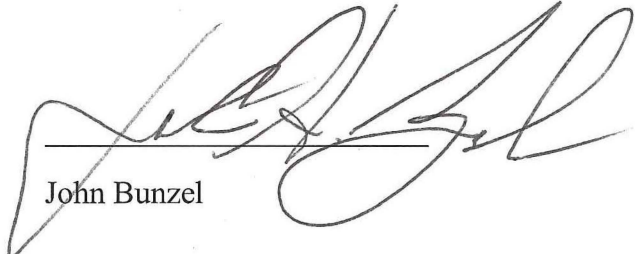
I, John Bunzel, hereby declare as follows:

1. My name is John Bunzel. I am over the age of 18 and competent to make this declaration.
  
2. I am Head of CDPP Revenue Management at TD Bank, N.A. (“TD”), and have served in that role for approximately two years. I have been employed at TD for approximately ten and a half years. As Head of CDPP Revenue Management, I lead the product team responsible for various products and services for consumer deposits and payments including overdraft products and services. I make the statements in this affidavit based on my own personal knowledge and my review of TD business records kept in the ordinary course of business.
  
3. TD has offered Zelle money transfer services for its consumer deposit accounts since April 2017. Starting in April 2020, TD has tracked Zelle transactions with their own transaction code within TD’s deposit account system of record. Prior to April 2020, Zelle transactions were tracked within a transaction code that also included debit card transactions.

4. For the 25-month period April 2020 (when TD first started to separately track Zelle transactions) through April 2022, TD consumer deposit account holders made 59,394,883 Zelle money transfer transactions. Of those transactions, 180,418 were either paid into overdraft or returned for insufficient funds, and assessed an overdraft-paid or overdraft-return (NSF) fee. The total amount of overdraft-paid and overdraft-return (NSF) fees assessed to TD consumer deposit account holders for Zelle transactions for the period April 2020 through April 2022 was \$6,314,630. Additional overdraft-paid and overdraft-return (NSF) fees were assessed to TD consumer deposit account holders for Zelle transactions during the period April 2017 through March 2020, but determining the number and amount of such fees requires further data analysis.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/2/2022



John Bunzel

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [TD Bank Failed to Warn Zelle Users of Overdraft Fee Risk, Class Action Claims](#)

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