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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

NATALIE TRISTAN, *et al.*,  
Plaintiffs,  
v.

BANK OF AMERICA, N.A.,  
Defendant

**Case No. 8:22-CV-01183-DOC-ADS**

**ORDER GRANTING DEFENDANTS’  
MOTION FOR SUMMARY  
JUDGMENT [132]**

Before the Court is Defendant Bank of America, N.A.’s Motion for Summary Judgment (“Motion”) (Dkt. 132). The Court heard oral arguments on September 30, 2024. For the reasons described below, the Court GRANTS Defendant’s Motion.

1 **I. BACKGROUND**

2 **A. Facts<sup>1</sup>**

3 Zelle is a money payment platform that enables users to transfer money quickly from  
4 their bank account to another’s bank account. Reply to Plaintiffs’ Statement of Genuine  
5 Disputes of Material Fact (“Reply to SGD”) #1-5. Bank of America provides the Zelle service  
6 to its customers through its proprietary mobile and online banking applications. *Id.* Plaintiffs  
7 are each Bank of America customers who were tricked into making Zelle payments to  
8 scammers from their Bank of America accounts. According to Plaintiffs, Bank of America has  
9 not reimbursed them for those losses. Third Amended Complaint (“TAC”) at 23, 28.

10 In November 2021, Plaintiff Tristan was searching for rental apartments and believed  
11 she found a potential unit to lease online posted by an individual. The individual, named  
12 “Orlin,” directed Tristan to submit a rental application and pay certain fees as part of the  
13 screening process. Reply to SGD #29-32. On November 20, 2021, Tristan transferred \$150 via  
14 Zelle for application fees. Shortly thereafter, Tristan was informed that her application was  
15 “approved” and was directed to transfer via Zelle a total of \$2,000—a security deposit of \$800  
16 and first-month’s rent of \$1,200. Tristan obliged, transferring a total of \$2,150 from her  
17 personal bank account to Orlin. *Id.* #33-40 Tristan learned that this was a scam when, on the  
18 purported move-in day, she arrived at the apartment but Orlin was nowhere to be found. *Id.* #41-  
19 43. On November 22, 2021, Tristan called Bank of America to ask for a reimbursement. *Id.*  
20 #48. The Bank initiated an investigation into the scam and determined to which bank account  
21 Tristan’s funds had been transferred. *Id.* # 52. Bank of America initiated a request to the other  
22 bank for the return of the funds, but that bank could not recover the funds. *Id.* #53-54.  
23 Ultimately, Bank of America denied Tristan’s claim for reimbursement. *Id.* #55. Tristan  
24 received a letter from Bank of America stating its “records indicate that we completed the  
25 transfer(s) according to the instructions you provided us, and therefore no error occurred. Based  
26 on this, your account won’t be credited.” *Id.*

27 \_\_\_\_\_  
28 <sup>1</sup> Unless indicated otherwise, to the extent any of these facts are disputed, the Court concludes they are not material to the disposition of the Motion. Further, to the extent the Court relies on evidence to which the parties have objected, the Court has considered and overruled those objections. As to any remaining objections, the Court finds it unnecessary to rule on them because the Court does not rely on the disputed evidence.

1 In April 2022, Plaintiff Myers noticed a charge on his credit card from Amazon.com that  
2 he did not recognize. *Id.* #133. Through Google, Myers obtained what he thought was the  
3 number for Amazon’s customer service line, which he called. *Id.* #134. Myers spoke to a  
4 representative who advised him to download a mobile application that would allow the  
5 representative to review his account and refund the charge. TAC ¶ 172. On April 26, 2022,  
6 Myers was tricked into transferring \$1,709 in five separate Zelle transactions from his bank  
7 accounts. TAC ¶ 176. Myers called Bank of America to report the transactions and file a claim  
8 for reimbursement. Myers told the Bank that he was instructed to download a mobile  
9 application which allowed the impersonators to guide him through initiating Zelle transfers to  
10 them. Reply to SGD #142-143. Bank of America investigated Myers’ claims and submitted a  
11 request to the receiving bank for the funds to be returned. *Id.* #144-145. The receiving bank  
12 said it could not recover the funds and Myers claim was denied by Bank of America on May 3,  
13 2024. *Id.* #146-147.

14 The present dispute is about whether the scams that Myers and Tristan fell prey to entitle  
15 them to reimbursement under Bank of America’s contracts governing Zelle transactions. The  
16 Parties do not dispute that “unauthorized transactions” are reimbursable by Bank of America  
17 and “authorized transactions” are not reimbursable under the contracts. Plaintiffs, however,  
18 contend that the definitions of these two categories are not clearly defined in the contracts and  
19 mislead users as to what types of fraud will be reimbursed by the Bank. Plaintiffs assert that the  
20 Bank unreasonably interprets “unauthorized transaction” to not include “scams” such as those  
21 the Plaintiffs experienced. The Online Banking Service Agreement (“OBSA”) governs Bank of  
22 America’s Zelle transactions and applies to the period in which the Plaintiffs here made their  
23 transactions. *See* October 2023 Order at 5.

24 The OBSA tells accountholders, “you will have no liability for unauthorized transactions  
25 if you notify us within 60 days after the statement showing the transaction has been mailed to  
26 you.” Reply to SGD #172. The OBSA provides no definition for the term “unauthorized  
27 transaction.” *Id.* #173. But it does state in all caps, “NEITHER WE NOR ZELLE OFFER A  
28 PROTECTION PROGRAM FOR AUTHORIZED PAYMENTS MADE THROUGH THE

1 SERVICE (FOR EXAMPLE, IF YOU DO NOT RECEIVE THE GOODS OR SERVICES  
2 THAT YOU PAID FOR, OR THE GOODS OR SERVICES THAT YOU RECEIVED ARE  
3 DAMAGED OR ARE OTHERWISE NOT WHAT YOU EXPECTED).” *Id.* #28. The OBSA  
4 defines “Unauthorized Payments” to include transactions “that occur in instances of account  
5 takeover, lost-stolen debit cards or account information, etc.” whereas “Scams” distinctly  
6 include transactions where the “Recipient convinces a Sender to send money with Zelle by (i).  
7 pretending to be or to represent another person or entity; or (ii). offering to provide a good,  
8 service, or additional funds while intending to provide nothing in return.” *Id.* #176. It further  
9 warns, “THE SERVICE IS INTENDED TO SEND MONEY TO FRIENDS, FAMILY AND  
10 OTHERS YOU TRUST. YOU SHOULD NOT USE THE SERVICE TO SEND MONEY TO  
11 RECIPIENTS WITH WHOM YOU ARE NOT FAMILIAR OR YOU DO NOT TRUST.” *Id.*  
12 #27.

13 **B. Procedural History**

14 On April 20, 2022, Plaintiff Natalie Tristan filed a putative class action complaint in the  
15 Superior Court of California in the County of Orange alleging the following causes of action  
16 against then-Defendants Bank of America and Early Warning Services, LLC d/b/a  
17 Zellepay.com (“EWS”): (1) Violations of California’s False Advertising Law (“FAL”), Cal.  
18 Bus. & Prof. Code §§ 17500, et seq.; (2) Violations of California’s Unfair Competition Law  
19 (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq.; (3) Violations of Nevada’s Deceptive  
20 Trade Practices Act (“NDTPA”), Nev. Rev. Stat. § 598.0903, et seq.; (4) Violations of the  
21 Electronic Fund Transfer Act (“EFTA”), 15 U.S.C §§ 1693, et seq.; (5) Breach of Contract; 6)  
22 Unjust Enrichment; and 7) Negligence.

23 On September 23, 2022, after the consolidation of that action and a similar pending  
24 action in federal court, Plaintiffs Natalie Tristan, Avantika Ahuja, and Phillip Myers filed a  
25 Consolidated Amended Class Action Complaint (Dkt. 29). On June 28, 2023, in response to  
26 motions to dismiss from Defendants, the Court dismissed all claims except Plaintiffs’ claims  
27 against the Bank for breach of the contracts’ express terms, breach of the implied covenant of  
28

1 good faith and fair dealing. *See* Order of June 28, 2023 Granting In Part Defendants’ Motion to  
2 Dismiss (“Order”) (Dkt. 51).

3 Plaintiffs filed their Second Amended Complaint on July 28, 2023 (Dkt. 57). On October  
4 26, 2023, the Court granted Defendants’ motions to dismiss in part and denied them in part (Dkt.  
5 75). As relevant here, the Court dismissed the following claims with leave to amend: (1)  
6 Plaintiffs Ahuja and Myers’ EFTA claims against Defendant Bank of America; (2) Plaintiffs’  
7 UCL and FAL claims against Defendant Bank of America and EWS; (3) Plaintiff Myers’  
8 NDTPA claim against Defendant Bank of America; and (4) Plaintiffs’ claim under the  
9 NCUTPA against Defendant Bank of America. Dkt. 75. The Court also denied Defendant’s  
10 Motions as to Plaintiff Tristan’s claim for breach of the implied covenant of good faith and fair  
11 dealing. *Id.* The Court dismissed with prejudice the following claims: (1) Plaintiff Tristan’s  
12 claim against Defendant Bank of America for breach of the express terms of the contract; (2)  
13 Plaintiffs Ahuja and Myers’ EFTA claims against EWS; and (3) Plaintiff Myers’ NDTPA claim  
14 against Defendant Bank of America. *Id.* Defendant EWS was subsequently dismissed from the  
15 case, as all claims against it had been dismissed with prejudice.

16 Plaintiffs filed their Third Amended Complaint on November 22, 2023 (“TAC”) (Dkt.  
17 79). Defendant filed a Motion to Dismiss on December 22, 2023 (Dkt. 91). The Court dismissed  
18 Plaintiffs’ UCL and EFTA claims without leave to amend on February 29, 2024 (Dkt. 97).

19 Defendant Bank of America filed the present Motion for Summary Judgment (“Motion”)  
20 on August 26, 2024 (Dkt. 132). The Parties jointly stipulated to dismiss Plaintiff Ahuja on  
21 September 6, 2024 (Dkt. 138). Plaintiffs filed their Opposition to the Motion for Summary  
22 Judgment (“Opposition”) on September 9, 2024 (Dkt. 147). Defendant filed its Reply in Support  
23 of the Motion for Summary Judgment (“Reply”) on September 16, 2024 (Dkt. 167). The Court  
24 heard oral arguments on the Motion on September 30, 2024.

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26 **II. LEGAL STANDARD**

27 Summary judgment is proper if “the movant shows that there is no genuine dispute as to  
28 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.

1 56(a). Summary judgment is to be granted cautiously, with due respect for a party’s right to  
2 have its factually grounded claims and defenses tried to a jury. *Celotex Corp. v. Catrett*, 477  
3 U.S. 317, 327 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A court must  
4 view the facts and draw inferences in the manner most favorable to the non-moving party.  
5 *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1992); *Chevron Corp. v. Pennzoil Co.*, 974  
6 F.2d 1156, 1161 (9th Cir. 1992). The moving party bears the initial burden of demonstrating the  
7 absence of a genuine issue of material fact for trial, but it need not disprove the other party’s  
8 case. *Celotex*, 477 U.S. at 323. When the non-moving party bears the burden of proving the  
9 claim or defense, the moving party can meet its burden by pointing out that the non-moving  
10 party has failed to present any genuine issue of material fact as to an essential element of its  
11 case. *See Musick v. Burke*, 913 F.2d 1390, 1394 (9th Cir. 1990).

12         Once the moving party meets its burden, the burden shifts to the opposing party to set  
13 out specific material facts showing a genuine issue for trial. *See Liberty Lobby*, 477 U.S. at  
14 248–49. A “material fact” is one which “might affect the outcome of the suit under the  
15 governing law . . . .” *Id.* at 248. A party cannot create a genuine issue of material fact simply by  
16 making assertions in its legal papers. *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter*  
17 *Kidde & Co., Inc.*, 690 F.2d 1235, 1238 (9th Cir. 1982). Rather, there must be specific,  
18 admissible, evidence identifying the basis for the dispute. *See id.* The Court need not “comb the  
19 record” looking for other evidence; it is only required to consider evidence set forth in the  
20 moving and opposing papers and the portions of the record cited therein. Fed. R. Civ. P.  
21 56(c)(3); *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001). The Supreme  
22 Court has held that “[t]he mere existence of a scintilla of evidence . . . will be insufficient; there  
23 must be evidence on which the jury could reasonably find for [the opposing party].” *Liberty*  
24 *Lobby*, 477 U.S. at 252.

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26 **III. DISCUSSION**

27         Plaintiffs’ only remaining claims against Defendant Bank of America are: (1) Myers’  
28 Breach of Contract claim and (2) Myers and Tristan’s Breach of the Covenant of Good Faith and

1 Fair Dealing claims. Defendant argues that both claims should be dismissed on summary  
2 judgment.

3 The Court finds that there are no genuine disputes as to material facts, the Plaintiffs’  
4 claims fail as a matter of law, and thus all claims should be dismissed.

5 **A. Myers’ Express Breach of Contract Claim**

6 In its October 2023 Order on Defendant’s Motion to Dismiss, the Court dismissed  
7 Plaintiff Tristan’s express breach of contract claim (Dkt. 75). The Court reasoned that “the  
8 explicit language of the OBSA as it existed at the time warned [Tristan] she would not be  
9 reimbursed for the type of payment she sent.” October 2023 Order at 5. Tristan was specifically  
10 notified in the OBSA that unauthorized payments, for which she would be reimbursed, differed  
11 from scams such as when the recipient “offer[s] to provide a good, service, or additional funds  
12 while intending to provide nothing in return.” *Id.* Tristan made Zelle payments to a scammer  
13 for application fees, a security deposit, and first month’s rent and then the scammer disappeared  
14 and did not provide the rental. Reply to SGD #36-43.

15 Although the scam that Myers was tricked into was different than Tristan’s rental scam,  
16 Myers’ facts are still covered by the warning in the OBSA and the rationale discussed in the  
17 Court’s October 2023 Order. Myers was tricked into thinking he was receiving help from an  
18 Amazon customer service representative over the phone. Myers made several payments over  
19 Zelle to the scammer who was not in fact an Amazon representative. The scammer did not help  
20 Myers with his Amazon problem and instead stole his money. Reply to SGD #134-139. The  
21 OBSA states that scams, as distinct from unauthorized payments, include transactions where  
22 the “Recipient convinces a Sender to send money with Zelle by (i). pretending to be or to  
23 represent another person or entity; or (ii). offering to provide a good, service, or additional  
24 funds while intending to provide nothing in return.” Reply to SGD #176. It also states that  
25 authorized payments are not protected and include, “IF YOU DO NOT RECEIVE THE  
26 GOODS OR SERVICES THAT YOU PAID FOR, OR THE GOODS OR SERVICES THAT  
27 YOU RECEIVED ARE DAMAGED OR ARE OTHERWISE NOT WHAT YOU  
28 EXPECTED.” *Id.* #28. Just as with Tristan, this language covers what happened to Myers.

1 Someone pretending to represent an entity tricked him into sending money as part of a service  
2 that did not exist and Myers received nothing in return. He was scammed into making  
3 payments. Thus, Myers' claim for reimbursement from Bank of America is expressly precluded  
4 by the contract language. His express breach of contract claim, like Tristan's, fails.

5 **B. Tristan and Myers' Breach of the Implied Covenant of Good Faith and Fair**  
6 **Dealing Claims**

7 The duty of good faith and fair dealing is implied in every contract. Breach of the duty,  
8 unlike breach of contract, involves "a conscious and deliberate act, which unfairly frustrates the  
9 agreed common purposes and disappoints the reasonable expectations of the other party thereby  
10 depriving that party of the benefits of the agreement." *Careau & Co. v. Sec. Pac. Bus. Credit,*  
11 *Inc.*, 222 Cal. App. 3d 1371, 1394 (1990). It is possible to abide by the contract's express terms  
12 yet still violate the implied duty. But "no obligation can be implied that would result in the  
13 obliteration of a right expressly given under a written contract." *New Hampshire Ins. Co. v.*  
14 *Ridout Roofing Co.*, 68 Cal. App. 4th 495, 505 (1998). In other words, the implied duty cannot  
15 lead to a result in which one party must act in a way directly at odds with the contract's terms.

16 Here, Defendant argues that Plaintiffs' implied covenant claims fail because (1) the law  
17 does not permit implied covenant claims for misinterpretation of contract terms, (2) the  
18 OBSA's express terms require dismissal of the claim, and (3) Plaintiffs did not have a  
19 reasonable expectation of reimbursement.

20 First, Defendant argues that "there is no such thing as an implied-covenant claim  
21 for failure to interpret a contract in a certain way." Motion at 12. Defendant relies heavily on  
22 the Ninth Circuit's recent case, *Schertzer v. Bank of America*, 109 F.4th 1200, 1214 (9th Cir.  
23 2024), for the proposition that allegations of contract misinterpretation are confined to express  
24 breach of contract claims not implied covenant claims. In affirming a grant of summary  
25 judgment on an implied claim, the *Schertzer* court held, "[the implied covenant] claim is  
26 indistinguishable from Plaintiff's breach of contract claim. It hinges on contract interpretation,  
27 and not on any alleged attempt by BOA to frustrate 'the agreed common purposes' of the  
28 contract." *Schertzer v. Bank of Am., NA*, 109 F.4th 1200, 1214 (9th Cir. 2024) (quoting *Careau*

1 at 1394). In this sense, *Schertzer* confirms that an implied covenant claim must go to the party's  
2 performance under the contract. Defendant construes Plaintiffs' position to be that the Bank  
3 breached the implied covenant by merely adopting an unreasonable interpretation of  
4 "unauthorized transactions." Motion at 15. While this is undoubtedly part of the Plaintiffs'  
5 argument, Plaintiffs also argue that the Bank's "performance in categorizing, investigating, and  
6 resolving Zelle transactions" was arbitrary and in bad faith, constituting a breach of the implied  
7 covenant. Opposition at 13.

8 In accordance with *Schertzer*, this Court finds that Plaintiffs' implied claim fails in so far  
9 as it relies on an argument about contract interpretation. Plaintiffs' argument that the Bank's  
10 performance violated the implied covenant runs into another problem. The implied obligations  
11 under the covenant of good faith and fair dealing cannot contradict express contract terms. *See*  
12 *New Hampshire*, 68 Cal. App. 4th 495, 505. Here, as this Court held in its October 2023 Order  
13 dismissing Tristan's express breach of contract claim, the explicit language of the contracts  
14 governing Zelle transactions made it clear that Plaintiffs would not be reimbursed for the  
15 transactions they made. October 2023 Order at 5. Thus, this Court cannot impose a duty on the  
16 Bank to reimburse transactions that the contract terms expressly refute. Defendant makes this  
17 point persuasively. Motion at 16.

18 Plaintiffs respond that their implied covenant claim would still permit the Bank to deny  
19 reimbursement for authorized transactions as the contracts state. Opposition at 14. The claim  
20 "does not require the Bank to interpret the OBSA contrary to the Court's prior order; it requires  
21 the Bank to wield its discretion reasonably and in good faith when reviewing accountholders'  
22 disputed Zelle transactions." Opposition at 14. This is a compelling distinction. It is true that  
23 imposing an obligation on the Bank to review transactions more transparently and rationally  
24 would not necessarily result in reimbursing authorized transactions.

25 However, the Plaintiffs' distinction does not save its claims here because there is no  
26 evidence that Tristan or Myers' transactions were inappropriately classified as "authorized  
27 transactions" according to the language of the contract. A change in the Bank's process would  
28 not result in a different outcome for either Plaintiff under the terms of the contracts. It is

1 undisputed that both Myers and Tristan made the transactions themselves to the scammers that  
2 preyed on them. Both Myers and Tristan’s transactions were governed by contract language  
3 stating, “NEITHER WE NOR ZELLE OFFER A PROTECTION PROGRAM FOR  
4 AUTHORIZED PAYMENTS MADE THROUGH THE SERVICE (FOR EXAMPLE, IF YOU  
5 DO NOT RECEIVE THE GOODS OR SERVICES THAT YOU PAID FOR, OR THE  
6 GOODS OR SERVICES THAT YOU RECEIVED ARE DAMAGED OR ARE OTHERWISE  
7 NOT WHAT YOU EXPECTED).” Reply to SGD #28. No amount of additional good faith or  
8 reasonableness on the part of the Bank would change the fact that, by the terms of the contract,  
9 their transactions were authorized and thus not reimbursable. There might be other victims of  
10 Zelle scams whose experiences do not so clearly fall under the above contract terms. But here,  
11 the Bank reasonably found that Tristan and Myers’ transactions were authorized in that they  
12 made the transactions.

13 Moreover, the fact that the Bank sometimes does reimburse a subset of authorized  
14 transactions does not change the terms of the applicable contracts. *Id.* #181-183. *See* Opposition  
15 at 4. If the Bank wants to be more generous with some kinds of scams, that is not a breach of  
16 the implied covenant. While the Bank’s reasoning about which kinds of authorized transactions  
17 to reimburse might appear arbitrary, those decisions do not alter the Zelle terms under which  
18 Myers and Tristan operated. The Bank told them they would not be reimbursed, and they were  
19 not reimbursed. Thus, as a matter of law, the Bank did not breach the implied covenant of good  
20 faith and fair dealing in its handling of Plaintiffs’ transactions.

21 Finally, the Court need not address whether Myers and Tristan had reasonable  
22 expectations of reimbursement under the contract because the undisputed contract terms and the  
23 Bank’s application of those terms to the transactions here do not show the Bank hindered the  
24 “agreed common purposes...thereby depriving that party of the benefits of the agreement.”  
25 *Careau* at 1394. There is not sufficient evidence for a reasonable jury to find a breach of the  
26 implied covenant of good faith and fair dealing based on the undisputed facts discussed above.

1 **IV. DISPOSITION**

2 For the foregoing reasons, the Court hereby GRANTS Defendant’s Motion for Summary  
3 Judgment on all claims. Accordingly, the Court hereby DENIES the Motion for Class  
4 Certification and Appointment of Class Counsel as moot (Dkt. 117).

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6 DATED: September 30, 2024

*David O. Carter*

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8 DAVID O. CARTER

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9 UNITED STATES DISTRICT JUDGE

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