

**BEFORE THE UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**In re: Bank of America Fraudulent Account  
Litigation**

**MDL No.**

**MOTION FOR TRANSFER AND COORDINATION  
OR CONSOLIDATION UNDER 28 U.S.C. §1407**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Movant-Plaintiff Charles F. Barrett (“Barrett” or “Plaintiff”), respectfully moves the Judicial Panel on Multidistrict Litigation (“Panel”) to transfer and centralize the actions listed in the Schedule of Actions, and subsequent tag-along actions, to the Honorable Waverly D. Crenshaw, Jr., Chief United States District Court Judge for the Middle District of Tennessee, who currently presides over the action brought by Plaintiff, for coordinated or consolidated pretrial proceedings.

Transfer and centralization of these actions is appropriate for the following reasons:

1. Bank of America operates in all 50 states and the District of Columbia. In September 2022, Bank of America, N.A. had over \$3.1 trillion in total assets.
2. Bank of America offers an array of financial products and services to consumers, including credit cards.
3. Until January 1, 2023, Bank of America formally evaluated its employees’ overall performance and incentive compensation by considering, among other factors, the number of new products or services that employees had sold to Bank of America customers.
4. Pressured to increase sales in order to keep their jobs or earn incentive bonuses, Bank of America’s employees submitted applications for and issued credit cards without consumers’ knowledge or consent.

5. When a consumer applies for a credit card, Bank of America obtains consumer reports (i.e., credit reports) on the applicant. When a potential lender obtains a credit report for the purpose of determining a consumer's creditworthiness, this activity is noted on future credit reports and negatively affects a consumer's credit rating (i.e., the credit score).

6. During the process of applying for credit cards without consumers' knowledge or consent, Bank of America would sometimes use or obtain consumer reports. Bank of America had no permissible purpose for obtaining these reports. Obtaining these reports had a negative impact on the consumers whose reports were obtained.

7. Bank of America benefitted from these accounts created without consumers' knowledge or consent because, among other things, Bank of America collected fees on those accounts.

8. Bank of America's conduct was investigated by the Consumer Financial Protection Bureau ("CFPB"), which determined that this conduct violated Truth in Lending Act, the Fair Credit Reporting Act, and the Consumer Financial Protection Act. On July 10, 2023, Bank of America settled with the CFPB and agreed to pay a civil penalty of \$30 million and to provide redress to affected customers.

9. Although Bank of America contends that it no longer imposes sales goals on the employees primarily responsible for consumer credit card accounts, this addresses only one cause of the issuance of credit cards without consumers' knowledge or consent. Moreover, the elimination of sales goals for purposes of formal performance evaluations and bonus eligibility does not necessarily mean that Bank of America does not consider employees' sales volume when making employment decisions.

10. Bank of America's actions have harmed impacted consumers. This harm includes being charged fees by Bank of America on the credit cards, being put into collections for failure to pay fees accruing without customers' knowledge, losing control over their personal identifying information, spending time and effort to investigate the facts and seeking to close unwanted accounts, and having to more carefully monitor their credit going forward, including through costly identity theft protection services.

11. Consumers' credit ratings are also negatively affected when Bank of America pulls their credit reports as well as if consumers incur fees or other charges on the accounts opened without their knowledge or consent. As a result of lowered credit ratings, consumers face greater difficulty in finding jobs and obtaining credit, including car loans and mortgages.

12. Although purportedly the unwanted credit card accounts constituted a small percentage of Bank of America new accounts, the size of Bank of America means that a small percentage is still a large number of accounts in absolute terms.

13. Movant's case was filed on July 28, 2023 in the Middle District of Tennessee, Nashville Division. *See Barrett v. Bank of America Corp. and Bank of America, N.A.*, 3:23-cv-00764 (M.D. of Tenn.) (Judge Crenshaw).

14. To date, six additional actions seeking similar relief in federal court have been filed (referred to collectively, with the Movant's Action, as the "Actions").<sup>1</sup> In total, there are seven putative class actions pending in the following three different districts:

- *Barrett v. Bank of America Corp., et al.*, No. 3:23-cv-00764 (M.D. Tenn.) (filed July 27, 2023)
- *Ballard, et al. v. Bank of America, N.A., et al.*, No. 3:23-cv-422-MOC-DCK (W.D.N.C.) (filed July 13, 2023)

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<sup>1</sup> The Schedule of Actions is attached to the accompanying Brief as Exhibit "A." Complaints (without exhibits) in the Actions and their related docket sheets are attached to the accompanying Brief as Exhibits "B-H."

- *Magers, et al. v. Bank of America, N.A., et al.*, Case No. 3:23-cv-459 (W.D.N.C.) (filed July 25, 2023)
- *Christensen v. Bank of America, N.A.*, No. 3:23-cv-00468 (W.D.N.C.) (filed July 27, 2023)
- *Jones, et al. v. Bank of America, N.A., et al.*, No. 3:23-cv-00491 (W.D.N.C.) (filed August 4, 2023)
- *Schak v. Bank of America, N.A., et al.*, No. 1:23-cv-06127 (N.D. Ill.) (filed August 25, 2023)
- *Stripling, et al. v. Bank of America, N.A.*, No. 1:23-cv-06829 (N.D. Ill.) (filed September 1, 2023)

15. In light of the fact there are thousands of consumers impacted by Defendants' conduct, more cases will likely be filed.

16. The Actions, as well as any additional tag-along actions pending against Defendant, will involve similar if not identical questions of fact, and will involve common discovery and pretrial motion practice, and will have numerous overlapping class claims. Accordingly, there is the potential for inconsistent pretrial rulings if the cases are not transferred for coordinated or consolidated proceedings pursuant to 28 U.S.C. § 1407.

17. The convenience of the courts, witnesses, parties, and counsel will all be served by transferring these cases to the Middle District of Tennessee and specifically to the Honorable Waverly D. Crenshaw, Jr., Chief United States District Court Judge for the Middle District of Tennessee, for coordinated or consolidated pretrial proceedings.

18. In support of the motion, Movant relies upon:

- (a) the Brief describing the background of the litigation and Movant's factual and legal contentions;
- (b) the Schedule of Actions providing: (1) the complete name of each action involved, listing the full name of each party included; (2) the district court and division where each action is pending; (3) the civil action number of

each action; and (4) the name of the Judge assigned to each action, if available;

- (c) a copy of all complaints (without exhibits) and docket sheets for all actions listed on the Schedule of Actions (attached as Exhibits A with the accompanying Brief); and
- (d) the Proof of Service.

WHEREFORE, Movant respectfully request that the Panel grant his motion and transfer all of the Actions to the Middle District of Tennessee for coordinated or consolidated pretrial proceedings and assign them to the Honorable Waverly D. Crenshaw, Jr.

Dated: September 13, 2023

Respectfully submitted,

*/s/ Charles J. LaDuca* \_\_\_\_\_

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