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2 CYRUS ZAL, A PROFESSIONAL CORPORATION
3 102 Mainsail Court
4 Folsom, CA 95630
5 (916) 985-3576
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7 Attorney for Defendant Derek Bluford and Defendant and
8 Cross-Complainant Quicklegal, Inc.

FILED
Superior Court Of California,
Sacramento
03/15/2017
amocanu
By _____, Deputy
Case Number:
34-2015-00181746

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 CHANGMING LIU, an individual, and
13 AIMEI WEI, an individual,

14 Plaintiffs,

15 v.

16 CALIFORNIA LEGAL PRO'S, INC., A
17 California corporation; DEREK
18 BLUFORD, an individual;
19 QUICKLEGAL, INC., A California
20 corporation; BANK OF AMERICA,
21 N.A., and DOES 1 through 50,
22 inclusive,

23 Defendants.

24 QUICKLEGAL, INC., a California
25 corporation,
Cross-Complainant,

v.

BANK OF AMERICA, N.A., and ROES
1 through 50, inclusive,
Cross-Defendants.

CASE NO. 34-2015-00181746-CU-
FR-GDS

**FIRST AMENDED CROSS-COMPLAINT
OF QUICKLEGAL, INC. AGAINST BANK
OF AMERICA FOR:**

1. BREACH OF IMPLIED CONTRACT;
2. BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING;
3. UNLAWFUL AND UNFAIR BUSINESS
PRACTICES;
4. CONVERSION; AND
5. DECLARATORY RELIEF

ACTION FILED: April 14, 2015
TRIAL DATE: None



1 Cross-Complainant Quicklegal, Inc. hereby files this First Amended Cross-
2 Complaint against Cross-Defendant Bank of America, N.A., and alleges as follows:

3 1. Cross-Complainant Quicklegal, Inc., ("Quicklegal") is a corporation
4 organized under the laws of the State of California and is doing business in the County
5 of Sacramento, California.

6 2. Cross-Defendant Bank of America, N.A., ("Bank of America") is a
7 banking institution doing business in the County of Sacramento, California.

8 3. The true names and capacities, whether individual, corporate, associate,
9 partnership or otherwise, of Cross-Defendants named herein as ROES 1 through 50
10 are unknown to Cross-Complainant, who therefore sues said Cross-Defendants by
11 such fictitious names pursuant to California Code of Civil Procedure §474. When the
12 true names and capacities of said Cross-Defendants are ascertained, Cross-
13 Complainant will amend the Cross-Complaint by inserting said true names and
14 capacities in place of said fictitious names and capacities. Cross-Complainant is
15 informed and believes and thereon alleges that ROES 1 through 50, and each of them,
16 are legally responsible in some manner for the events and happenings referred to
17 herein, and proximately caused or contributed to the injuries and damages to Cross-
18 Complainant which are hereinafter alleged. Whenever in this Cross-Complaint any
19 Cross-Defendant is the subject of any charging allegation by Cross-Complainant, it
20 shall be deemed that said Cross-Defendants ROES 1 through 50 are likewise the
21 subject of said charging allegation.
22

23 4. Cross-Complainant is informed and believes, and on the basis of that
24 information and belief alleges, that Cross-Defendants, including the ROE Cross-
25

1 Defendants, were agents and employees of each other and in doing the acts alleged
2 herein were acting within the course and scope of that agency and employment. At all
3 times relevant herein, each of the Cross-Defendants, including the ROE Cross-
4 Defendants, was the agent, servant, partner, officer, director, or employee of each of
5 the remaining Cross-Defendants and was doing the acts herein complained of within
6 the scope of his/her/its agency and employment.

7
8 **FIRST CAUSE OF ACTION**
9 **[BREACH OF IMPLIED CONTRACT]**

10 5. Quicklegal refers to the allegations contained in paragraphs 1 through 4
11 above and incorporates them by reference as though fully set forth anew.

12 6. In or about 2014, Quicklegal opened demand deposit accounts with
13 Bank of America. At the time Quicklegal opened the demand deposit accounts, the
14 representatives of Quicklegal were handed a "Welcome Package" from the Bank of
15 America that contained the Bank of America's "Deposit Agreement and Disclosures"
16 ("Deposit Agreement"). At the time Quicklegal opened the said demand deposit
17 accounts, no employee of the Bank of America explained to Quicklegal or pointed out
18 to Quicklegal any of the contents of the Deposit Agreement. The Bank of America
19 Deposit Agreement consisted of 49 pages of extremely small print.

20 7. At the time Quicklegal opened the said demand deposit accounts, there
21 were absolutely no negotiations between Quicklegal and the Bank of America with
22 respect to the terms and conditions contained in the Bank of America's Deposit
23 Agreement. The Deposit Agreement was presented to Quicklegal as a "*fait accompli*"
24 and as a "take it or leave it" agreement. At the time Quicklegal opened the said
25 demand deposit accounts, no one from the Bank of America mentioned or explained to
Quicklegal any of the following clauses set forth in the Deposit Agreement: (1) the

1 "Freezing Clause" found on page 34 of the Deposit Agreement that stated that the
2 Bank of America in its discretion could freeze the funds in Quicklegal's deposit
3 demand accounts; (2) the "Conflicting Demands and Disputes" clause found on page
4 34 of the Deposit Agreement that stated that the Bank of America in its discretion
5 could freeze the funds in Quicklegal's deposit demand accounts and interplead the
6 said funds into court; (3) the "How Claims on Business Accounts Will Be Resolved"
7 clause found on page 46 of the Deposit Agreement that prohibited Quicklegal from
8 filing a representative action (class action) against Bank of America; or (4) the **CLASS**
9 **ACTION AND JURY TRIAL WAIVER FOR BUSINESS ACCOUNTS** clause found on
10 page 47 of the Deposit Agreement that purported to deny the right to a jury trial and
11 the right to file or participate in a class action lawsuit against Bank of America. These
12 four clauses were all "hidden" in the Deposit Agreement, a 49-page document
13 consisting of very fine print. Under California law, the Freezing Clause, the Conflicting
14 Demands and Disputes Clause, the How Claims on Business Accounts Will Be
15 Resolved Clause and the **CLASS ACTION AND JURY TRIAL WAIVER FOR**
16 **BUSINESS ACCOUNTS** Clause in the Deposit Agreement are all unconscionable and
17 unenforceable clauses of the Deposit Agreement.

18
19 8. If a contract, or any portion thereof, is found to be an unconscionable
20 contract, California Civil Code §1670.5(a) provides the remedies for such an
21 unconscionable contract:

22 "(a) If the court as a matter of law finds the contract or any clause of the
23 contract to have been unconscionable at the time it was made the court may refuse to
24 enforce the contract, or it may enforce the remainder of the contract without the
25 unconscionable clause, or it may so limit the application of any unconscionable clause
as to avoid any unconscionable result."

9. The portions of the Deposit Agreement that are unconscionable and

1 unenforceable are the above-referenced sections entitled "Freezing' Your Account";
2 "Conflicting Demands and Disputes"; "How Claims on Business Accounts Will Be
3 Resolved"; and **"CLASS ACTION AND JURY TRIAL WAIVER FOR BUSINESS
4 ACCOUNTS"**.

5 a. The "Freezing Your Account" clause states as follows:

6 "If at any time we believe that your account may be subject to
7 irregular, unauthorized, fraudulent or illegal activity, we may,
8 in our discretion, freeze the funds in the account and in other
9 accounts you maintain with us, without any liability to you, until
10 such time as we are able to complete our investigation of the
11 account and transactions. If we do freeze your account funds,
12 we will provide notice to you as soon as reasonably possible.
13 We may not provide this notice to you prior to freezing the
14 account if we believe that such notice could result in a security
15 risk to us or to the owner of the funds in the account."

16 For reference purposes, the section quoted above will be referred to herein as
17 "the Freezing Clause".

18 b. The "Conflicting Demands and Disputes" clause states as follows:

19 "We are not required to make payment from an account to a signer, a payee, a
20 beneficiary of trust accounts or Payable on Death (POD) account, or to any
21 other person claiming an interest in any funds in the account:

- 22 • if we have actual knowledge of, or otherwise believe in good faith that there
23 may be a bona fide dispute between the signers, beneficiaries, payees, or
24 other persons concerning their rights to the account proceeds or
- 25 • if we are otherwise uncertain as to who is entitled to the account funds.

We may notify all signers, beneficiaries, payees, and other persons claiming an
interest in the account of the dispute or uncertainty without liability to you.

We also may, at our option and without liability to you, take one or more of
these actions:.....

- freeze all or part of the funds until the dispute is resolved to our
satisfaction;...

- 1
- pay the funds into an appropriate court for resolution; or
 - refuse to disburse any funds in the account to any person until such time as: all persons claiming an interest in the account consent in writing to a resolution of the dispute or a court of proper jurisdiction authorizes or directs the payment; or the person with a conflicting claim withdraws his or her claim in writing.

2
3
4
5
6 You are liable for all expenses and fees we incur, including attorneys' fees, and
7 we may charge them to your account."

8 For reference purposes, the section quoted above will be referred to herein as
9 "the Conflicting Demands and Disputes Clause".

10 c. The objectionable portion of the "How Claims on Business Accounts Will Be
11 Resolved" clause states as follows:

12 "The arbitration, judicial reference or trial by a judge will take place on an
13 individual basis without resort to any form of class or representative action."

14 For reference purposes, the section quoted above will be referred to herein as
15 "the How Claims Will Be Resolved Clause".

16 d. The **CLASS ACTION AND JURY TRIAL WAIVER FOR BUSINESS**
17 **ACCOUNTS** clause states as follows:

18 **"FOR BUSINESS ACCOUNTS, YOU AND WE AGREE AND UNDERSTAND:**

19
20 **(1) THAT YOU AND WE ARE BOTH GIVING UP THE RIGHT TO TRIAL**
21 **BY JURY, AND (2) THAT THIS SECTION PRECLUDES YOU AND US**
22 **FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS**
23 **OR REPRESENTATIVE ACTION OR JOINING OR CONSOLIDATING**
24 **THE CLAIMS OF OTHER PERSONS. THIS IS A CLASS ACTION**
25 **WAIVER AND A JURY TRIAL WAIVER."**

24 For reference purposes, the section quoted above will be referred to herein as
25 the "Class Action and Jury Trial Waiver Clause".

1 10. The Freezing Clause, the Conflicting Demands and Disputes Clause, the
2 How Claims on Business Accounts Will Be Resolved Clause and the Class Action and
3 Jury Trial Waiver Clause are all unconscionable and unenforceable clauses for the
4 following reasons:

5 a. The Freezing Clause merely requires a *subjective* belief on the
6 part of the Bank of America of irregular, unauthorized, fraudulent or illegal activity, and
7 does not even require a *good faith belief*, or a *reasonable belief*, or an *objective* belief
8 based on evidence. So even if the Bank of America has an unreasonable or bad faith
9 belief that one of its depositors' accounts has had "irregular, unauthorized, fraudulent
10 or illegal activity", it may freeze such account *indefinitely*, and basically convert the
11 deposit accounts to its own use indefinitely because it has a subjective "belief" of
12 improper activity on the account, even if that belief is not based in reality and is
13 unreasonable. This clause is a totally unfair, oppressive and totally one-sided clause in
14 favor of Bank of America that Bank of America failed to disclose to Quicklegal at the
15 time Quicklegal opened the said accounts.
16

17 b. The Conflicting Demands and Disputes clause merely requires a
18 "belief in good faith" that there may be a bona fide dispute among various persons,
19 and allows the Bank of America to freeze the funds merely because the Bank of
20 America is "uncertain as to who is entitled to the account funds", which is again a
21 subjective belief that has no defined or reasonable limits. This clause is a totally unfair,
22 oppressive and totally one-sided clause in favor of Bank of America that Bank of
23 America failed to disclose to Quicklegal at the time Quicklegal opened the said
24 accounts.
25

1 c. The Freezing Clause purports to absolve the Bank of America of
2 all liability under all circumstances in which an account is frozen under the Freezing
3 Clause, even when the Bank of America acts in bad faith, acts unreasonably, or acts
4 maliciously, or acts illegally and wrongfully. This clause is a totally unfair, oppressive
5 and totally one-sided clause in favor of Bank of America that Bank of America failed to
6 disclose to Quicklegal at the time Quicklegal opened the said accounts.

7 d. The Freezing Clause and the Conflicting Demands and Disputes
8 clause do not provide an objective basis to have the account unfrozen, they do not
9 provide an objective procedure or process to have the account unfrozen, and they do
10 not even provide a reasonable time limit when the Bank's "investigation" is to be
11 completed so that the account can be unfrozen. The Depositor remains in limbo at the
12 complete whim and mercy of the Bank of America, as the only criteria for freezing the
13 account is the Bank's subjective "belief" that something is amiss, and apparently
14 according to the Freezing Clause and the Conflicting Demands and Disputes clause,
15 the account may remain frozen as long as the Bank has that subjective "belief" that
16 something is amiss, even if that belief is unreasonable, in bad faith, malicious or not
17 based in reality. This clause is a totally unfair, oppressive and totally one-sided clause
18 in favor of Bank of America that Bank of America failed to disclose to Quicklegal at the
19 time Quicklegal opened the said accounts..

20
21 e. The How Claims Will Be Resolved Clause purports to deny
22 Quicklegal its important right to a class action without having notified Quicklegal that it
23 was giving up this important right, without Quicklegal's knowledge that it was giving up
24 this important right, and without having obtained the informed consent of Quicklegal to
25

1 give up this important legal right. This clause is a totally unfair, oppressive and totally
2 one-sided clause in favor of Bank of America that Bank of America failed to disclose to
3 Quicklegal at the time Quicklegal opened the said accounts.

4 f. The Class Action and Jury Trial Waiver Clause purports to deny
5 Quicklegal its important rights to a class action and a jury trial without having notified
6 Quicklegal that it was giving up these important rights, without Quicklegal's knowledge
7 that it was giving up these important rights, and without having obtained the informed
8 consent of Quicklegal to give up these important legal rights. This clause is a totally
9 unfair, oppressive and totally one-sided clause in favor of Bank of America that Bank
10 of America failed to disclose to Quicklegal at the time Quicklegal opened the said
11 accounts.

12
13 11. The case law has provided certain criteria and standards to determine
14 whether a contract, or any portion thereof, is unconscionable, and the case law has
15 also provided certain criteria and standards to determine whether the contract is a
16 contract of adhesion. Under these criteria and standards established by the case law,
17 it is clear that the Freezing Clause, the Conflicting Demands and Disputes Clause, the
18 How Claims on Business Accounts Will Be Resolved Clause, and the Class Action and
19 Jury Trial Waiver Clause are all unconscionable and also constitute a contract of
20 adhesion, and are hence unenforceable against Quicklegal.

21 12. In the landmark case of *Flores v. TransAmerica Homefirst, Inc.* (2001) 93
22 Cal.App.4th 846 at 853, the First District Court of Appeal stated in a thorough analysis
23 the criteria and standards that the courts employ to determine whether a contract is
24 unconscionable and whether the contract is a contract of adhesion:
25

1 “In *A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 186 Cal.Rptr.
2 114 (*A & M Produce*), the court outlined an analytic framework for determining
3 whether a particular contractual provision is unconscionable, explaining that
4 unconscionability has both a procedural and a substantive element. (*Id.* at p. 486, 186
5 Cal.Rptr. 114.) The *procedural* element focuses on ‘oppression’ or ‘surprise.’ (*Id.* at pp.
6 486, 491, 186 Cal.Rptr. 114.) Oppression arises from an inequality of bargaining
7 power that results in no real negotiation and an absence of meaningful choice.
8 Surprise involves the extent to which the supposedly agreed-upon terms are hidden in
9 a prolix printed form drafted by the party seeking to enforce them. (*Id.* at p. 486, 186
10 Cal.Rptr. 114.) The *substantive* element has to do with the effects of the contractual
11 terms and whether they are overly harsh or one-sided. (*Id.* at p. 487, 186 Cal.Rptr.
12 114; see also *Armendariz, supra*, 24 Cal.4th at pp. 114, 118–119, 99 Cal.Rptr.2d 745,
13 6 P.3d 669; *Stirlen, supra*, 51 Cal.App.4th at p. 1532, 60 Cal.Rptr.2d 138.)⁶ Analysis of
14 unconscionability begins with an inquiry into whether the contract was a contract of
15 adhesion—i.e., a standardized contract, imposed upon the subscribing party without
16 an opportunity to negotiate the terms. (*Armendariz, supra*, 24 Cal.4th at pp. 113–114,
17 99 Cal.Rptr.2d 745, 6 P.3d 669; *Graham, supra*, 28 Cal.3d at p. 817, 171 Cal.Rptr.
18 604, 623 P.2d 165; see generally, *Neal v. State Farm Ins. Cos.* (1961) 188 Cal.App.2d
19 690, 694, 10 Cal.Rptr. 781.) A finding of a contract of adhesion is essentially a finding
20 of procedural unconscionability. (See *Stirlen, supra*, 51 Cal.App.4th at pp. 1533–1534,
21 60 Cal.Rptr.2d 138; *Kinney, supra*, 70 Cal.App.4th at p. 1329, 83 Cal.Rptr.2d 348.)”

22
23 13. When applying the criteria and standards established by the courts as
24 cited in the cases quoted above, it is clear that the Freezing Clause, the Conflicting
25 Demands and Disputes clause, and the How Claims Will Be Resolved Clause all

1 satisfy *both* the procedural and substantive elements of being an unconscionable
2 contract and a contract of adhesion, and hence all three clauses are unenforceable.

3 14. Pursuant to California Financial Code §40501, upon Quicklegal opening
4 demand deposit accounts with Bank of America, an implied contract was formed
5 between Bank of America and Quicklegal. California Financial Code §40501 states as
6 follows: "In accordance with the implied contract existing between a financial institution
7 and its depositor, no bank, savings association, credit union, or other financial
8 institution operating in this state which maintains and services demand deposit
9 accounts,, including NOW accounts, may release any funds from those accounts to
10 any person or entity who is not the account holder, unless the funds are released
11 pursuant to the depositor's authorization or in accordance with the law". Thus,
12 pursuant to California Financial Code §40501, Quicklegal had an implied contract with
13 Bank of America with respect to its demand deposit accounts.

14 15. After the instant action was filed on April 14, 2015, Bank of America
15 unlawfully, illegally and wrongfully froze the demand deposit accounts of Quicklegal. In
16 a letter dated June 2, 2015 from counsel for Bank of America to the undersigned
17 counsel for Quicklegal, counsel for Bank of America cited the Freezing Clause of the
18 Deposit Agreement as the justification for freezing the demand deposit accounts of
19 Quicklegal.

20 16. In a letter dated June 12, 2015 from the undersigned counsel for
21 Quicklegal to the counsel for Bank of America, counsel for Quicklegal stated that the
22 Freezing Clause contained in the Deposit Agreement was an unconscionable and
23 unenforceable clause of the Deposit Agreement pursuant to California Civil Code
24 §1670.5(a) and pursuant to the case law cited above, counsel for Quicklegal
25 demanded that Bank of America immediately unfreeze Quicklegal's bank account.

1 Counsel for Bank of America has never responded to the letter from Quicklegal's
2 counsel dated June 12, 2015, and Quicklegal's demand deposit accounts remain
3 frozen. The reason and basis that Bank of America gave for freezing Quicklegal's
4 demand deposit accounts was the fact that plaintiffs in the instant action had filed a
5 lawsuit against Quicklegal and against Bank of America, and plaintiffs had asserted a
6 cause of action against Bank of America for a constructive trust to be placed on the
7 funds in Quicklegal's demand deposit accounts in Bank of America. Thus, plaintiffs in
8 the instant action have made an "adverse claim" against the Bank of America with
9 respect to the funds in Quicklegal's demand deposit accounts in Bank of America.

10 17. The Freezing Clause and the Conflicting Demands and Disputes clause
11 contained in Bank of America's Deposit Agreement are null, void and unenforceable
12 as being against California state law and public policy. California Financial Code
13 §1450 states as follows:

14 "Notice to any bank of an adverse claim (the person making the adverse claim
15 being hereafter called 'adverse claimant') to a deposit standing on its books to the
16 credit of or to personal property held for the account of any person **shall be
17 disregarded, and the bank, notwithstanding the notice, shall honor the checks,
18 notes, or other instruments requiring payment of money by or for the account of
19 the person to whose credit the account stands** and on demand shall deliver that
20 property to, or on the order of, the person for whose account the property is held,
21 without any liability on the part of the bank; subject, however, to the exceptions
22 provided in subdivisions (a) and (b):

23 (a) If an adverse claimant delivers to the bank at the office at which the deposit is
24 carried or at which the property is held an affidavit of the adverse claimant stating that
25 of the adverse claimant's own knowledge the person to whose credit
the deposit stands or for whose account the property is held is a fiduciary for the
adverse claimant and that the adverse claimant has reason to believe the fiduciary is
about to misappropriate the deposit or the property, and stating the facts on which the
claim of fiduciary relationship and the belief are founded, the bank shall refuse
payment of the deposit and shall refuse to deliver the property for a period of not more
than three court days (including the day of delivery) from the date that

1 the bank received the adverse claimant's affidavit, without liability on its part and
2 without liability for the sufficiency or truth of the facts alleged in the affidavit.

3 (b) If at any time, either before, after, or in the absence of the filing of an affidavit by
4 the adverse claimant, the adverse claimant procures and serves upon the bank at the
5 office at which the deposit is carried or at which the property is held a restraining
6 order, injunction, or other appropriate order against the bank from a court of competent
7 jurisdiction in an action in which the adverse claimant and all persons in whose names
8 the deposit stands or for whose account the property is held are parties, the bank shall
9 comply with the order or injunction, without liability on its part." (**Bold** added).

10 18. The provisions of Financial Code §1450 are mandatory in that the statute
11 states that the Bank **shall** disregard any adverse claim being made by an adverse
12 claimant and **shall** honor the checks, etc., of the account holder, which in this case is
13 Quicklegal. Thus, the Freezing Clause and the Conflicting Demands and Disputes
14 clause in the Bank of America's Deposit Agreement are in direct violation of Financial
15 Code §1450, and are thus null, void and unenforceable as being contrary to the
16 express provision of law and contrary to public policy.

17 19. California Civil Code §1667 defines "unlawfulness" and states as follows:

18 "That is not lawful which is:

- 19 1. Contrary to an express provision of law;
- 20 2. Contrary to the policy of express law, though not expressly prohibited; or,
- 21 3. Otherwise contrary to good morals."

22 Pursuant to Civil Code §1667, Bank of America's Freezing Clause is not lawful
23 because it is contrary to an expressed provision of law, as found in Financial Code
24 §1450 cited above.

25 20. California Civil Code §1668 states as follows:

"All contracts which have for their object, directly or indirectly, to exempt anyone

1 from responsibility for his own fraud, or willful injury to the person or property of
2 another, or violation of law, whether willful or negligent, are against the policy of the
3 law.”

4 Bank of America's Freezing Clause attempts and purports to exempt Bank of
5 America from violation of the law when it states that the Bank of America shall not be
6 liable for freezing Quicklegal's demand deposit accounts. Thus, Bank of America
7 purported exemption from a violation of the law is void pursuant to Civil Code §1668
8 as being against the policy of the law. Consequently, Bank of America is liable to
9 Quicklegal for the freezing of Quicklegal's demand deposit accounts.

10 21. Quicklegal has performed all the conditions, covenants, and promises
11 required on its part to be performed in accordance with the terms and conditions of the
12 implied contract with Bank of America with respect to its demand deposit accounts,
13 except those obligations that Quicklegal was prevented or excused from performing.

14 22. Bank of America continued to illegally, wrongfully and unlawfully freeze
15 the demand deposit accounts of Quicklegal until the said funds in those accounts were
16 deposited into court pursuant to an action for interpleader filed by Bank of America.
17 The refusal of Bank of America to unfreeze the demand deposit accounts of
18 Quicklegal before the funds were deposited into court was a breach of the implied
19 contract that exists between Bank of America and Quicklegal, and is also in violation of
20 express provisions of law and in violation of public policy.

21 23. Quicklegal has suffered damages legally and proximately caused by
22 Bank of America's breach of the implied demand deposits contract as follows:
23 Quicklegal is a start-up internet company, and Quicklegal was in the process of
24
25

1 launching its internet website service when Bank of America unlawfully, illegally and
2 wrongfully froze its demand deposit accounts. As a result of its demand deposit
3 accounts being frozen, Quicklegal was unable to continue to launch its website and to
4 launch its internet-based service, and has lost profits and was on the brink of failing as
5 a start-up company due to Bank of America's freezing of its bank accounts. Over one
6 million dollars has been invested in Quicklegal by its various investors, and at the time
7 that Bank of America unlawfully, illegally and wrongfully froze its bank accounts,
8 Quicklegal was valued conservatively at \$5.5 Million. In addition, in order to obtain
9 access to some of the funds in its bank accounts that had been deposited into court by
10 Bank of America pursuant to its interpleader action, Quicklegal entered into a very
11 unfavorable settlement agreement with plaintiffs herein by agreeing that \$55,000 of the
12 funds deposited into court could be released to plaintiffs despite the fact that plaintiffs
13 had alleged in their Complaint on file herein that Quicklegal had received only \$30,000
14 of plaintiffs' money. Thus, due to Bank of America's wrongful action in freezing its
15 accounts, Quicklegal suffered general damages by paying to plaintiffs \$25,000 more
16 than plaintiffs had claimed they had sent to Quicklegal. Pursuant to the foregoing,
17 Quicklegal has suffered substantial damages in an amount to be determined by proof
18 at trial.
19

20 24. Wherefore, Quicklegal prays for judgment against Bank of America as
21 set forth below.
22

23 **SECOND CAUSE OF ACTION**

24 **[BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING]**
25

1 25. Quicklegal refers to the allegations contained in paragraphs 1 through 24
2 above and incorporates them by reference as though fully set forth anew.

3 26. Bank of America breached the implied covenant of good faith and fair
4 dealing of its implied contract with Quicklegal by the illegal, unlawful and wrongful
5 freezing of Quicklegal's demand deposit accounts, as more fully described in
6 paragraphs 6 through 22 above. In freezing the accounts, Bank of America has
7 violated the provisions of expressed law and has also violated public policy by its
8 illegal, unlawful and wrongful freezing of Quicklegal's demand deposit accounts.

9 27. Bank of America continued to illegally, wrongfully and unlawfully freeze
10 the demand deposit accounts of Quicklegal until the said funds in those accounts were
11 deposited into court pursuant to an action for interpleader filed by Bank of America.
12 The refusal of Bank of America to unfreeze the demand deposit account of Quicklegal
13 is a bad faith breach of the implied contract that exists between Bank of America and
14 Quicklegal and is also in violation of law and of public policy.

15 28. Quicklegal has suffered damages legally and proximately caused by
16 Bank of America's breach of the implied demand deposits contract as follows:
17 Quicklegal is a start-up internet company, and Quicklegal was in the process of
18 launching its internet website service when Bank of America unlawfully, illegally and
19 wrongfully froze its demand deposit accounts. As a result of its demand deposit
20 accounts being frozen, Quicklegal has been unable to continue to launch its website
21 and to launch its internet-based service, and has lost profits and is on the brink of
22 failing as a start-up company due to Bank of America's freezing of its bank accounts.
23 Over one million dollars has been invested in Quicklegal by its various investors, and
24
25

1 at the time that Bank of America unlawfully, illegally and wrongfully froze its bank
2 accounts, Quicklegal was valued conservatively at \$5.5 Million. In addition, in order to
3 obtain access to some of the funds in its bank accounts that had been deposited into
4 court by Bank of America pursuant to its interpleader action, Quicklegal entered into a
5 very unfavorable settlement agreement with plaintiffs herein by agreeing that \$55,000
6 of the funds deposited into court could be released to plaintiffs despite the fact that
7 plaintiffs had alleged in their Complaint on file herein that Quicklegal had received only
8 \$30,000 of plaintiffs' money. Thus, due to Bank of America's wrongful action in
9 freezing its accounts, Quicklegal suffered general damages by paying to plaintiffs
10 \$25,000 more than plaintiffs had claimed they had sent to Quicklegal. Pursuant to the
11 foregoing, Quicklegal has suffered substantial damages in an amount to be
12 determined by proof at trial.

13
14 29. The conduct of Bank of America as described in paragraphs 6 through
15 22 above was willful, wanton, malicious and one with an evil motive and intent and a
16 reckless disregard for the rights of Quicklegal, and therefore warrants the imposition of
17 exemplary and punitive damages against Bank of America in a sum to be established
18 by proof at trial.

19 30. Wherefore, Quicklegal prays for judgment against Bank of America as
20 set forth below.

21 **THIRD CAUSE OF ACTION**

22 **[UNLAWFUL AND UNFAIR BUSINESS PRACTICES]**

23 31. Quicklegal refers to the allegations contained in paragraphs 1 through
24 30 above and incorporates them by reference as though fully set forth anew.
25

1 32. By the conduct of Bank of America as described in paragraphs 6 through
2 22 above, Bank of America has engaged in unlawful, deceptive, and unfair business
3 acts or practices in violation of Business & Professions Code Sections 17200, et seq.

4 **A. Unlawful Business Practices**

5 33. Bank of America has engaged in the following unlawful business acts or
6 practices in violation of Business & Professions Code Sections 17200, et seq.:

7 **(a) Violations of Dodd-Frank Wall Street Reform & Consumer Protection**

8 **Act of 2010.** A stated purpose of the Dodd-Frank Wall Street Reform & Consumer
9 Protection Act of 2010 (the "Act") is to ensure that consumer products and services are
10 "fair, transparent and competitive" and to provide consumers with "timely and
11 understandable information to make responsible decisions about financial
12 transactions." The Act provides that in dealing with consumers, "affiliated persons" that
13 provided a "consumer financial product or service" must not engage in unfair,
14 deceptive or abusive acts of practices. The Act makes it "unlawful" for any covered
15 "person [defined as including any business entity] or service provider" to "order or
16 provide to a consumer any financial product or service not in conformity with Federal
17 Consumer financial law" or "to engage in any unfair, deceptive or abusive act or
18 practice." The Act defined a "financial product or service" as including bank accounts.
19 The Act authorizes that the Bureau of Consumer Financial Protection to seek the
20 following relief for violations: rescission, restitution, disgorgement, damages, and civil
21 penalties of up to \$5,000 per day per violation. Through its conduct alleged herein,
22 Bank of America has not acted in a "fair" or "transparent" manner, but has engaged in
23 "unfair, deceptive and abusive practice[s]" in violation of the Act by, inter alia, by
24
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1 presenting untrue and misleading information to Quicklegal and to the general public
2 regarding the validity of the Freezing Clause and the validity of the Conflicting
3 Demands and Disputes clause contained in Bank of America's Deposit Agreement, as
4 the Freezing Clause and the Conflicting Demands and Disputes clause are both
5 unconscionable, are null and void as against the express provisions of law, and are
6 also unenforceable as against public policy.

7 **(b) Breach of Contract.** Bank of America has engaged in unlawful business
8 practices by breaching its contract with Quicklegal as alleged herein.

9 **(c) Conversion.** Bank of America has engaged in unlawful business practices
10 by converting funds belonging to Quicklegal as alleged herein.

11 **B. Unfair Business Practices**

12
13 34. Defendants have engaged in the following unfair business acts or practices
14 in violation of Business & Professions Code Sections 17200, et seq.: by presenting
15 untrue and misleading information to Quicklegal and to the general public regarding
16 the Freezing Clause and the Conflicting Demands and Disputes clause contained in
17 Bank of America's Deposit Agreement, as the Freezing Clause and the Conflicting
18 Demands and Disputes clause are unconscionable, are null and void as against the
19 express provisions of law, and are also unenforceable as against public policy.

20 **C. Deceptive Business Practices**

21 35. Bank of America has engaged in the following deceptive business acts or
22 practices in violation of Business & Professions Code Sections 17200, et seq.: by
23 presenting untrue and misleading information to Quicklegal and to the general public
24 regarding the Freezing Clause and the Conflicting Demands and Disputes clause
25

1 contained in Bank of America's Deposit Agreement, as the Freezing Clause and the
2 Conflicting Demands and Disputes clause are unconscionable, are null and void as
3 against the express provisions of law, and are also unenforceable as against public
4 policy.

5 36. Quicklegal is entitled to relief as provided by law as a result of a Bank of
6 America's unlawful and unfair business practices described above, and Quicklegal is
7 also entitled to an award of its attorney's fees in bringing this cause of action against
8 Bank of America.

9 **FOURTH CAUSE OF ACTION**

10 **[CONVERSION]**

11 37. Quicklegal refers to the allegations contained in paragraphs 1 through 36
12 above and incorporates them by reference as though fully set forth anew.

13 38. Based on the allegations contained in paragraphs 6 through 22 above,
14 Bank of America wrongfully converted to its own use the money belonging to
15 Quicklegal contained in Quicklegal's demand deposit accounts with Bank of America.
16 The said amounts were contained in three different accounts with the following
17 balances: (1) \$580.09; (2) \$3,067.84; and (3) \$73,827.20, a total of \$77,475.13. After
18 Bank of America interpleaded the \$77,475.13 into court, Quicklegal received
19 \$22,475.13 of those pursuant to Quicklegal agreeing that plaintiffs herein could receive
20 \$55,000 of those funds. Thus, the total amount of money that Bank of America had
21 wrongfully and illegally converted to its own use belonging to Quicklegal contained in
22 Quicklegal's Demand Deposit Accounts before the funds were deposited into court
23 was \$77,475.13.
24
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1 39. As a proximate result of the conversion of money belonging to Quicklegal
2 by Bank of America as described in paragraph 38 above, Quicklegal has been
3 damaged in the amount of \$55,000, which represents the \$77,475.13 minus the
4 \$22,475.13 that Quicklegal did receive, plus interest at the legal rate.

5 40. The conduct of Bank of America as described in paragraphs 37 through
6 39 above was willful, wanton, malicious and one with an evil motive and intent and a
7 reckless disregard for the rights of Quicklegal, and therefore warrants the imposition of
8 exemplary and punitive damages against Bank of America in a sum to be established
9 by proof at trial.

10 41. Wherefore, Quicklegal prays for judgment against Bank of America as
11 set forth below.

12 **FIFTH CAUSE OF ACTION**

13 **[DECLARATORY RELIEF]**

14 42. Quicklegal refers to the allegations contained in paragraphs 1 through 41
15 above and incorporates them by reference as though fully set forth anew.

16 43. An actual controversy has arisen and now exists between Quicklegal and
17 Bank of America regarding their respective rights and duties concerning the status and
18 validity of the Freezing Clause, the Conflicting Demands and Disputes Clause, the
19 How Claims on Business Accounts Will Be Resolved Clause, and the Class Action and
20 Jury Trial Waiver Clause contained in Bank of America's Deposit Agreement, in that
21 Quicklegal contends that the Freezing Clause, the Conflicting Demands and Disputes
22 Clause, the How Claims on Business Accounts Will Be Resolved Clause, and the
23 Class Action and Jury Trial Waiver Clause are all unconscionable and therefore
24
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1 unenforceable, are null and void as against the expressed provisions of the law and
2 are unenforceable as against public policy, while Bank of America disputes the said
3 claims being made by Quicklegal as to the Freezing Clause, the Conflicting Demands
4 and Disputes Clause, the How Claims on Business Accounts Will Be Resolved
5 Clause, and the Class Action and Jury Trial Waiver Clause.

6 44. Quicklegal requests that this Court find and declare that the Freezing
7 Clause, the Conflicting Demands and Disputes Clause, the How Claims on Business
8 Accounts Will Be Resolved Clause, and the Class Action and Jury Trial Waiver Clause
9 are all unconscionable and therefore unenforceable, are null and void as against the
10 expressed provisions of the law, and are unenforceable as being against public policy.

11 45. An actual controversy has arisen and now exists between Quicklegal and
12 Bank of America regarding their respective rights and duties concerning the status and
13 validity of the Class Action and Jury Trial Waiver Clause contained in Bank of
14 America's Deposit Agreement, in that Quicklegal contends that the Class Action and
15 Jury Trial Waiver Clause is unconscionable and therefore unenforceable pursuant to
16 California Civil Code §1668, is null and void as against the expressed provisions of the
17 law and is unenforceable as against public policy, while Bank of America disputes the
18 said claims being made by Quicklegal as to the Class Action and Jury Trial Waiver
19 Clause in the Deposit Agreement.
20

21 46. Quicklegal requests that this Court find and declare that the Class Action
22 and Jury Trial Waiver Clause contained in Bank of America's Deposit Agreement is
23 unconscionable and therefore unenforceable, is null and void as against the expressed
24 provisions of the law, and is unenforceable as against public policy.
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1 47. A judicial declaration is necessary and appropriate at this time and under
2 these circumstances, so that Quicklegal may ascertain its rights and duties under the
3 Deposit Agreement and so that Quicklegal will be able to file a class action lawsuit
4 against Bank of America with respect to Bank of America's Deposit Agreement.

5 48. As a proximate result of the actions of Bank of America as described in
6 paragraphs 6 through 22 above, Quicklegal has suffered damages according to proof,
7 and Quicklegal seeks declaratory relief that the Freezing Clause, the Conflicting
8 Demands and Disputes Clause, the How Claims on Business Accounts Will Be
9 Resolved Clause, and the Class Action and Jury Trial Waiver Clause in Bank of
10 America's Deposit Agreement, are all unconscionable and therefore unenforceable,
11 are null and void as against the expressed provisions of the law, and are
12 unenforceable as against public policy.

13
14 49. Wherefore, Quicklegal prays for judgment against Bank of America as
15 set forth below.

16 WHEREFORE, Quicklegal, Inc., prays for judgment against Bank of America,
17 N.A., and the ROE Defendants as follows:

18
19 **FIRST CAUSE OF ACTION**
20 **[BREACH OF IMPLIED CONTRACT]**

- 21 1. For general damages in an amount to be established by proof at trial;
22 2. For special damages in an amount to be established by proof at trial;
23 3. For costs of suit incurred herein; and
24 4. For such further and other relief as the Court deems just and proper.
25

1 **SECOND CAUSE OF ACTION**

2 **[BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING]**

- 3 5. For general damages in an amount to be established by proof at trial;
- 4 6. For special damages in an amount to be established by proof at trial;
- 5 7. For punitive and exemplary damages in an amount to be established by
- 6 proof at trial;
- 7 8. For attorney's fees in an amount to be established by proof at trial;
- 8 9. For costs of suit incurred herein; and
- 9 10. For such further and other relief as the Court deems just and proper.

10 **THIRD CAUSE OF ACTION**

11 **[UNLAWFUL AND UNFAIR BUSINESS PRACTICES]**

- 12 11. For relief as provided by law;
- 13 12. For attorney's fees in an amount to be established by proof at trial;
- 14 13. For costs of suit incurred herein; and
- 15 14. For such further and other relief as the Court deems just and proper.

16 **FOURTH CAUSE OF ACTION**

17 **[CONVERSION]**

- 18 15. For general damages in an amount to be established by proof at trial,
- 19 plus interest at the legal rate from the time of conversion;
- 20 16. For special damages in an amount to be established by proof at trial;
- 21 17. For punitive and exemplary damages in an amount to be established by
- 22 proof at trial;
- 23 18. For costs of suit incurred herein; and
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19. For such further and other relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION

[DECLARATORY RELIEF]

20. For a declaration from the Court that the Freezing Clause, the Conflicting Demands and Disputes Clause, and the How Claims Will Be Resolved Clause contained in Bank of America's Deposit Agreement are all unconscionable and therefore are unenforceable, that the said clauses are null and void as against the expressed provisions of the law, and that the said clauses are unenforceable as against public policy;

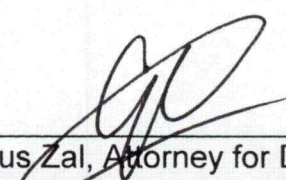
21. For a declaration from the Court that the Class Action and Jury Trial Waiver Clause contained in Bank of America's Deposit Agreement is unconscionable and therefore is unenforceable, that it is null and void as against the expressed provisions of the law, and that it is unenforceable as against public policy;

22. For costs of suit incurred herein; and

23. For such further and other relief as the Court deems just and proper.

Cyrus Zal, A Professional Corporation

Dated: March 14, 2017

By: 
Cyrus Zal, Attorney for Defendants
Derek Bluford and Quicklegal, Inc.

PROOF OF SERVICE

Changming Liu, et al. v. California Legal Pros, Inc., et al.
Sacramento Superior Court Case No. 34-2015-00181746-CU-FR-GDS

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I, Cyrus Zal, declare that:

I am employed by the Cyrus Zal, A Professional Corporation in the County of Sacramento, State of California; I am over the age of 18 and not a party to the within action; my business address is 102 Mainsail Court, Folsom, California, 95630.

On this date, I served the foregoing document, described as:

FIRST AMENDED CROSS-COMPLAINT OF QUICKLEGAL, INC. AGAINST BANK OF AMERICA FOR: 1. BREACH OF IMPLIED CONTRACT; 2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING; 3. UNLAWFUL AND UNFAIR BUSINESS PRACTICES; 4. CONVERSION; AND 5. DECLARATORY RELIEF

on all interested parties in this action by placing the original or a true copy thereof enclosed in a sealed envelope addressed as follows:

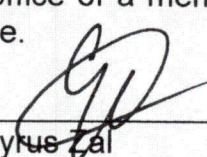
Daniel F. Pyne, Esq.
Erika J. Gasaway, Esq.
HOPKINS & CARLEY
A Law Corporation
P.O. Box 1469
San Jose, CA 95109-1469

Mark Johnson Kenney, Esq.
Austin B. Kenney, Esq.
Eleanor M. Roman, Esq.
SEVERSON & WERSON
One Embarcadero Center, Suite 2600
San Francisco, CA 94111

X **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Folsom, California. Executed on **March 14, 2017.**

X **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Cyrus Zal