

Superior Court of the District of Columbia Civil - Civil Actions Branch 500 Indiana Ave NW, Room 5000, Washington DC 20001 (202) 879-1133 | www.dccourts.gov

Case Number: 2024-CAB-003999

Case Style: National Association of Consumer Advocates, Inc. v. Gemini Trust Company LLC

INITIAL ORDER

Initial Hearing Date: Initial Hearing Time: Courtroom Location:

Friday, 09/27/2024 9:30 AM Remote Courtroom 519

Please see attached instructions for remote participation.

Your case is assigned to Associate Judge Juliet J McKenna.

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("Super. Ct. Civ. R.") 40-I, it is hereby ORDERED as follows:

- 1) This case is assigned to the judge and calendar designated above. All future filings in this case shall bear the calendar number and judge's name along with the case number in the caption.
- 2) Within 60 days of the filing of the complaint, plaintiff must file proof of service on each defendant of copies of the summons, the complaint, and this Initial Order. The court will dismiss the claims against any defendant for whom such proof of service has not been filed by this deadline, unless the court extended the time for service under Rule 4.
- 3) Within 21 days of service (unless otherwise provided in Rule 12), each defendant must respond to the complaint by filing an answer or other responsive pleading. The court may enter a default and a default judgment against any defendant who does not meet this deadline, unless the court extended the deadline under Rule 55(a).
- 4) At the time stated above, all counsel and unrepresented parties shall participate in a hearing to establish a schedule and discuss the possibilities of settlement. Counsel shall discuss with their clients before the hearing whether the clients are agreeable to binding or non-binding arbitration. This order is the only notice that parties and counsel will receive concerning this hearing.
- 5) If the date or time is inconvenient for any party or counsel, the Civil Actions Branch may continue the Conference once, with the consent of all parties, to either of the two succeeding days when the calendar is called. To reschedule the hearing, a party or lawyer may call the Branch at (202) 879-1133. Any such request must be made at least seven business days before the scheduled date. No other continuance will be granted except upon motion for good cause shown.
- 6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website http://www.dccourts.gov/.

Chief Judge Anita M. Josey-Herring

To Join by Computer, Tablet, or Smartphone:

1) Copy and Paste or Type the link into a web browser and enter the Webex Meeting ID listed below.

Link: dccourts.webex.com/meet/ctb519

Meeting ID: 129 705 0412

- 2) When you are ready, click "Join Meeting".
- 3) You will be placed in the lobby until the courtroom clerk gives you access to the hearing.

Or to Join by Phone:

- 1) Call 202-860-2110 (local) or 844-992-4726 (toll-free)
- 2) Enter the Webex Meeting ID listed above followed by "##"

Resources and Contact Information:

- 1) For best practices on how to participate in Webex Meetings, click here https://www.webex.com/learn/best-practices.html.
- 2) For technical issues or questions, call the Information Technology Division at 202-879-1928 and select option 2.
- 3) For case questions, call the Civil Actions Branch Clerk's Office at (202) 879-1133.

ACCESSIBILITY AND LANGUAGE ACCESS

Persons with Disabilities:

If you have a disability as defined by the American Disabilities Act (ADA) and you require an accommodation, please call 202-879-1700 or email ADACoordinator@dcsc.gov. The D.C. Courts does not provide transportation service.

Interpreting and Translation Services:

The D.C. Courts offers free language access services to people having business with the court who are deaf or who are non-English speakers. Parties to a case may request free translations of court orders and other court documents. To ask for an interpreter or translation, please contact the Clerk's Office listed for your case. For more information, visit https://www.dccourts.gov/language-access.

Servicios de interpretación y traducción:

Los Tribunales del Distrito de Columbia ofrecen servicios gratuitos de acceso al idioma a las personas sordas o que no hablan inglés que tienen asuntos que atender en el tribunal. Las partes de un caso pueden solicitar traducciones gratuitas de las órdenes judiciales y otros documentos del tribunal. Para solicitar un intérprete o una traducción, póngase en contacto con la Secretaría de su caso.

Para más información, visite https://www.dccourts.gov/language-access.

El acceso al idioma es importante para los Tribunales del Distrito de Columbia. Puede dar su opinión sobre los servicios de idiomas visitando https://www.dccourts.gov/services/information-and-resources/interpreting-services#language-access.

የቃልና የጽሑፍ ትርጓሜ አንልግሎቶች፡

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Tips for Attending Remote Hearings - Civil Division

Your court hearing may be held remotely. This means that you will participate by phone or by video conference instead of coming to the courthouse. Here are some tips on how to prepare.

How do I know if I have a remote hearing?

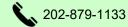
The Court will contact you to tell you that your hearing is remote. They may contact you by sending you an email, letter in the mail, or by calling you.

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How do I take part in a remote hearing?

The Court will give you step-by-step instructions on how to take part in the remote hearing.

If you lose your written notice, call the Civil Actions Clerk's Office for instructions at:



Is there anything that I should do before the day of the hearing?

 Let the court know immediately if you cannot join a hearing because you do not have a phone or computer.



Civil Actions Clerk's Office: 202-879-1133

- You may want to contact an attorney for legal help.
- You can also find the list of legal services providers at <u>www.dccourts.gov/services/represent-yourself</u> by clicking on the link that says, "List of Legal Service Providers for Those Seeking an Attorney or Legal Advice".
- Evidence: if you want the judge to review photos or documents, ask the judge how to submit your evidence.
- Witnesses: tell the judge if you want a witness to testify at your hearing.
- Accommodations & Language Access: let the court know if you need an interpreter or other accommodation for your hearing.

Tips for the Hearing



- Join the hearing a few minutes early!
- Charge your computer or phone and make sure you have enough minutes to join the call. Find a private and quiet space. If possible, be alone in a room during the hearing. Try to limit distractions as much as possible. If others are in the room with you, ask if they can be quiet during the hearing.
- Mute your microphone when you are not talking. Mute all sounds on your phone or computer.
- Say your name before you speak so the record clear. Be prepared to identify your role in the hearing (e.g., observer, plaintiff, defendant, witness, etc.).
- Speak slowly and clearly so everyone hears what you are saying.
- Pause before speaking in case there is a lag. Use a headset or headphones if you can. This will free up your hands and sound better.
- Try not to talk over anyone else. Only one person can speak at a time. If you talk while someone else is talking, the judge will not be able to hear you.
- Have all your documents for the hearing in front of you. Have a pen and paper to take notes.
- If you are not ready for your hearing or want to speak with an attorney, you can ask the judge to postpone your hearing for another date.
- If your sound or video freezes during the hearing, use the chat feature or call the Clerk's Office to let them know that you are having technical issues.

Special Tips for Video Hearings



(Click here for more information)

- Download the court's hearing software, WebEx, in advance and do a test run! The Court will provide you with a WebEx link in advance of the hearing.
- Set up the camera at eye level. If you are using your phone, prop it up so you can look at it without holding it.
- Look at the camera when you speak and avoid moving around on the video.
- Wear what you would normally wear to court.
- Sit in a well-lit room with no bright lights behind you.
- If possible, find a blank wall to sit in front of. Remember the
 judge will be able to see everything on your screen, so pick a
 location that is not distracting.



District of Columbia Courts

Tips for Using DC Courts Remote



The DC Courts have **remote hearing sites** available in various locations in the community to help persons who may not have computer devices or internet service at home to participate in scheduled remote hearings. The Courts are committed to enhancing access to justice for all.

There are six remote access sites throughout the community which will operate: **Monday – Friday**, **8:30 am – 4:00 pm**.

Remote Site - 1

Balance and Restorative Justice Center 1215 South Capitol Street, SW Washington, DC 20003

Remote Site - 2

Balance and Restorative Justice Center 1110 V Street, SE Washington, DC 20020

Remote Site - 3

Balance and Restorative Justice Center 118 Q Street, NE Washington, DC 20002

The remote site locations are:



Remote Site - 4

Balance and Restorative Justice Center 920 Rhode Island Avenue, NE Washington, DC 20018

Remote Site - 5

Reeves Center 2000 14th Street, NW, 2nd Floor Community Room Washington, DC 20009

Remote Site - 6

Reeves Center 2000 14th Street, NW, Suite 300N Office of the Tenant Advocate Washington, DC 20009 *** No walk-ins at this location***

If you want to use a remote site location for your hearing, call 202-879-1900 or email DCCourtsRemoteSites@dcsc.gov at least 24 hours before your hearing to reserve a remote access computer station. If you require special accommodations such as an interpreter for your hearing, please call 202-879-1900 at least 24 hours in advance of your hearing so the Courts can make arrangements.

You should bring the following items when you come to your scheduled site location

- 1. Your case number and any hyperlinks provided by the Courts for your scheduled hearing.
- 2. Any documents you need for the hearing (evidence), including exhibits, receipts, photos, contracts, etc.
- **3.** Materials for notetaking, including pen and paper.

Contact information to schedule your remote access computer station:

Call: **202-879-1900**

Email: DCCourtsRemoteSites@dcsc.gov

^{*}Safety and security measures are in place at the remote sites.



Tribunales del Distrito de Columbia

Consejos para usar los sitios de audiencia remota de los Tribunales de DC



Los Tribunales de DC disponen de **sitios de audiencia remota** en distintos centros de la comunidad para ayudar a que las personas que no tienen dispositivos informáticos o servicio de Internet en su casa puedan participar en audiencias remotas programadas. Los Tribunales honran el compromiso de mejorar el acceso de toda la población a la justicia.

En toda la comunidad hay seis sitios de acceso remoto que funcionarán de lunes a viernes, de 8:30 am a 4:00 pm.

Sitio Remoto - 1

Balance and Restorative Justice Center 1215 South Capitol Street, SW Washington, DC 20003

Sitio Remoto - 2

Balance and Restorative Justice Center 1110 V Street, SE Washington, DC 20020

Sitio Remoto - 3

Balance and Restorative Justice Center 118 Q Street, NE Washington, DC 20002

Los centros de acceso remoto son:



Sitio Remoto - 4

Balance and Restorative Justice Center 920 Rhode Island Avenue, NE Washington, DC 20018

Sitio Remoto - 5

Reeves Center 2000 14th Street, NW, 2nd Floor Community Room Washington, DC 20009

Sitio Remoto - 6

Reeves Center 2000 14th Street, NW, Suite 300N Office of the Tenant Advocate Washington, DC 20009 *No se puede entrar sin cita previa*

Si desea usar un sitio remoto para su audiencia, llame al 202-879-1900 o envíe un mensaje de correo electrónico a DCCourtsRemoteSites@dcsc.gov al menos 24 horas antes de la audiencia, para reservar una estación de computadora de acceso remoto. Si necesita adaptaciones especiales, como un intérprete para la audiencia, llame al 202-879-1900 al menos 24 horas antes de la audiencia para que los Tribunales puedan hacer los arreglos necesarios.

Cuando concurra al sitio programado debe llevar los siguientes artículos

- Su número de caso y todos los hipervínculos que le hayan proporcionado los Tribunales para la audiencia programada.
- 2. Cualquier documento que necesite para la audiencia (prueba), incluidos documentos probatorios, recibos, fotos, contratos, etc.
- 3. Materiales para tomar nota, como papel y lápiz.

*Los sitios de acceso remoto cuentan con medidas de seguridad y protección.

Información de contacto para programar su estación de computadora de acceso remoto:

Teléfono: 202-879-1900

Correo electrónico: DCCourtsRemoteSites@dcsc.gov

Superior Court of the District of Columbia

CIVIL DIVISION - CIVIL ACTIONS BRANCH

INFORMATION SHEET

National Association of Consumer Advocates, Inc.	Case Number: 2024-CAB-003999	
Plaintiff(s) VS	Date: June 26, 2024	
Gemini Trust Company LLC Defendant(s)	One of the defendants is being sued in their official capacity.	
Name: (Please Print) F. Peter Silva II	Relationship to Lawsuit	
Firm Name:	Attorney for Plaintiff	
Tycko & Zavareei LLP Telephone No.: DC Bar No.: (202) 973-0900 1010483	Self (Pro Se) Other:	
TYPE OF CASE: Non-Jury 6 Person Demand: \$	Jury	
PENDING CASE(S) RELATED TO THE ACTION BE Case No.: Judge:	EING FILED Calendar #:	
Case No.: Judge:	Calendar #:	
NATURE OF SUIT: (Check One Box Only)		
CONTRACT COLLECTION/INS. SUB	EMPLOYMENT DISPUTE	
Breach of Contract Debt Collection	Breach of Contract	
Breach of Warranty Insurance Subrogation	Discrimination	
Condo/Homeowner Assn. Fees Motion/Application for Ju	dgment by Confession Wage Claim	
Contract Enforcement Motion/Application Regard	rding Arbitration Award Whistle Blower	
Negotiable Instrument	Wrongful Termination	
REAL PROPERTY Condo/Homeowner Assn. Foreclosure Declaratory Judgment Epictment Eminent Domain	☐ FRIENDLY SUIT ☐ Other ☐ HOUSING CODE REGULATIONS ☐ Quiet Title ☐ QUI TAM	
☐ Drug Related Nuisance Abatement ☐ Interpleader	Specific Performance STRUCTURED SETTLEMENTS	
App. for Entry of Jgt. Defaulted Compensation Benefits Enter Administrative Order as Judgment MAI	AGENCY APPEAL Release Mechanics Lien Dangerous Animal Determination DCPS Residency Appeal DPRACTICE Merit Personnel Act (OEA) Merit Personnel Act (OHR)	
Desistion Others	Wrongful Death Other Agency Appeal	
	LICATION FOR INTERNATIONAL FOREIGN JUDGMENT	

Information Sheet, Continued

CIVIL ASSET FORFEITURE Currency Other Real Property Vehicle NAME CHANGE/VITAL RECORD AMENDM Birth Certificate Amendment Death Certificate Amendment Gender Amendment Name Change	Personal Injury Toxic Mass	
GENERAL CIVIL Accounting Deceit (Misrepresentation) Fraud Invasion of Privacy Lead Paint Legal Malpractice Motion/Application Regarding Arbitration Award Other - General Civil	Product Liability Request for Liquidation Writ of Replevin Wrongful Eviction CIVIL I/COMPLEX CIVIL Asbestos MORTGAGE FORECLOSURE Non-Residential Residential	STATUTORY CLAIM ☐ Anti – SLAPP ☑ Consumer Protection Act ☐ Exploitation of Vulnerable Adult ☐ Freedom of Information Act (FOIA) ☐ Other TAX SALE FORECLOSURE ☐ Tax Sale Annual ☐ Tax Sale Bid Off
VEHICLE Personal Injury Property Damage REQUEST FOR FO	CATION APPEAL OREIGN JUDGMENT	
Filer/Attorney's Signature	06/26/2	024 Date



Superior Court of the District of Columbia CIVIL DIVISION

Civil Actions Branch 500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001 Telephone: (202) 879-1133 Website: www.dccourts.gov

National Association of Consumer Advocates, Inc.

Plaintiff

vs.

Case Number

2024-CAB-003999

Gemini Trust Company LLC

Defendant

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

F. Peter Silva II		Ci	lerk of the Countries
Name of Plaintiff's Attorney			
2000 Pennsylvania Ave NW, Suite 1010, Was	hington, DC 20006	Ву	DOM W. J.
Address			Deputy Clerk
202-973-0900		Date	June 26, 2024
Telephone 如需翻译,请打电话 (202) 879-4828	Veuillez appeler au (202) 8	79-4828 pour une traductio	n Đề có một bài dịch, hãy gọi (202) 879-4828

번역을 원하시면,(202)879-4828로 전화주실세요 - የአጣርኛ ትርጉም ለጣባኘት (202)879-4828 - ይደውሉ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation Vea al dorso la traducción al español

CV-3110 [Rev. June 2017] Super. Ct. Civ. R. 4





TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA DIVISIÓN CIVIL

Sección de Acciones Civiles 500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001 Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

National Association of Consumer Adv	ocates, Inc.			
	Demandante			
contra				
		Número de Caso:	2024-CAB-003999	
Gemini Trust Company LLC				
	Demandado			
	CITATORIO			
Al susodicho Demandado:				

Por la presente se le cita a comparecer y se le require entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una

copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le require presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga

efectivo el desagravio que se busca en la demanda.		
F. Peter Silva II	SECF	RETARIO DEL TRADINADA
Nombre del abogado del Demandante		
2000 Pennsylvania Ave NW, Suite 1010, Washington, DC 20006	Por:	30 With
Dirección		Subsecretario
202-973-0900	Fecha	June 26, 2024
Teléfono		
如需翻译,请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 Veuillez appeler a	9-4828 pour une trad	uction Để có một bài dịch, hãy gọi (202) 879-4828
반약을 완료하였던(202) 879-4828 로로 설문 작산사업	የአማርኛ ትርጉም ለማ	ግኘት (202) 879-4828 ይደውሉ

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE OPONERSE A ESTA ACCIÓN, <u>NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO</u>.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedirayuda al respecto.

Vea al dorso el original en inglés See reverse side for English original

CV-3110 [Rev. June 2017] Super. Ct. Civ. R. 4

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, INC., 1215 17th St NW, Washington, DC 20036,

Plaintiff.

V.

GEMINI TRUST COMPANY LLC, 315 Park Ave S, New York, NY 10010,

SERVE:

CT CORPORATION SYSTEM, 28 Liberty St, New York, NY 10005,

Defendant.

Case No: 2024-CAB-003999

COMPLAINT AND JURY TRIAL DEMAND

INTRODUCTION

- 1. Gemini operates a cryptocurrency platform available to consumers across the globe, with over \$200 billion in trading volume.¹ Users can buy and sell cryptocurrencies like Bitcoin through the Gemini platform. With millions of users, Gemini holds itself out as "the secure way to buy, sell, store, and convert crypto," making the process "safe and easy" for consumers, because Gemini is "crypto-obsessed and compliance-focused."²
- 2. In reality, Gemini is anything but "compliance-focused." Gemini requires its users to assent to its User Agreement ("UA"), a contract of adhesion, as a condition of creating a Gemini account and buying, selling, or trading cryptocurrency on the Gemini platform. But the Gemini UA repeatedly flouts federal obligations and consumer protections designed to ensure ordinary consumers aren't left holding the bag when they are scammed and victimized.

¹ "Gemini" refers to Defendant Gemini Trust Company LLC.

² Gemini.com (last accessed June 25, 2024).

- 3. These consumer protections arise under the Electronic Funds Transfer Act ("EFTA"). The EFTA protects financial institution consumers from unauthorized electronic transactions. The District of Columbia Consumer Protection Procedures Act ("CPPA") provides for the enforcement of the EFTA by a nonprofit organization when consumers in the District have been wronged, as here.
- 4. Plaintiff National Association of Consumer Advocates, Inc. ("NACA") is a nonprofit advocacy organization committed to representing consumers' interests. NACA brings this suit to enforce the CPPA in light of Gemini's refusal to follow the law and the resulting harm that has affected District of Columbia consumers.

JURISDICTION AND VENUE

- 5. This Court has subject matter jurisdiction under D.C. Code § 11-921 and D.C. Code § 28–3905(k)(2).
 - 6. This Court has personal jurisdiction over Gemini under D.C. Code § 13-423(a).

PARTIES

A. NACA

- 7. The National Association of Consumer Advocates, Inc. is a nonprofit public interest organization. NACA is organized under the laws of the Commonwealth of Massachusetts, and registered as a foreign corporation with the District of Columbia. NACA's principal place of business is in Washington, D.C.
- 8. NACA is a nonprofit association of more than 1,500 attorneys and consumer advocates committed to representing consumers' interests. NACA's primary focus is the protection and representation of consumers. NACA serves as a voice for consumers in the ongoing struggle to curb unfair or abusive business practices that harm consumers. NACA has been instrumental in advocating against consumer abuses both federally and locally in the District.
- 9. NACA's robust history of consumer advocacy demonstrates a sufficient nexus with the interest of the consumers represented in this case. NACA specifically advocates for the

protection of consumers' rights during electronic fund transfers in instances of fraud and mistake,³ as well as publishes educational reports detailing the harms of one-sided contracts of adhesion which purport to waive consumers' substantive rights and remedies, such as the Gemini User Agreement.⁴

10. NACA brings this suit to enforce the CPPA in light of Gemini's refusal to follow the law and the resulting harm that has affected District of Columbia consumers. The names of the affected District consumers contained within Gemini's records.

B. Gemini

- 11. Defendant Gemini Trust Company LLC is a New York limited liability company. Its principal place of business is in New York City, New York.
- 12. Gemini has, at all relevant times, engaged in trade or commerce in the District by advertising, offering, and operating its cryptocurrency platform in the District through users located within Washington, D.C.

FACTUAL BACKGROUND

A. Gemini's cryptocurrency platform garners large market share.

- 13. Gemini was founded in 2014 by Cameron and Tyler Winklevoss, the founders of Winklevoss Capital Management.
- 14. Since then, cryptocurrency values have exploded. A single Bitcoin, worth about \$300 to \$400 in 2014, is now worth more than 150 times that amount. The total value of all Bitcoin in existence now exceeds one trillion dollars. Other cryptocurrencies like Ethereum and Tether have seen similar meteoric rises, now worth about \$437 billion and \$100 billion, respectively.

https://www.nclc.org/wp-content/uploads/2022/10/FedNow-coalition-comments-final-1.pdf; https://www.consumeradvocates.org/wp-content/uploads/2022/01/Comment_CFPBTechPayments_12.2021.pdf; https://www.consumeradvocates.org/wp-content/uploads/2022/01/Comment_CFPBTechPayments_12.2021.pdf

⁴ Hines, Christina, "Fine Print Traps Terms in Corporate Form Contract that Cause Most Harm to Consumer Rights and Protections" https://www.consumeradvocates.org/wp-content/uploads/2024/03/NACA fineprinttraps mostharm032024.pdf

15. Gemini rode this wave to a powerful position in the crowded crypto space. More than \$200 billion in value has been traded on its platform.⁵ The Gemini platform routinely processes over \$156 million in trading volume in a 24-hour period.

16. The crypto market is competitive. Recognizing that it needed to market itself as distinct from its competitors, Gemini focused on its compliance with the law and safety standards. Today, Gemini boasts that it is "Certified," "Regulated," and "Licensed." It promises that from "day one," it has "prioritized the security" of its users' assets. And Gemini swears it "never ha[s] and never will compromise on that."

17. Gemini has repeatedly compromised on that, at the expense of ordinary consumers, as detailed below.

B. Scammers repeatedly target cryptocurrency purchasers.

18. The incredible explosion in the value of cryptocurrencies has led to the predictable but unfortunate consequence of scammers seeking to separate crypto users from their profits.

19. A University of Texas study found that criminal enterprises have "interact[ed] freely with major crypto exchanges," including Gemini, to extract more than \$75 billion from the accounts of regular consumers. The same study found that these scams are often carried out by modern-day slaves, trapped in compounds in southeast Asia and forced to interact with western cryptocurrency holders online to try to steal their crypto.

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https://deliverypdf.ssrn.com/delivery.php?ID=4770290291190830070770200100240650870300 170590120040020001020930990940860890741201000010550131250060470550980291200701 041130650550500080640821110071111251161150660110370690010940850021210000300870 86113012103000114010116094010098029013093110026008110003&EXT=pdf.

⁵ Gemini.com.

⁶ Gemini.com.

⁷ *Id*.

⁸ *Id*.

- 20. Crypto scams have become so prevalent that the Federal Trade Commission has published guidance meant to help consumers protect themselves from falling victim.¹⁰
- 21. These scams have affected District residents. One Gemini user in Washington, D.C. complained to the Consumer Financial Protection Bureau in September 2023 after their Gemini account was "hacked" and they lost all of their crypto.
- 22. Another Gemini customer complained in March 2024 after their card was stolen and unauthorized purchases were made on their account. After informing Gemini of the unauthorized transactions, Gemini refused to remove or reverse them.
- 23. More Gemini users have suffered from Gemini removing their access to their accounts, or freezing the accounts entirely, while Gemini purports to perform a review of the account. Gemini does not share the progress of that review with the user, and in the meantime the user cannot access their funds.
- 24. Despite these repeated breaches of security and safety, Gemini represents or warrants that it has "Industry Leading Security Controls" on its website that mislead consumers regarding its safety, security, and compliance. It goes so far as to state that "[t]rust is our product, which begins by building and maintaining a secure customer experience."
- 25. Further, it represents that it has "embraced regulations and third-party assessments that demonstrate our commitment to a safe and secure experience." Yet, the UA does not comply with EFTA and consumers accounts are not safe and secure.

C. Gemini's UA violates the EFTA and leaves consumers with nothing.

26. With new scams targeting crypto users popping up daily, Gemini has taken swift action to protect itself and ensure its consumers (and not Gemini) are the ones left holding the bag.

¹⁰ <u>https://consumer.ftc.gov/articles/what-know-about-cryptocurrency-and-scams.</u>

¹¹ https://www.gemini.com/security (last visited 6/24/2024).

¹² *Id*.

- 27. Gemini's User Agreement,¹³, last modified February 16, 2024, includes numerous provisions meant to insulate Gemini from the externalities of the crypto industry and push as much of the risks onto consumers as possible. The UA has been carefully honed to protect Gemini's owners and investors from any possible downside. In exchange, the individual users forced to agree to the contract of adhesion as a condition of doing any business on the Gemini platform receive 100% of the risks.
- 28. Because of this, Gemini's UA approach violates the EFTA over and over again. The Gemini UA is replete with EFTA violations.
- 29. The UA requires users to agree that Gemini "cannot be held liable for unauthorized access or other loss resulting from your disclosure or other transmission, whether intentional or inadvertent, of your login information to third parties." UA at Account Access.
- 30. The UA requires users to agree that the user is "solely responsible" for "managing and maintaining the security" of their Gemini account, and Gemini is "not responsible . . . for any unauthorized access to or use of" the user's account. Id.
- 31. The UA requires users to agree that it is the user's "sole responsibility" to review their transaction history and that they will be deemed to have reviewed their "Transaction History and all notices *on at least a monthly basis.*" UA at Account Review and Acknowledgement.
- 32. The UA requires users to agree that "every communication" sent to them by email "will be deemed to have been acknowledged as correct, approved, and confirmed" unless Gemini receives written notice "within three calendar days" of the email. *Id*.
- 33. The UA requires users to "agree and understand" that they "access and use Gemini at [their] own risk." UA at Risks.
- 34. The UA requires users to agree that Gemini's "TOTAL LIABILITY" is limited by the value of the user's loss "AT THE TIME OF THE LOSS," and that Gemini's liability limitation

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¹³ https://perma.cc/Y5P4-2BF7

- applies to "COMPUTER VIRUSES, SPYWARE, SCAMWARE," and "PHISHING, SPOOFING, DOMAIN TYPOSQUATTING," and other scams. UA at Disclaimer of Liability.
- 35. The UA requires users to agree that Gemini cannot be held responsible "for any other circumstances" beyond Gemini's "reasonable control." UA at Reasonable Care.
- 36. The UA requires users to agree to indemnify and hold Gemini harmless "against any or all" liabilities arising out of the user's use of the Gemini platform. UA at Indemnities.
- 37. The UA requires users to indemnify Gemini for legal costs and expenses relating to "any . . . litigation" regarding to the user's Gemini account. Gemini reserves for itself the ability to deduct its "legal and enforcement related costs" directly from a user's Gemini account balance "without notice." UA at Legal Costs.
- 38. The UA requires users to agree that they may not transfer a "specific asset" out of their Gemini account until any "anticipated or actual" regulatory or legal action relating to that asset "is resolved." *Id*.
- 39. All of these provisions violate the EFTA, which Congress enacted to address the risks to consumers associated with electronic banking transactions. See, e.g. *Widjaja v. JPMorgan Chase Bank, N.A.*, 41 F.4th 579, 580-81 (9th Cir. 2021).
- 40. Indeed, the EFTA's "primary objective" is "the provision of individual consumer rights." 15 U.S.C. § 1693(b) (Congressional declaration of purpose). It "was established to protect consumers from errant and unauthorized monetary transfers." *Guarnieri*, 2022 WL 11381916, at *8. The Consumer Financial Protection Bureau (CFPB) promulgated Regulation E, 12 C.F.R. § 1005, under the EFTA.
- 41. Per the EFTA, Regulation E, and Regulation E's Official Interpretations, it is Gemini that bears the responsibility for unauthorized transfers and withdrawals in the regular course.
- 42. Specifically, pursuant to 15 U.S.C. § 1693g(a), "Unauthorized electronic fund transfers; limit" states in relevant part as follows:

- 43. In no event. . . shall a consumer's liability for an unauthorized transfer exceed the lesser of-
 - (1) \$50; or
 - (2) the amount of money or value of property or services obtained in such, unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected.
- 44. This cap is increased to \$500 dollars where the consumer waits more than two business days after becoming aware of the unauthorized transaction to notify the financial institution. 15 U.S.C. 1693g(a)(2).
 - 45. The rules are elucidated in Regulation E, 12 C.F.R. § 1005.6(b):
 - (b) Limitations on amount of liability. A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:
 - (1) Timely notice given. If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.
 - (2) Timely notice not given. If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of:
 - (i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and
 - (ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the

- institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.
- 46. The EFTA places the burden of proof on the financial institution to demonstrate that challenged transfers were authorized. 15 U.S.C. § 1693g(b).
- 47. The EFTA's implementing regulations expressly prohibit denials based on a consumer's alleged negligence. *See* Consumer Financial Protection Bureau, Comment for 1005.6 Liability of Consumer for Unauthorized Transfers, 6(b)(2) ("Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers.")
- 48. Moreover, where access to a consumer's account is obtained by means of robbery or fraud, the transfer is deemed unauthorized and it the financial institution not the consumer -- that bears the loss. *See, e.g.*, Official Interpretation of Regulation E, 12 C.F.R. § 1005.2(m)(3) ("Access device obtained through robbery or fraud. An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.").
- 49. Under the EFTA, the manner in which a consumer may dispute a charge, the time periods applicable to such disputes, the time periods within which the financial institution must investigate, and the rules for provisional credits (including the consumer's full access to provisionally credited funds pending conclusion of an investigation) are all determined by statute not contract. See, e.g. 1693f (Error Resolution); 1693g (Consumer Liability).
- 50. A prevailing consumer is entitled to attorney's fees and costs under the EFTA (1693m(a)), whereas a prevailing defendant must show that an action was brought in bad faith or

for purposes of harassment in order to be eligible for costs and "attorney's fees reasonable in relation to the work expended". 1693m(f).

- 51. A consumer's rights under the EFTA may not be waived by any agreement between the consumer and the financial institution. See, 1693l (referred to by Courts as the EFTA's "anti-waiver provision". See, e.g., Jordan v. Freedom Nat'l Ins. Servs., 2016 WL 5363752, at *2 (D. Ariz. Sept. 26, 2016) (section 1693l known as the EFTA's "anti-waiver provision").
- 52. In short, Gemini's UA which shifts liability for unauthorized transactions onto the consumer, sharply limits the time a consumer has to dispute any transaction, denies the consumer access to provisionally credited funds, waives an assortment of protections, and makes the consumer liable for all of Gemini's fees and costs in defending any action is entirely contrary to the EFTA.

THE DISTRICT'S CONSUMER PROTECTION PROCEDURES ACT

- 53. The District of Columbia Consumer Protection Procedures Act protects consumers from a wide range of unfair and deceptive business practices. *See* D.C. Code § 28–3904. The CPPA's extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28–3904, but to all other statutory and common law prohibitions. *See* D.C. Code §28-3905(b)(2).
- 54. Consistent with these protections, CPPA Section 28–3901(c) directs courts to construe the CPPA broadly "to promote its purpose," including ensuring that "a just mechanism exists to remedy all improper trade practices" and promoting "through effective enforcement[] fair business practices throughout the community." D.C. Code §§ 28–3901(c), (b)(1), (2).
- 55. Among other things, the CPPA "establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia," D.C. Code § 28–3901(c), and makes it unlawful to "advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered" and "make false or misleading representations of fact concerning . . . the price in comparison to [the] price of [a] competitor['s]," D.C. Code §§ 28–3904(h), (j).

- 56. CPPA Section 28–3904 is explicit that a violation occurs regardless of "whether or not any consumer is in fact misled, deceived, or damaged" by the unlawful practice.
- 57. Further, the CPPA authorizes public interest organizations, such as NACA, to bring claims on behalf of a consumer:
 - [A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action

D.C. Code §§ 28–3905(k)(1)(D).

58. Under the CPPA, a nonprofit or public interest organization may seek an injunction against the use of the unlawful trade practice. D.C. Code § 28–3905(k)(2)(D).

COUNT ONE

Violation of the Consumer Protection Procedures Act, D.C. Code §§ 28-3901 et seq.

- 59. The allegations of Paragraphs 1 through 58 are re-alleged as if fully set forth herein.
- 60. The D.C. Consumer Protection Procedures Act is a remedial statute that is to be broadly construed. It prohibits any person from engaging in any "unfair or deceptive trade practice," including to "represent that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law" and to "make or enforce unconscionable terms or provisions of sales or leases." D.C. Code § 28–3904(e-1), (r). CPPA Section 28–3904 is explicit that a violation occurs regardless of "whether or not any consumer is in fact misled, deceived, or damaged" by the unlawful practice.
- 61. NACA has standing to bring this Count under D.C. Code § 28–3905(k)(l)(D)(i), which provides in relevant part that "a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice."

- 62. NACA is a public interest organization that has done significant advocacy work on behalf of consumers, including cryptocurrency consumers, both locally in the District and at the federal level.
- 63. NACA brings this action on behalf of all District of Columbia Gemini users who have been subject to Gemini's unfair and deceptive trade practices as described herein.
- 64. The CPPA prohibits unlawful trade practices in connection with the offer, sale, advertisement, and supply of consumer goods and services. D.C. Code § 28–3904.
- 65. Gemini's platform and services, and the products bought, sold, traded, and stored on them, are leased or sold for personal, household, or family purposes and, therefore, are consumer goods or services.
- 66. Gemini, in the ordinary course of business, offers to lease, sell, or transfer, either directly or indirectly, consumer goods or services. Gemini, in the ordinary course of business, supplies consumer goods and services. Therefore, Gemini is a merchant. D.C. Code § 28–3901(a)(3).
 - 67. Gemini has engaged in unfair and deceptive practices in violation of the CPPA:
 - a. Gemini, through its UA, violated the EFTA as described above which is a violation of the CPPA. *See* D.C. Code §28-3905(b)(2).
 - b. Gemini's UA provisions represented that its transactions conferred or involved rights, remedies, or obligations which it did not have or involve, or which were prohibited by law. D.C. Code § 28–3904(e)(1).
- 68. District consumers suffered actual injuries as a result of Gemini's unfair and deceptive practices. Consumers lost funds on the Gemini platform and did not receive the benefits or protections afforded to them by law, including the EFTA, due to Gemini's violations of the law and illegal UA provisions.
- 69. Given these practices, NACA is also entitled to injunctive relief under D.C. Code § 28–3905(k)(2)(D).

70. WHEREFORE, NACA respectfully requests this Court enter judgment in its favor and against Gemini:

a. Permanently enjoin Gemini, pursuant to D.C. Code § 28–3905(k)(2)(D),

from enforcing illegal provisions of the UA;

b. Permanently enjoin Gemini, pursuant to D.C. Code § 28–3905(k)(2)(D),

from enforcing each provision of the UA alleged herein to be unlawful;

c. Declare that the EFTA applies to Defendant and that the provisions of its

UA alleged herein to be in violation of the EFTA are unlawful under D.C.

Code D.C. Code §28-3905(b)(2);

d. Award NACA reasonable attorneys' fees and costs as provided in the

CPPA;

e. Grant NACA other and further relief as the Court finds necessary and

proper.

JURY DEMAND

71. NACA demands a trial by jury.

Date: June 26, 2024 /s/ F. Peter Silva II

F. Peter Silva II (DC Bar No. 1010483)

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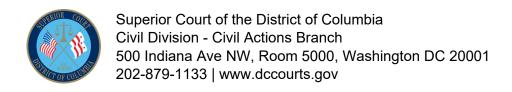
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Counsel for Plaintiff
National Association of Consumer Advocates



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Gemini Trust Company LLC
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28 Liberty ST
New York NY 10005

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Case Caption: National Association of Consumer Advocates, Inc. v. Gemini Trust Company LLC

To: Gemini Trust Company LLC Case Number: 2024-CAB-003999

NOTICE OF REMOTE INITIAL SCHEDULING CONFERENCE

Your case is scheduled for a(n) Remote Initial Scheduling Conference on 09/27/2024 at 9:30 AM in Remote Courtroom 519.

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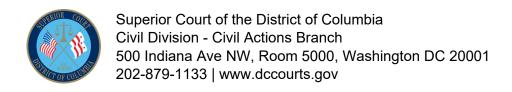
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የቃልና የጽሑፍ ትርጓሜ አንልግሎቶች፡

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Peter Silva II TYCKO & ZAVAREEI LLP 1970 Broadway Suite 1070 Oakland CA 94612

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የቃልና የጽሑፍ ትርጓሜ አንልግሎቶች፡

የቋንቋ ተደራሽነት ለዲ.ሲ. ፍርድ ቤቶች አስፈላጊ ነው። የቋንቋ አንልግሎቶች በተመለከተ አስተያየትዎን
https://www.dccourts.gov/services/information-and-resources/interpreting-services#language-access በመጎብኘት መስጠት ይችላሉ።