

**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.

³ <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.”⁶ It promises that from “day one,” it has “prioritized the security” of its users’ assets.⁷ And Gemini swears it “never ha[s] and never will compromise on that.”⁸

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.⁹ 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.

⁵ Gemini.com.

⁶ Gemini.com.

⁷ *Id.*

⁸ *Id.*

⁹

<https://deliverypdf.ssrn.com/delivery.php?ID=477029029119083007077020010024065087030017059012004002000102093099094086089074120100001055013125006047055098029120070104113065055050008064082111007111125116115066011037069001094085002121000030087086113012103000114010116094010098029013093110026008110003&EXT=pdf>.

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.”¹¹

25. Further, it represents that it has “embraced regulations and third-party assessments that demonstrate our commitment to a safe and secure experience.”¹² 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 <https://consumer.ftc.gov/articles/what-know-about-cryptocurrency-and-scams>.

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

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)(1)(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
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