

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CASE NO. 5:15-CV-231**

GARY and ANNE CHILDRESS, THOMAS)
and ADRIENNE BOLTON, and STEVEN)
and MORGAN LUMBLEY *on behalf of*)
themselves and others similarly situated,)

Plaintiffs,)

v.)

BANK OF AMERICA CORPORATION,)
BANK OF AMERICA, N.A., and FIA)
CARD SERVICES,)

Defendants.)

**AMENDED COMPLAINT—CLASS
ACTION**

JURY TRIAL DEMANDED

Plaintiffs GARY AND ANNE CHILDRESS, THOMAS AND ADRIENNE BOLTON, AND STEVEN AND MORGAN LUMBLEY (collectively “Plaintiffs”), individually and on behalf of a class of similarly situated persons, hereby file this Class Action Complaint, making the allegations herein upon personal knowledge as to themselves and their own acts, and upon information and belief and based upon investigation of counsel as to all other matters, as set forth herein.

INTRODUCTION

1. Since the beginning of the Iraq War through the present, members of our military services have been asked to make many sacrifices for our nation. One of these sacrifices is financial; leaving family, friends and the comforts of civilian life to answer our country’s call to duty also requires leaving behind employment, a career, and financial security. The Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. App. §§ 501 *et seq.*, was enacted to address this sacrifice, and seeks “to enable [servicemembers] to devote their entire energy to defense needs

of the Nation.” 50 U.S.C. App. § 502(1). The SCRA guarantees that all debts incurred by a servicemember before being called to active duty are reduced to a 6% interest rate, from the date deployment orders are received through the ensuing active duty period as required by 50 U.S.C. App. § 527. The Act also requires financial institutions to permanently forgive interest above 6%. To attract and retain the businesses of servicemembers, Defendants implemented the SCRA through a proprietary program that provided benefits more generous than those required by the SCRA, consistent with the practices of other banks.

2. Defendants Bank of America Corporation, Bank of America, N.A., and FIA Card Services (collectively “Defendants”) have failed to honor the active duty status of America’s fighting forces by: (1) charging an illegally high interest rate on the debts of thousands of servicemembers while they were abroad serving our nation, in violation of the SCRA and Defendants’ contractual duties; (2) allowing these unlawful interest charges to improperly inflate servicemembers’ principal balances; and (3) charging compound interest on these inflated balances.

3. Defendants then concealed their SCRA violations from the thousands of military families victimized by Defendants’ practices. Plaintiffs and other class members did not discover that Defendants were violating their rights until 2014, when Defendants sent misleading correspondence and payment checks to some military families purportedly to compensate them for poor service. When Defendants’ actions led Plaintiffs to investigate Defendants’ compliance with the SCRA, they discovered that Defendants’ internal audits had uncovered wholesale violations of the SCRA and damages to thousands of military families.

4. The named Plaintiffs include three servicemembers who defended this nation in military service. Their spouses and they now seek to defend thousands of America's servicemembers by enforcing their rights under the SCRA.

JURISDICTION AND VENUE

5. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331 because this action arises, in part, under the laws of the United States, particularly the Servicemembers Civil Relief Act ("SCRA") 50 U.S.C. App. § 501 *et seq.* Section 597(a) provides a private right of action to remedy violations of the SCRA.

6. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and (6) because the aggregate claims of the proposed class members exceed \$5,000,000, and at least one named Plaintiff resides in a different state than Bank of America. The amount in controversy in this matter includes, but is not limited to, actual and consequential monetary damages, disgorgement of Defendants' ill-gotten gains, punitive damages, and attorneys' fees and costs.

7. This Court has personal jurisdiction over Defendants, as both their headquarters and business activities which are the subject of the present complaint are located in North Carolina.

8. Venue is proper in this Court, as two named Plaintiffs reside in this district, Defendants conduct business within the district, and the business activities which are the subject of this Complaint occurred therein.

PARTIES

9. Plaintiffs file this Complaint in their individual capacity, and as a class action on behalf of themselves and all others similarly situated. They, along with other class members who may be named as class representatives at the time a motion is filed to certify the proposed class,

will represent the class: All persons in the United States who had an interest-bearing obligation or liability to Defendants or related entities which were subject to the SCRA and whose interest rates on such obligations or liabilities were not properly reduced or forgiven during active military service pursuant to 50 U.S.C. App. § 527, as implemented through Defendants' proprietary SCRA program, but excluding persons who have previously released the claims asserted herein.

10. Plaintiffs Gary and Anne Childress (the "Childresses") reside at 3801 Oak Park Rd., Raleigh, NC 27612. They had one or more interest-bearing obligations to Defendants, including credit card debt, in 2008, when Gary Childress was called to active service in Iraq as part of the Army National Guard. Defendants denied him his rights and benefits under the SCRA.

11. Plaintiffs Thomas and Adrienne Bolton (the "Boltons") reside at 8541 Denver Ave., Joint Base Lewis-McChord, WA 98433. They had one or more interest-bearing obligation to Defendants, including credit card debt, when Thomas Bolton was deployed to Iraq from 2005–2006 and from 2008–2009. Defendants denied him his rights and benefits under the SCRA.

12. Plaintiffs Steven and Morgan Lumbley (the "Lumbleys") reside at 10005 Sterling Place Dr., Conroe, TX 77303. They had one or more interest-bearing obligation to Defendants, including a Gold Option loan, in 2007, when Steven Lumbley was deployed to Iraq; they still maintain a loan account with Defendants. Defendants denied Steven Lumbley his rights and benefits under the SCRA.

13. Defendant Bank of America Corporation ("Bank of America Corp."), a Delaware corporation, is a bank holding company and a financial services holding company with headquarters in the Bank of America Corporate Center, 100 North Tryon Street, Charlotte, NC 28255.

14. Defendant Bank of America, N.A. (“BoA”), a wholly-owned subsidiary of Bank of America Corp., is a national banking association with its principal place of business located in Charlotte, North Carolina.

15. Defendant FIA Card Services is a wholly-owned subsidiary of Bank of America, N.A.

CLASS ACTION ALLEGATIONS

Class Definition

16. In accordance with FED. R. CIV. P. 23, Plaintiffs bring this action in their individual capacity and as a class action on behalf of themselves and all others similarly situated. They, along with other class members who may be named as class representatives at the time a motion is filed to certify the proposed class, will represent the class: All persons in the United States who had an interest-bearing obligation or liability to Defendants or related entities which were subject to the SCRA, and whose interest rates on such obligations or liabilities were not properly reduced or forgiven during active military service pursuant to 50 U.S.C. App. § 527, as implemented through Defendants’ proprietary SCRA program, but excluding persons who have executed a release of the rights claimed herein.

17. This class action satisfies the requirements of FED. R. CIV. P. 23, including, but not limited to, numerosity, commonality, typicality, adequacy and predominance.

Impracticable Joinder

18. The proposed class is composed of thousands of persons, geographically dispersed throughout the United States, the joinder of whom in one action is impracticable. The disposition of their claims in a class action will provide substantial benefits to both parties and the Court. Upon

information and belief, Defendants, either directly or through affiliated entities, are in possession of the names and addresses of all class members.

19. Class treatment is particularly appropriate here because the international presence of Defendants means that they conduct business in every jurisdiction in the United States. Further, this matter involves multiple federal statutes which were extensively and harmfully misapplied by Defendants.

Risk of Inconsistent or Varying Adjudications

20. Prosecution of separate actions by class members would risk inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendants.

21. Further, the outcomes of separate actions by individual members of the class could, as a practical matter, be potentially dispositive of the interests of other members of the class and substantially impair or impede their ability to protect their interests. Class-wide adjudication of Plaintiffs' claims, therefore, is appropriate.

22. Defendants have acted on grounds generally applicable to the class, thereby making class-wide adjudication of these claims appropriate.

Common Questions of Law and Fact

23. There exists a well-defined community of interests and questions common to the class, which predominate over individual factual or legal questions. These common factual and legal questions include, but are not limited to:

- (a) Whether Defendants improperly applied the SCRA to class members' accounts, thereby denying them benefits to which they are entitled by law;
- (b) Whether Defendants' violations of the SCRA, and particularly Defendants' failure to forgive interest charges rather than adding it to the Plaintiffs' principal balances,

caused the periodic account statements sent to class members to overstate principal and interest, among other errors, in violation of the Truth in Lending Act (“TILA”), 15 U.S. C. § 1601 *et seq.*;

(c) Whether Defendants violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. GEN. STAT. § 75-1.1 *et seq.* (“UDTPA”), and other applicable laws and regulations;

(d) Whether Defendants’ violations of the SCRA and TILA constitute a *per se* violation of the UDTPA;

(e) Whether the UDTPA applies to every transaction stated herein, given that Bank of America is headquartered in North Carolina and the violations arose through its business in North Carolina;

(f) Whether Defendants’ proprietary SCRA program, as described herein, constituted an enforceable contract term or a separate enforceable contract between Defendants and class members, and whether Defendants’ violations of the terms of its program gives rise to liability for breach of contract or violation of the SCRA;

(g) Whether Defendants systematically steered military families to higher interest rate products, thereby charging higher interest rates to such families prior to their entering active military service, and thus depriving such families of the benefits to which they are entitled under the SCRA;

(h) Whether Defendants have developed proprietary SCRA or restitution programs that unlawfully discriminate between accounts held by servicemembers and accounts held by their families;

- (i) Whether Defendants knew, reasonably should have known, or recklessly disregarded that their acts and practices were unlawful;
- (j) Whether Defendants' acts and practices were negligent;
- (k) Whether Defendants engaged in practices intending to deceive consumers;
- (l) Whether Defendants are entitled to an offset of damages for voluntary payments sent to some class members, when such payments were purportedly for poor customer service, not as remediation for any unlawful practice or interest overcharges;
- (m) Whether Plaintiffs and class members who received such payments suffered damages when Defendants overstated the taxable component of the payments to the Internal Revenue Service, causing such class members to be charged excess taxes;
- (n) Whether Plaintiffs and the class are entitled to actual, consequential, and punitive damages; and
- (o) Whether Plaintiffs and the class are entitled to recovery of attorney's fees and costs.

Typicality

24. The individual Plaintiffs and the class representatives to be named are asserting claims that are typical of the claims of the entire class, and the class representatives will fairly and adequately represent and protect the interests of the class in that they have no interests antagonistic to those of the other members of the class.

Fair and Adequate Representation

25. The individual Plaintiffs have retained counsel who are competent and experienced in the handling of litigation, including class action litigation, and who will fairly and adequately

represent and protect the interests of the class. Likewise, the class representatives will fairly and adequately represent and protect the interests of the class as a whole.

Superiority of Class Action Procedure

26. The individual Plaintiffs and other class members have all suffered damages as a result of Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will likely retain a substantial unlawful gain, their conduct will go un-remedied and uncorrected, and the class members will likely be deprived of adequate relief. Class action treatment of these claims is superior to handling the claim in other ways.

27. Certification of the class is appropriate under FED. R. CIV. P. 23.

STATEMENT OF FACTS

Plaintiffs Gary and Anne Childress

28. Plaintiffs Gary and Anne Childress had one or more interest-bearing obligations to Defendants, including credit card debt, in 2008, when Gary Childress was called to active service in Iraq as part of the Army National Guard.

29. On or around July 29, 2008, Gary Childress received orders requiring him to report to active duty on September 22, 2008.

30. On or around September 28, 2008, Gary Childress notified Defendants that he had entered active duty service, and requested that Defendants reduce the interest rate on his outstanding debt to 6%, as required by the SCRA. At the time, Mr. Childress' account had a balance of over \$5,000 and was incurring interest at a rate of approximately 27%.

31. On or around October 9, 2008, Gary Childress contacted Defendants, asking why they had not lowered the interest rate on the Childresses' accounts; he noted that their other banks had already done so.

32. In response, Defendants requested that the Childresses send, by fax or mail, additional information regarding Gary Childress's deployment, including a copy of his activation orders, the name of his unit and commander, the length of his active duty, and his telephone number.

33. On or around October 9, 2008, Anne Childress faxed Defendants the requested information and again asked that the interest rate on the Childresses' accounts be reduced to 6% as required by the SCRA.

34. Had Defendants failed to reduce the Childresses' interest rates to 6% as required by the SCRA, they would have closed their accounts with Defendants and moved to another bank.

35. Defendants subsequently sent account statements to the Childresses which reflected a 6% interest rate on their outstanding debt. These statements led the Childresses to believe that Defendants were in compliance with the SCRA.

36. However, Defendants did not reduce the interest rate on the Childresses' accounts to 6% as required by the SCRA. Instead, Defendants applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA. This practice was imperceptible to the Childresses, as their monthly statements contained misrepresentations that they were being charged the correct interest rate.

37. The Childresses relied on the misrepresentations in Defendants' monthly account statements when choosing to maintain their accounts with Defendants. They also continued to use the account and incur more debt on it, to Defendants' benefit, based upon Defendants' representations that they were complying with the SCRA and their proprietary SCRA program. Had the Childresses known that Defendants were charging them a higher interest rate than

permitted by the SCRA, they would have closed their accounts with Defendants and moved to another bank.

38. The Childresses paid more in interest charges on their accounts with Defendants than should have been due under a correct application of the SCRA and Defendants' proprietary SCRA program.

39. The Childresses never received an accounting of the overcharged interest. Upon information and belief, Defendants are still in possession of certain funds which were obtained as a result of the overcharged interest on the Childresses' debt.

40. On July 19, 2014, Gary Childress received a check from Defendants for \$7,104.78, along with a cover letter stating as follows: "Based on a recent review of your accounts, we may not have provided you the level of service you deserve, and are providing you this check. There is nothing you need to do other than cash your check."

41. The rationale stated in the cover letter was, upon information and belief, intended to conceal Defendants' violation of the SCRA and prevent the Childresses from investigating the matter further.

42. The Childresses determined through a visit to a Bank of America branch that the check was legitimate, but were unable to discover why they had received the check. They cashed the check without making a deposit.

43. On or around January 20, 2015, Gary Childress received a 1099-MISC form, listing an amount of \$5,328.59 as taxable income.

44. Anne Childress repeatedly called Defendants to determine the purpose of both the check and the statement of taxable income. She never received a definitive answer. One customer

service representative told her that the check was compensation for “poor service” while Gary Childress was deployed.

45. The Childresses never received an accounting or similar documentation related to the check they received on July 19, 2014, or an explanation of how Defendants determined the amount of taxable income reported to the Internal Revenue System.

46. In response to a complaint filed by the Childresses, Gary Childress received a letter from Defendants on or about February 20, 2015, explaining that “[a]s part of a normal account review process, we found that our interest calculation for the period you were on active duty did not provide our full intended benefit. We re-evaluated your accounts and revised the calculations. It was determined that an additional adjustment was needed.” This statement was false and intended to conceal Defendants' violations of the SCRA and their proprietary program.

Plaintiffs Thomas and Adrienne Bolton

47. Plaintiffs Thomas and Adrienne Bolton had one or more interest-bearing obligations to Defendants, including credit card debt, when Thomas Bolton was deployed to Iraq from 2005–2006 and from 2008–2009.

48. Shortly after Thomas’s deployment in November 2005, the Boltons provided notice to the Defendants of the deployment and requested that Defendants reduce the interest rate on their outstanding debt in accordance with the SCRA.

49. Thomas Bolton served in Iraq for one year, from November 2005 until November 2006.

50. In approximately September, 2008, Thomas Bolton again received deployment orders. The Boltons provided notice to Defendants of Thomas’s deployment, and again sought an interest rate reduction under the SCRA, around the time of deployment.

51. Thomas Bolton served in Iraq for approximately one year, beginning on September 2, 2008.

52. During both of Thomas Bolton's deployments, Defendants sent account statements to the Boltons which reflected a 6% interest rate on their outstanding debt. These statements led the Boltons to believe that Defendants were in compliance with the SCRA.

53. However, upon information and belief, Defendants did not reduce the interest rate on the Boltons' accounts to 6% as required by the SCRA. Instead, Defendants applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA and Defendants' proprietary program. This practice was imperceptible to the Boltons, as their monthly statements contained misrepresentations that they were being charged the correct interest rate.

54. The Boltons relied on the misrepresentations in Defendants' monthly account statements when choosing to maintain their accounts with Defendants. They also continued to use the account and incur more debt on it, to Defendants' benefit, based upon Defendants' representations that they were complying with the SCRA and their proprietary SCRA program. Had the Boltons known that Defendants were charging them a higher interest rate than permitted by the SCRA, they would have closed their accounts with Defendants and moved to another bank.

55. The Boltons paid more in interest charges on their accounts with Defendants than should have been due under a correct application of the SCRA and Defendants' proprietary program.

56. The Boltons never received an accounting of the overcharged interest. Upon information and belief, Defendants are still in possession of certain funds which were obtained as a result of the overcharged interest on the Boltons' debt.

57. In August 2014, the Boltons received a check for \$12,081.56 from Defendants. It included a similar cover letter as that received by the Childresses, which suggested that the purpose of the check was compensation for poor customer service. After receiving the check, Adrienne Bolton called Defendants to confirm that it was legitimate. Defendants confirmed the legitimacy of the check and stated the purpose of the check was to reimburse the Boltons for excessive interest that Defendants had charged during Thomas Bolton's active military service in violation of the SCRA. In reliance on this information, the Boltons deposited the check without expecting any tax liability.

58. The rationale stated in the cover letter was, upon information and belief, intended to conceal Defendants' violation of the SCRA and prevent the Boltons from investigating the matter further.

59. In March 2015, Thomas Bolton received a 1099-MISC form, which stated that of the \$12,081.56 paid to the Boltons by Defendants, \$9,041.15 was classified as "additional compensation." When the Boltons contacted Defendants regarding the tax form, they were again told that the taxed portion was restitution for Defendants' poor service.

60. Subsequently, Thomas Bolton filed a complaint with the Office of the Comptroller of the Currency (OCC) and the Consumer Financial Protection Bureau (CFPB).

61. On April 9, 2015, the CFPB notified Thomas Bolton that the company had responded to his complaint.

62. Defendants' response to Thomas Bolton's CFPB complaint stated "[a]s part of a normal account review process, we found that our interest calculation for the period you were on active duty did not provide our full intended benefit. We re-evaluated your accounts and revised the calculations. It was determined that an additional adjustment was needed. Since the error."

This statement was false and intended to conceal Defendants' violations of the SCRA and their proprietary program.

63. On or about May 5, 2015, Jason Bafone, a representative of Bank of America, called Adrienne Bolton and stated that the payment check the Boltons received was the balance that Bank of America owed them plus “accrued interest.” Adrienne Bolton asked Bafone for a record of Defendants’ accounting related to the payment check, but was told that Bank of America was not required to disclose it.

Plaintiffs Steven and Morgan Lumbley

64. Plaintiffs Steven and Morgan Lumbley had one or more interest-bearing obligations to Defendants in 2007, when Steven Lumbley was deployed to Iraq as a member of the Army National Guard.

65. The Lumbleys opened a Gold Option Loan account with Defendants in late February 2007, and immediately used it to purchase a vehicle.

66. On May 22, 2007, Steven Lumbley received orders from the Texas Army National Guard requiring him to report for active duty on or about June 4, 2007, for overseas deployment as part of Operation Iraqi Freedom.

67. On May 23, 2007, the Lumbleys provided notice of Steven Lumbley’s deployment, as well as a copy of his deployment orders, to Defendants and requested that Defendants reduce interest rate on their outstanding debt to 6% as required by the SCRA.

68. Steven Lumbley served in Iraq until approximately August 8, 2008.

69. During Steven Lumbley’s deployment, Defendants sent account statements to the Lumbleys which reflected a 6% interest rate on their outstanding debt. These statements led the Lumbleys to believe that Defendants were in compliance with the SCRA. However, upon

information and belief, Defendants did not reduce the interest rate on the Lumbleys' accounts to 6% as required by the SCRA. Instead, Defendants applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA and Defendants' proprietary program. This practice was imperceptible to the Lumbleys, as their monthly statements contained misrepresentations that they were being charged the correct interest rate.

70. The Lumbleys relied on the misrepresentations in Defendants' monthly account statements when choosing to maintain their accounts with Defendants. They also continued to use the account and incur more debt on it, to Defendants' benefit, based upon Defendants' representations that they were complying with the SCRA and their proprietary SCRA program. Had the Lumbleys known that Defendants were charging them a higher interest rate than permitted by the SCRA, they would have closed their accounts with Defendants and moved to another bank.

71. The Lumbleys paid more in interest charges on their accounts with Defendants than should have been due under a correct application of the SCRA and Defendants' proprietary program.

72. The Lumbleys never received an accounting of the overcharged interest. Upon information and belief, Defendants are still in possession of certain funds which were obtained as a result of the overcharged interest on the Lumbleys' debt.

73. On July 21, 2014, Steven Lumbley received a check for \$2,047.69 from Bank of America. It included a similar cover letter as that received by the Childresses, which suggested that the purpose of the check was compensation for poor customer service. The letter and check were sent in a nondescript envelope that appeared to be a solicitation or "junk mail."

74. That evening, Steven Lumbley spent approximately one hour on the phone with representatives from Bank of America, but was unable to determine the purpose of the payment

check. He therefore accepted, and relied upon, the explanation Defendants provided in their cover letter—that the check was compensation for poor customer service. He cashed the check without making a deposit, and kept the proceeds for a time in his safe in case the check proved to be a mistake.

75. The rationale stated in the cover letter was, upon information and belief, intended to conceal Defendants' violation of the SCRA and prevent the Lumbleys from investigating the matter further.

76. On approximately February 4, 2015, Steven Lumbley received a 1099-MISC stating that \$1,535.77 of the payment check was taxable.

77. The Lumbleys still maintain a loan account with Defendants.

General Allegations

78. In their communications with Plaintiffs and other class members, Defendants represented that they monitored the accounts of servicemembers using a nationwide proprietary and SCRA-compliant program.

79. The terms of Defendants' proprietary program included certain benefits that Defendants considered to be more generous than those required by the SCRA. Further, the terms of the proprietary program were consistent with the benefits provided to servicemembers by other banks.

80. Upon information and belief, the terms of Defendants' proprietary program were well documented, consistently applied, and communicated to class members, and became terms of the agreements between the parties.

81. Upon information and belief, Defendants offered the proprietary program and the benefits offered thereby to appear competitive in the consumer banking market and to retain the

business of servicemembers. Plaintiffs and other class members relied on Defendants' representations regarding the proprietary program when deciding to maintain their accounts with Defendants and to incur more debts on those accounts. If Defendants had failed to provide this competitive program, Plaintiffs and other class members would have closed their accounts with Defendants and moved to another bank.

82. Despite their representations to Plaintiffs and other class members, Defendants failed to comply with the SCRA and the terms of their propriety program. Specifically, Bank of America failed to reduce the interest rates on servicemembers' accounts to 6%, and failed to properly calculate the debt forgiveness requirements of both the SCRA and Defendants' proprietary program.

83. Further, Defendants failed to comply with the timing requirements of the SCRA and their proprietary program, under which reductions in the interest rates on servicemembers' accounts are effective on the date military orders are received.

84. Defendants did not forgive incurred interest, including certain fees and charges, as required by the SCRA and their propriety program. As a result, Defendants overstated the outstanding balances on servicemembers' accounts, and unlawfully charged interest on those balances on a recurring basis.

85. Defendants have not maintained adequate internal systems to ensure compliance with the SCRA. For example, servicemembers must often contact Defendants repeatedly to request interest rate reductions on their accounts to which they are entitled.

86. Defendants' violations of the SCRA and their own propriety program were carried out through complex computer calculations that were not discoverable by servicemembers, as the

periodic account statements and other communications received by Plaintiffs and other class members incorrectly reflected a 6% interest rate on servicemembers' accounts.

87. These violations caused damage to servicemembers, including the miscalculation of principal, interest, payoff amounts, and imposition of late fees and other charges.

88. Further, Defendants' violations of the terms of their own proprietary SCRA program constituted a breach of their contracts with Plaintiffs and other class members.

89. Upon information and belief, both Defendants' proprietary program and its restitution program implemented in response to its violations of the SCRA unlawfully discriminated between accounts held by servicemembers and accounts held by their families.

90. As part of their proprietary program, Defendants represented, that additional debts incurred by the accounts of servicemembers during active military service would accrue interest at 6%. In reliance on these terms, servicemembers and their families continued to incur debt on their accounts with Defendants during their active duty.

91. However, Defendants charged a much higher rate than 6% on this additional debt, despite their representation to Defendants and class members and in violation of the terms of their proprietary program.

92. In addition, Defendants systematically steered military families to higher-interest rate products, thereby charging more interest from such families prior to active military service and depriving military families of the intended benefits of the SCRA and proprietary program.

93. In addition to violating the SCRA and their own proprietary programs, Defendants made certain misrepresentations to Plaintiffs and other class members about their accounts that concealed and prevented Plaintiffs and class members from reasonably discovering such violations.

94. For example, on a monthly basis Defendants sent Plaintiffs and class members account statements which reflected a 6% interest rate during times of active duty, when Defendants were in fact charging significantly higher interest rates on those accounts in violation of the SCRA and the Truth in Lending Act (“TILA”). These higher interest rates improperly inflated Plaintiffs’ and class members’ outstanding balances, which Defendants then used to charge additional interest.

95. Defendants conducted an internal audit of their SCRA compliance, and determined that they had systematically and repeatedly violated the SCRA by failing to apply the required 6% interest rate to servicemembers’ accounts during times of active military service.

96. After Defendants discovered that they had charged servicemembers improperly high interest rates during active military service in violation of the SCRA, Defendants never admitted such violations to Plaintiffs and other class members or provided any accounting of the overcharges.

97. Instead, Defendants sent unsolicited payment checks to some servicemembers, with accompanying correspondence that misleadingly stated that the purpose of the check was compensation for poor or substandard customer service. The correspondence was often sent in a nondescript envelope that appeared to many servicemembers as a solicitation or “junk mail.”

98. Many class members, including certain Plaintiffs, deposited or cashed the payment checks they received from Defendants in reliance on the explanation Defendants provided—as compensation for Defendants’ poor level of service.

99. Plaintiffs and other class members later received tax forms from Defendants suggesting that at least a portion of the payment checks were taxable income. Defendants’

representations on the tax forms were contrary to the explanations they provided to Plaintiffs and other class members in the correspondence which accompanied the payment checks.

100. In addition, upon information and belief Defendants' reporting to taxing authorities understated the economic harm caused to Plaintiffs and class members, which in turn exaggerated class members' tax liabilities and created certain tax consequences and burdens that Plaintiffs and class members should not have incurred. Without a proper accounting of Defendants SCRA violations and reimbursement program, Plaintiffs and class members are without recourse to challenge Defendants' reporting to taxing authorities.

101. Through various forms of communication, Defendants have admitted to Plaintiffs and other class members that they charged improperly high interest rates on servicemembers' accounts during times of active duty in violation of the SCRA and their own proprietary program. Defendants' admission has been confirmed by an investigation of the Office of the Comptroller of Currency, which found that Defendants:

(a) Failed to have in place effective policies and procedures across the Bank to ensure compliance with the SCRA; (b) Failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its SCRA compliances processes; (c) Failed to devote to its SCRA compliance processes adequate internal controls, compliance risk management, internal audit, third party management, and training; and (d) Engaged in violations of the SCRA.

102. Defendants' acts and omissions, including their failure to comply with the SCRA and their own proprietary program, caused damage to the Plaintiffs, including but not limited to payment of additional, unnecessary, and improper interest, charges and fees.

103. In addition, upon information and belief, Defendants are still in possession of certain funds belonging to Plaintiffs and class members which were obtained as a result of the overcharged interest on servicemembers' accounts.

104. The damages to servicemembers are significant in part because Defendants have instituted policies and practices to steer servicemembers toward products with higher interest rates than those recommended to other consumers. Damages caused by Defendants' violations of the SCRA and their proprietary program were therefore compounded by these high interest rates, contributing to the financial woes of many families with a servicemembers abroad.

105. Defendants' failure to comply with the SCRA, the TILA, and its own proprietary program resulted in significant wrongful gain, based on the improperly high interest rates charged to the accounts of Plaintiffs and other class members during periods of active military service.

ALLEGATIONS AS TO DISCOVERY

106. Due to Defendants' misrepresentations to Plaintiffs and class members and concealment of its SCRA violations, Plaintiffs and class members had no reasonable opportunity to discover the violations until prompted to investigate by Defendants' misleading correspondence which accompanied payment checks in 2014. That Defendants' violations were self-concealing is evident by the fact that Bank of America has continued its nationwide practice of overcharging active military servicemembers for more than a decade.

107. Upon information and belief, the violations and breaches described herein are ongoing. Defendants' violations of the SCRA resulted in improper inflation of the principal balances owed by Plaintiffs and class members, and monthly interest being charged on these inflated balances. Thus, each and every month in which Defendants failed to charge a 6% interest rate on servicemembers' accounts as required by the SCRA, or forgive debt that accrued as a result of this failure, constituted an ongoing violation of, *inter alia*, the SCRA.

108. Each month, Defendants sent incorrect periodic statements to Plaintiffs and class members, constituting an ongoing violation of the SCRA, TILA, the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”), and other laws and regulations.

109. Defendants further violated the TILA and the UDTPA by sending correspondence to servicemembers containing misrepresentations that were designed to conceal Defendants’ violations of the SCRA and discourage further investigation by Plaintiffs and class members. Defendants’ actions, including their misrepresentations, failure to provide an accounting of their SCRA violations, and their incorrect reporting to taxing authorities, constitute further violations of statutory and common law and have caused further damages to Plaintiffs and class members.

110. The policies behind the SCRA, and the facts described herein, require an equitable tolling of any statute of limitations. Defendants have overcharged servicemembers for over a decade, and in many cases, the servicemembers’ active duty status hindered their ability to discover these violations. Defendants should not be allowed to retain their ill-gotten gains resulting from such improper activity.

FIRST CAUSE OF ACTION
(Violation of the Servicemembers Civil Relief Act)

111. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

112. Plaintiffs have a private right of action for violations of the SCRA pursuant to 50 U.S.C. App. § 597(a). The SCRA, formerly known as the War and National Defense Soldiers’ and Sailors’ Civil Relief Act of 1940, guarantees that all debts incurred by a servicemember or servicemember reservist before being called to active duty will be reduced to an interest rate of 6% from the date of receipt of their orders, and during the ensuing active duty period as required

by 50 U.S.C. App. § 527. Several classes of fees and charges qualify as interest. Any interest above the 6% must be forgiven and cannot be deferred.

113. Defendants violated the SCRA by failing to properly apply its provisions to the accounts and outstanding debt of Plaintiffs and other class members. Specifically, Defendants charged interest rates higher than 6% on the accounts of Plaintiffs and class members during active military service, and failed to forgive overcharged interest as required by the SCRA. As a result, Defendants improperly inflated servicemembers' principal balances, and subsequently charged compounded interest on those balances.

114. Further, Defendants systematically steered military families to higher-interest rate products, thereby charging more interest from such families prior to active military service and depriving military families of their statutory benefits.

115. Defendants were aware of the provisions and requirements of the SCRA. Defendants either knew, reasonably should have known, or recklessly disregarded their failure to comply with the SCRA and the exploitative and deceptive nature of their policies, procedures, and decisions.

116. Plaintiffs incurred damages as a result of Defendants' violations of the SCRA. For many class members, this harm is ongoing. As a result, Plaintiffs and the class members seek relief.

SECOND CAUSE OF ACTION
(Breach of Contract)

117. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

118. Defendants developed a propriety SCRA program that was implemented nationwide. Defendants' conduct and communications with Class Members informed Class Members of the terms of this program, with an understanding that Class Members would rely upon

that program in managing their financial affairs while a servicemember was engaged in active military service. Defendants proprietary program was developed and offered to maintain competitiveness in the banking industry and to retain the business of servicemembers, knowing that if Defendants' program was not competitive servicemembers would move their business to another bank.

119. Defendants' proprietary SCRA program either constituted an enforceable term of Defendants' contract with Plaintiffs and class members or constituted a separate enforceable contract between Defendants, Plaintiffs, and other class members.

120. In addition, Defendants' contracts with Plaintiffs and class members contain an implied covenant of good faith and fair dealing which required Defendants to deal fairly and in good faith with Plaintiffs and class members.

121. Plaintiffs and other class members maintained their accounts with Defendants and incurred additional debt on their accounts, to Defendants' benefit, in reliance on the proprietary program and the purported benefits offered by Defendants, which were competitive with those offered by other banks.

122. For example, but not by way of limitation, Defendants represented that during servicemembers' active military service, additional debts incurred by their accounts would accrue interest at 6%, and that equal benefits would be provided to the spouses of active military members. The proprietary program contained additional valuable benefits.

123. Defendants violated the terms of the proprietary SCRA program and thereby breached its contract with Plaintiffs and class members.

124. Defendants charged Plaintiffs and class members more interest than was permitted by their proprietary SCRA program. Plaintiffs, in reliance on the program and certain

representations from Defendants, as described herein, paid the improper interest charges, and Defendants currently retain those payments.

125. In addition, Defendants incorrectly reported certain payments made to Plaintiffs and class members to taxing authorities, creating certain tax consequences and burdens that Plaintiffs and class members should not have incurred.

126. Defendants' actions also constituted a breach of the implied covenant of good faith and fair dealing contained in their contracts with Plaintiffs and other class members.

127. The Plaintiffs and class members have been damaged by Defendants' breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Violation of Truth in Lending Act)

128. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

129. Pursuant to 15 U.S.C. § 1637(b), monthly statements provided by “[t]he creditor of any account under an open consumer credit plan” shall include, *inter alia*:

- “The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates,” § 1637(b)(4);
- “Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and . . . the corresponding nominal annual interest rate,” § 1637(b)(5); and
- “Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle . . . the total finance charge expressed as an annual percentage rate,” § 1637(b)(6).

130. Defendants violated § 1637 and, upon information and belief, other provisions of the Truth in Lending Act (“TILA”) by providing monthly account statements to Plaintiffs and other class members which inaccurately reflected that Defendants were applying an interest rate of 6% to the outstanding debt of servicemembers during active military duty. In reality, Defendants applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA and the proprietary program.

131. Plaintiffs and other class members relied on the misrepresentations contained in Defendants’ monthly account statements when choosing to maintain their accounts with Defendants. Had Plaintiffs known that Defendants were charging them an illegally high interest rate in violation of the SCRA and Defendants’ proprietary program, or that Defendants’ SCRA benefits were not competitive with those offered by other banks, they would not have incurred additional debt on their accounts but rather would have closed their accounts with Defendants and moved to another bank.

132. Defendants’ violations of the TILA deceived Plaintiffs, concealed Defendants’ SCRA violations, and caused damages to Plaintiffs.

FOURTH CAUSE OF ACTION
(Negligence)

133. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

134. Certain actions by Defendants, including but not limited to the creation of their proprietary and reimbursement programs, the issuance of tax forms to Plaintiffs and other class members, and their reporting to taxing authorities, created a duty to treat Plaintiffs and class members fairly and in good faith.

135. Defendants breached their duty to Plaintiffs and class members by violating the SCRA and their proprietary program, concealing such violations from Plaintiffs and class members, and making misrepresentations regarding the nature of their reimbursement program and the payment checks issued to Plaintiffs and class members.

136. Defendants knew, reasonably should have known, or recklessly disregarded their duty to treat Plaintiffs and class members fairly and deal with them in good faith.

137. Further, Defendants' failure to accurately report certain payments made to Plaintiffs and class members, and the reasons for those payments, to taxing authorities constitutes negligence *per se*.

138. Defendants' negligence and breach of their duties was the proximate cause of damages sustained by the Plaintiffs.

FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

139. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

140. As described herein, Defendants provided certain information to Plaintiffs and other class members regarding the interest rates being charged on their outstanding debt during periods of active military service and the basis for certain payment checks sent to Plaintiffs.

141. Specifically, Plaintiffs' and class members' periodic account statements reflected a 6% interest rate on their outstanding debt during active duty, and Defendants claimed that the payment checks were compensation for poor or substandard service discovered during routine account review.

142. This information was false, as Defendants were actually charging Plaintiffs and class members improperly high interest rates in violation of the SCRA and their proprietary

program, and the communications were designed to conceal that the payment checks were related to Defendants' violations of the SCRA and thereby discourage investigation into such violations.

143. In addition, Defendants failed to correct the false information they provided to Plaintiffs and other class members until forced to reveal their failure to comply with the SCRA as a result of investigations by Plaintiffs and third parties.

144. Defendants intended for Plaintiffs and other class members to rely on the false information they provided in their decisions to maintain accounts with Defendants and deposit the payment checks without investigating Defendants' violations of the SCRA.

145. By providing false information to Plaintiffs and other class members and then failing to correct it prior to Plaintiffs' investigations, Defendants failed to use reasonable care or competence in communicating the false information.

146. Plaintiffs and other class members suffered damage as a result of their reliance on Defendants' false information, as they were charged illegally high interest rates on their outstanding debt during active duty, in violation of the SCRA.

147. As a direct result of the Defendants' improper and negligent actions, Plaintiffs and other class members sustained an ascertainable loss as well as other damages. As a result, Plaintiffs and the class members seek relief.

SIXTH CAUSE OF ACTION
(Violation of N.C. Gen. Stat. § 75-1.1 *et seq.*)

148. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

149. Defendants' negligence and negligent misrepresentations toward Plaintiffs and other class members constitutes violations of the Unfair and Deceptive Trade Practices Act ("UDTPA").

150. Specifically, Defendants provided Plaintiffs and other class members with periodic account statements and other communications which reflected a 6% interest rate on their outstanding debt during periods of active duty, even though Defendants were actually charging rates much higher than that in violation of the SCRA.

151. Further, Defendants, through both written and telephone communications, negligently misrepresented to Plaintiffs and other class members that payment checks they received were compensation for poor or substandard service, when Defendants secretly intended to reimburse Plaintiffs and other class members for Defendants' violations of the SCRA and their proprietary program while ensuring that Plaintiffs and class members would not investigate such violations.

152. Defendants' actions were egregious, aggravated, and undertaken with disregard for the rights of Plaintiffs and other class members.

153. In the alternative, Defendants' violations of the SCRA and TILA, as described herein, constitute *per se* violations of the UDTPA.

154. Defendants' unfair and deceptive acts have "affected commerce" and were "acts or practices in and affecting commerce" within the meaning of N.C. GEN. STAT. § 75-1.1 *et seq.* because they were directly related to the consumer banking markets, and may have affected Plaintiffs' and other class members' credit ratings and financial well-being.

155. Defendants' unfair and deceptive acts were the actual and proximate cause of damage to Plaintiffs and other class members because Plaintiffs relied on Defendants' misrepresentations and concealment of material facts when deciding to maintain their accounts with Defendants and accept reimbursement payments under false pretenses.

156. Due to Defendants' unfair and deceptive acts, Plaintiffs and other class members sustained an ascertainable loss as well as other damages. As a result, Plaintiffs and the class members seek relief.

157. In addition, Plaintiffs and the other class members are entitled to treble damages and attorneys' fees pursuant to N.C. GEN. STAT. § 75-16 and § 75-16.1.

SEVENTH CAUSE OF ACTION
(Constructive Trust)

158. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

159. As described herein, Defendants have engaged, and are upon information and belief currently engaging, in improper conduct in violation of federal law which has caused damage to Plaintiffs and other class members.

160. In addition, Defendants have wrongfully obtained, and will continue to retain, certain funds and profits as a result of their misconduct, which legally belong to Plaintiffs and other class members.

161. Plaintiffs and other class members are entitled to the imposition of a constructive trust containing all assets, funds, and property derived from Defendants' wrongful acts, with Defendants serving as constructive trustees for the benefit of Plaintiffs.

EIGHTH CAUSE OF ACTION
(Accounting)

162. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

163. Pursuant to federal and North Carolina law, Plaintiffs and other class members are entitled to recover certain actual, consequential, and punitive damages based on the present and future revenues and profits of Defendants based on their fraudulent, improper, and illegal actions.

164. The amount of damages owed to Plaintiffs and other class members is currently unknown and cannot be ascertained without an accounting of the revenues and profits made by Defendants which are attributable to their wrongful and illegal acts.

165. Accordingly, Plaintiffs and other class members are entitled to an accounting of all assets, funds, revenues, and profits received and retained by Defendants as a result of their improper actions, as described herein.

PRAYER FOR RELIEF

WHEREFORE, on behalf of themselves and all other persons similarly situated, Plaintiffs respectfully pray for the following relief:

- a. An Order certifying the class, appointing the named Plaintiffs and class members as class representatives and Plaintiffs' attorneys as class counsel;
- b. Factual findings that Defendants have violated the Servicemembers Civil Relief Act, the Truth in Lending Act, the North Carolina Unfair and Deceptive Trade Practices Act, and other applicable statutes and rules;
- c. An Order requiring disgorgement of Defendants' ill-gotten gains to pay restitution to Plaintiffs and all members of the class;
- d. An award of compensatory, consequential, and punitive damages;
- e. An award of treble damages and attorneys' fees and costs pursuant to the North Carolina Unfair and Deceptive Trade Practices Act;
- f. An award of pre-and post-judgment interest;

- g. The imposition of a constructive trust containing all assets, funds, and property derived from Defendants' wrongful acts, with Defendants serving as constructive trustees for the benefit of Plaintiffs and class members;
- h. An accounting of all assets, funds, revenues, and profits received and retained by Defendants as a result of their improper actions;
- i. A jury trial on all issues so triable; and
- j. Such other relief as this Court may deem just and proper.

This the 18th day of September, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Amended Complaint—Class Action** was filed with the Clerk of Courts using the CM/ECF system. Parties may access this filing through the Court’s Electronic Filing System. Notice of this filing will be sent to the following counsel of record by operation of the Court’s Electronic Filing System:

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This the 18th day of September, 2015.

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