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, STEVEN and MORGAN LUMBLEY, RAYMOND and JACKIE LOVE, HARRY and MARIANNE CHAMPAGNE, and RUSSELL and MARY BETH CHRISTE, *on behalf of themselves and others similarly situated,*	)	**SECOND AMENDED COMPLAINT—CLASS ACTION**
Plaintiffs,	)	**JURY TRIAL DEMANDED**
v.	)	
BANK OF AMERICA, N.A.	)	
Defendant.	)	

Plaintiffs Gary and Anne Childress, Thomas and Adrienne Bolton, Steven and Morgan Lumbley, Raymond and Jackie Love, Harry and Marianne Champagne, and Russell and Mary Beth Christe (collectively "Plaintiffs"), individually and on behalf of a class of similarly situated persons, file this Second Amended Class Action Complaint against the above-named defendant ("Bank of America" or "the Bank"), and allege based 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 below.

INTRODUCTION

1. Since our country's founding, 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.S. § 3901 *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.S. § 3902.

2. To further this interest, the SCRA guarantees that all debts incurred by a servicemember before being called to active duty are reduced to an interest rate of not more than 6%, from the date deployment orders are received through the ensuing active duty period, or, if the debt is in the nature of a mortgage, from the date deployment orders are received, through the ensuing active duty period, and an additional year thereafter. The Act also requires financial institutions to permanently forgive interest above 6%.

3. To attract and retain the business of servicemembers, Bank of America implemented the SCRA through a proprietary program that promised benefits somewhat more generous than those required by the SCRA, consistent with the practices of other banks.

4. Bank of America, however, has failed to honor the active duty status of America's fighting forces by: (1) charging an unlawfully high interest rate on the debts of servicemembers while they were abroad serving our nation, in violation of the SCRA and the Bank's own contractual duties; (2) temporarily "subsidizing" interest charges on servicemembers' mortgages rather than re-amortizing their loans as necessary to permanently forgive interest above 6%; (3) allowing these unlawful interest charges to improperly inflate servicemembers' principal balances and deprive plaintiffs of equity in their homes, equity to which they are legally entitled; and (4) charging compound interest on these inflated balances.

5. Bank of America concealed its SCRA violations from the thousands of military families victimized by its practices. Plaintiffs and other class members did not discover that Bank of America was violating their rights under the SCRA and other state and federal laws until late

2014 and early 2015. During that time, the Bank sent misleading correspondence and payment checks to some military families purporting to compensate them for "poor service." The Bank later sent 1099 tax forms to those families reporting excessive taxable income. When its actions led plaintiffs to investigate Bank of America's compliance with the SCRA, they discovered that the Bank's internal audits had uncovered wholesale violations of the SCRA and damages to thousands of military families.

6. The named plaintiffs include six servicemembers who defended this nation in military service. Plaintiffs seek to represent a class of thousands of America's military families entitled to the protections of the SCRA—protections that were ignored by Bank of America and which caused class members significant economic injury.

JURISDICTION AND VENUE

7. 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.S. § 3901, *et seq*. At section 4042, the statute provides a private right of action to remedy violations of the SCRA.

8. 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 Bank of America's ill-gotten gains, punitive damages, and attorneys' fees and costs.

9. This Court has personal jurisdiction over the Defendant, as both its headquarters and business activities, which are the subject of the present Complaint, are located in North Carolina.

10. Venue is proper in this Court, as two named plaintiffs reside in this district, Defendant conducts business within the district, and the business activities which are the subject of this Complaint occurred therein.

PARTIES

11. Plaintiffs file this Complaint in their individual capacities, and as a class action on behalf of themselves and all others similarly situated. They will seek to represent the following class: All persons identified in Bank of America's records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action.

12. Plaintiffs Gary and Anne Childress (the "Childresses") reside in Raleigh, North Carolina. They had one or more interest-bearing obligations to Bank of America, including credit card debt, in 2008, when Gary Childress was called to active service in Iraq as part of the Army National Guard. Bank of America denied the Childresses their rights and benefits under the SCRA and its own proprietary program.

13. Plaintiffs Thomas and Adrienne Bolton (the "Boltons") reside at Joint Base Lewis-McChord, Washington. They had one or more interest-bearing obligation to Bank of America, including credit card debt, when Thomas Bolton was deployed to Iraq from 2005–2006 and from

2008–2009. Bank of America denied the Boltons their rights and benefits under the SCRA and its own proprietary program.

14. Plaintiffs Steven and Morgan Lumbley (the "Lumbleys") reside in Conroe, Texas. They had one or more interest-bearing obligation to Bank of America, including a Gold Option loan, in 2007, when Steven Lumbley was deployed to Iraq; they still maintain a loan account with Bank of America. Bank of America denied the Lumbleys their rights and benefits under the SCRA and its own proprietary program.

15. Plaintiffs Jackie and Raymond Love (the "Loves") reside in Garrett, Indiana. They had one or more interest bearing obligations to Bank of America, including a mortgage, when Raymond Love was on active military duty and deployed to Iraq in December, 2004 until January, 2006, and again in 2008. Bank of America denied the Loves their rights and benefits under the SCRA and its own proprietary program.

16. Plaintiffs Harry and Marianne Champagne (the "Champagnes") reside in Melbourne, Florida. They had one or more interest bearing obligations to Bank of America, including a mortgage, when Harry Champagne was on active military duty and deployed to Germany in 2007. Bank of America denied the Champagnes their rights and benefits under the SCRA and its own proprietary program.

17. Plaintiffs Russell and Mary Christe (the "Christes") reside in Chesapeake, Virginia. They had one or more interest bearing obligations to Bank of America, including a mortgage, when Russell Christe was on active military duty and deployed to Kuwait in 2012 and again in 2016. Bank of America denied the Christes their rights and benefits under the SCRA and its own proprietary program.

18. Defendant Bank of America, N.A., 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.

CLASS ACTION ALLEGATIONS

Class Definition

19. In accordance with Federal Rule of Civil Procedure 23, plaintiffs bring this action in their individual capacity and as a class action on behalf of themselves and all others similarly situated. They will represent the following proposed class: All persons identified in Bank of America's records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action.

20. This class action satisfies the requirements of Federal Rule of Civil Procedure 23, including, but not limited to, numerosity, commonality, typicality, adequacy and predominance.

Impracticable Joinder

21. 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, Bank of America, either directly or through affiliated entities, is in possession of the names and addresses of all class members.

22. Class treatment is particularly appropriate here because the international presence of Bank of America means that they conduct business in every jurisdiction in the United States.

Risk of Inconsistent or Varying Adjudications

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

24. 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.

25. Bank of America has acted on grounds generally applicable to the class, thereby making class-wide adjudication of these claims appropriate.

Common Questions of Law and Fact

26. 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 Bank of America failed to lawfully apply the SCRA to class members' accounts, thereby denying them benefits to which they are entitled by law;

(b) Whether Bank of America's use of the Interest Subsidy Method has violated the SCRA;

(c) Whether Bank of America's violations of the SCRA, including its failure to *forgive* interest charges rather than adding such 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.*;

(d) Whether Bank of America 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;

(e) Whether Bank of America's violations of the SCRA and TILA constitute *per se* violations of the UDTPA;

(f) Whether the UDTPA applies to every transaction applicable to the class and the allegations here, given that Bank of America is headquartered in North Carolina and the violations arose through its business in North Carolina;

(g) Whether Bank of America's proprietary SCRA-inspired program, as described in this Complaint, included enforceable contract terms and/or a separate enforceable contract between the Bank and class members, and whether Bank of America's violations of the terms of its program gives rise to liability for breach of contract or violation of the SCRA;

(h) Whether Bank of America systematically steered military families to higher interest rate mortgages, 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;

(i) Whether Bank of America developed proprietary SCRA or restitution programs that unlawfully discriminate between accounts held by servicemembers and accounts held by their families;

(j) Whether Bank of America knew, reasonably should have known, or recklessly disregarded that their acts and practices were unlawful;

(k) Whether Bank of America's acts and practices were negligent;

(l) Whether Bank of America engaged in practices intending to deceive consumers;

(m) Whether Bank of America is entitled to an offset of damages for voluntary payments sent to some class members, when such payments were self-described by the Bank as payment for poor customer service, not as remediation for any unlawful practice or interest overcharges;

(n) Whether plaintiffs and class members who received such payments suffered damages when Bank of America overstated the taxable component of the payments to the Internal Revenue Service, causing such class members to pay excess taxes;

(o) Whether plaintiffs and the class are entitled to actual, consequential, and punitive damages; and

(p) Whether plaintiffs and the class are entitled to recovery of attorney's fees and costs.

Typicality

27. The individual plaintiffs and the class representatives 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

28. 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

29. The individual plaintiffs and other class members have all suffered damages as a result of Defendant's unlawful and wrongful conduct. Absent a class action, Bank of America 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.

30. Certification of the class is appropriate under Federal Rule of Civil Procedure 23.

STATEMENT OF FACTS

Plaintiffs Gary and Anne Childress

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

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

33. On or around September 28, 2008, Gary Childress notified Bank of America that he had entered active duty service, and requested that the Bank 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%.

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

35. In response, Bank of America 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.

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

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

38. Bank of America 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 the Bank was in compliance with the SCRA.

39. However, Bank of America did not reduce the interest rate on the Childresses' accounts to 6% as required by the SCRA. Instead, the Bank 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.

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

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

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

43. On July 19, 2014, Gary Childress received a check from the Bank 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."

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

45. 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.

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

47. Anne Childress repeatedly called Bank of America 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.

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

49. In response to a complaint filed by the Childresses, Gary Childress received a letter from Bank of America 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 the Bank's violations of the SCRA and its proprietary program.

Plaintiffs Thomas and Adrienne Bolton

50. Plaintiffs Thomas and Adrienne Bolton had one or more interest-bearing obligation to Bank of America, including credit card debt, when Thomas Bolton was deployed to Iraq from 2005–2006 and from 2008–2009.

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

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

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

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

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

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

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

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

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

60. In August 2014, the Boltons received a check for $12,081.56 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. After receiving the check, Adrienne Bolton called the Bank to confirm that it was legitimate. The Bank confirmed the legitimacy of the check and stated the purpose of the check was to reimburse the Boltons for excessive interest that the Bank 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.

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

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

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

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

65. Bank of America's 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 Defendant's violations of the SCRA and their proprietary program.

66. 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 the Bank's accounting related to the payment check, but was told that Bank of America was not required to disclose it.

Plaintiffs Steven and Morgan Lumbley

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

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

69. 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.

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

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

72. During Steven Lumbley's deployment, Bank of America sent account statements to the Lumbleys which reflected a 6% interest rate on their outstanding debt. These statements led the Lumbleys to believe that the Bank was in compliance with the SCRA. However, upon information and belief, the Bank did not reduce the interest rate on the Lumbleys' accounts to 6% as required by the SCRA. Instead, the Bank applied a mathematical formula that charged interest

at a rate significantly higher than that permitted under the SCRA and Bank of America's proprietary program. This practice was imperceptible to the Lumbleys, as their monthly statements contained misrepresentations that they were being charged the correct interest rate.

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

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

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

76. 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."

77. 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 the Bank provided in its 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.

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

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

80. The Lumbleys still maintain a loan account with Bank of America.

Plaintiffs Jackie and Raymond Love

81. Plaintiffs Jackie and Raymond Love had one or more interest-bearing obligation to Bank of America, including a mortgage, in 2004, when Raymond Love was called to active military service in Iraq.

82. In late 2004, Raymond Love received orders requiring him to report to active duty on November 14, 2004.

83. Shortly after Mr. Love reported for active duty in 2004, the Loves notified Bank of America that Mr. Love had entered active duty service, and requested that the Bank reduce the interest rate on their mortgage to 6%, as required by the SCRA. At the time, the Loves owed over $160,000 on their mortgage, which was incurring interest at a rate of 7%.

84. After multiple requests from the Loves, Bank of America represented that it had reduced the interest rate on the Loves' mortgage to 6%.

85. However, Bank of America did not reduce the interest rate on the Loves' mortgage to 6% as required by the SCRA. Instead, the Bank applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA, and only temporarily

subsidized a portion of the interest above 6%, rather than re-amortizing the mortgage to permanently forgive the interest.

86. These practices were imperceptible to the Loves, as their monthly statements contained misrepresentations that they were being charged the correct interest rate. Specifically, Bank of America sent monthly statements to the Loves that stated:

> If you and BAC Home Loan Servicing, LP have entered into an agreement to address your monthly payments, please make payments in accordance with this agreement.
>
> If you have qualified for an interest rate reduction based upon current active military service, subsequent statements may not reflect the reduced payment amount. Please refer to the notice previously sent to you for the reduced payment amount.

In response to telephone inquiries, Bank of America also repeatedly assured the Loves that the Bank was applying an SCRA-compliant interest rate to the Loves' account in its internal computer systems and when crediting the Loves' monthly payments to the account balance.

87. Despite the Loves regular timely payments, Bank of America regularly mischaracterized the Loves' payments as late. Upon information and belief, Bank of America failed to timely credit the Loves' payments to their account because the Bank was waiting on their own tardy interest subsidy payments before crediting the account. Bank of America's application of the Interest Subsidy Method adversely affected the Loves credit score.

88. The Loves relied on Bank of America's misrepresentations, including those in its monthly account statements, when choosing to maintain their mortgage with the Bank rather than refinancing it elsewhere, and when taking out another loan with Bank of America. Had the Loves known that Bank of America was charging them a higher interest rate than allowed by the SCRA, they would have taken their business elsewhere.

89. Mr. Love returned from active duty in Iraq on or about January 4, 2006, when he entered the National Guard reserves.

90. Mr. Love was again placed in active duty, as an Active Guard Reservist on or about January 16, 2007, and he remained on active duty through January 31, 2011. During this time, Mr. Love was again deployed to Iraq in 2008, where he remained until mid-2009.

91. In 2008, the Loves notified Bank of America that Mr. Love had re-entered active duty service, and requested that the Bank reduce the interest rate on their mortgage to 6%, as required by the SCRA. Bank of America maintained its misrepresentations that it did reduce the interest rate on the Loves' mortgage in compliance with the SCRA.

92. The Loves paid more in interest charges on their mortgage with Bank of America than should have been due under a correct application of the SCRA and the Bank's proprietary SCRA program.

93. The Loves did not receive as much equity in their property as they should have had the Bank correctly applied the SCRA and its own proprietary SCRA-related program to their mortgage.

94. In April, 2011, the Loves filed for bankruptcy and thereafter their house was sold at an auction.

95. The Loves never received an accounting of the overcharged interest. Upon information and belief, Bank of America remains in possession of certain funds which were obtained as a result of the unlawful, overcharged interest on the Loves' mortgage.

96. In late October, 2014, Jackie and Raymond Love each received two checks from Bank of America with a cover letter dated October 27, 2014, and stating as follows: "Based on a recent review of your accounts, we may not have provided you with the level of service you

deserve, and are providing you this check. There is nothing you need to do other than cash your check." Mrs. Love's checks were in the amounts of $1,282.80 and $4,223.88. Mr. Love's checks were in the amounts of $1,282.80 and $29,567.20.

97. The language chosen by Bank of America for this letter was plainly intended to conceal the Bank's actual violation of law, including the SCRA, and prevent the Loves from investigating the matter further.

98. The Loves called Bank of America and asked for more details about the purpose of the checks, but the Bank refused to provide any additional information. The Loves subsequently cashed the checks.

99. In or around January, 2015, Jackie and Raymond Love each received one 1099-INT form and one 1099-MISC form from Bank of America. Both 1099-INT forms listed 1,282.80 as "interest income." Mr. and Mrs. Love's 1099-MISC forms respectively listed $29,567.20 and $4,223.88 as miscellaneous income. However, Bank of America's 1099 forms and reports to the Internal Revenue Service erroneously overstated the Loves' taxable income.

100. The Loves suffered adverse tax consequences as a result of the checks Bank of America sent to the Loves and the associated erroneous tax reporting. Specifically, the Loves lost an education tax credit and the American Opportunity Credit and were penalized $1,496 by the Internal Revenue Service for supposed underpayment of 2014 taxes.

101. The Loves never received an accounting or similar documentation related to the checks they received in October, 2014, or an explanation of how Bank of America determined the amount of taxable income reported to the Internal Revenue Service.

Plaintiffs Harry and Marianne Champagne

102. Plaintiffs Harry and Marianne Champagne had one or more interest-bearing obligation to Bank of America, including a mortgage, in 2007, when Harry Champagne was called to active military service in Germany as a helicopter pilot for the United States Army.

103. In the fall of 2007, Mr. Champagne received orders requiring him to report to active duty on October 15, 2007.

104. Shortly after receiving notice of Mr. Champagne's deployment and prior to reporting for duty on or about October 15, 2007, the Champagnes notified Bank of America that Mr. Champagne had entered active duty service, sent his deployment orders, and requested that the Bank reduce the interest rate on their mortgage to 6%, as required by the SCRA. At the time, the Champagnes owed approximately over $300,000 on their mortgage, which was incurring interest at a rate in excess of 6%.

105. Bank of America represented to the Champagnes that it had reduced the interest rate on the Champagnes' mortgage to comply with the SCRA's 6% interest rate cap.

106. However, Bank of America did not reduce the interest rate on the Champagnes' mortgage to 6% as required by the SCRA. Instead, the Bank applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA, and only temporarily subsidized a portion of the interest above 6%, rather than re-amortizing the mortgage to permanently forgive the interest. These practices were imperceptible to the Champagnes, as their monthly statements contained misrepresentations that they were being charged the correct interest rate.

107. The Champagnes relied on the misrepresentations in Bank of America's monthly account statements when choosing to maintain their mortgage with the Bank rather than refinancing it elsewhere, and when maintaining a credit card account with Defendant. Had the

Champagnes known that Bank of America was charging them a higher interest rate than allowed by the SCRA, they would have taken their business elsewhere.

108. The Champagnes paid more in interest charges on their mortgage with Bank of America than should have been due under a correct application of the SCRA and its own proprietary SCRA program.

109. The Champagnes did not receive as much equity in their property as they would have had Bank of America correctly applied the SCRA and its own proprietary SCRA program to their mortgage.

110. The Champagnes never received an accounting of the overcharged interest. Upon information and belief, Bank of America remains in possession of certain funds which were obtained as a result of the overcharged interest on the Champagnes' mortgage.

111. In about late October, 2014, the Champagnes each received a check from Bank of America with a cover letter dated October 27, 2014, stating as follows: "Based on a recent review of your accounts, we may not have provided you with the level of service you deserve, and are providing you this check. There is nothing you need to do other than cash your check." Mr. Champagne's check was for approximately $47,480.81 and Mrs. Champagne's check was for approximately $7,423.09.

112. The language chosen by Bank of America for this letter was plainly intended to conceal the Bank's actual violation of law, including the SCRA, and prevent the Champagnes from investigating the matter further.

113. The Champagnes called Bank of America and asked for more details about the purpose of the checks, but the Bank refused to provide any additional information. The Champagnes then visited a local branch of Bank of America, where a bank teller could not tell

them whether the check was legitimate without attempting to deposit it in the Champagnes' account. The Champagnes followed the teller's suggestion and deposited the check.

114. In or around January, 2015, Mr. and Mrs. Champagne each received a 1099-MISC form from Bank of America in the amounts of $46,734.00 and $6,676.28, respectively. The Champagnes also each received a 1009-INT for $746.81 from Bank of America. However, the Bank's 1099 forms and reports to the Internal Revenue Service erroneously overstated the Champagnes' taxable income.

115. The Champagnes called Bank of America numerous times in March and April 2016 and asked several of its customer service representatives and supervisors for an accounting and explanation of the checks they received in 2014 and the 1099 forms they received in 2015. These representatives did not provide any information other than what was on the cover letter sent with the checks in 2014. One or more Bank of America representatives referred the Champagnes to the Rust Consulting firm, which informed the Champagnes that it was a neutral party and that the checks Bank of America sent to the Champagnes were part of a class action lawsuit, which is incorrect.

116. The Champagnes suffered adverse tax consequences as a result of the checks Bank of America sent to them and the associated erroneous tax reporting. Among these consequences is that the Internal Revenue Service is seeking payment from the Champagnes for supposed underpayment of 2014 taxes.

117. The Champagnes never received an accounting or similar documentation related to the checks they received in October, 2014, or an explanation of how Bank of America determined the amount of taxable income reported to the Internal Revenue Service.

Plaintiffs Russell and Mary Beth Christe

118. Plaintiffs Russell and Mary Beth Christe had one or more interest-bearing obligations to Bank of America, including two mortgages, in 2012, when Russell Christe was called to active military service in Kuwait. The Christes had the same mortgages with the Bank when Mr. Christe was again called to service in Kuwait in 2016.

119. In the fall of 2012, Russell Christe received orders requiring him to report to active duty on November 1, 2012.

120. Shortly after receiving deployment orders in fall of 2012, the Christes notified Bank of America that Mr. Christe had entered active duty service, and requested that it reduce the interest rate on their mortgages to 6%, as required by the SCRA. At the time, the Christes owed over $500,000 on their mortgages, which were incurring interest at rates of approximately 6.9% to 11.5%.

121. After the Christes' repeated requests, Bank of America represented that it had reduced the interest rate on the Christes' mortgage to 6%.

122. However, Bank of America did not reduce the interest rate on the Christes' mortgage to 6% as required by the SCRA. Instead, the Bank applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA, and only temporarily subsidized a portion of the interest above 6%, rather than re-amortizing the mortgage to permanently forgive the interest. These practices were imperceptible to the Christes, as their monthly statements contained misrepresentations that they were being charged the correct interest rate.

123. The Christes relied on the misrepresentations in Bank of America's monthly account statements when choosing to maintain and modify their mortgage with the Bank rather than refinancing their property elsewhere. Had the Christes known that Bank of America was

charging them a higher interest rate than allowed by the SCRA, they would have taken their business elsewhere.

124. Mr. Christe returned from active duty in Kuwait on December 5, 2013.

125. Mr. Christe was again placed on active duty in Kuwait on January 2, 2016, which he served through October 28, 2016.

126. Before Mr. Christe left for active duty in early 2016, the Christes notified Bank of America that Mr. Christe was resuming active duty service, and requested that the Bank reduce the interest rate on their mortgage as required by the SCRA and its own proprietary SCRA program.

127. The Christes paid more in interest charges on their mortgage with Bank of America than should have been due under a correct application of the SCRA and its own proprietary SCRA program.

128. The Christes do not have as much equity in their property as they would have had Bank of America correctly applied the SCRA and its own proprietary SCRA program to their mortgage.

129. The Christes never received an accounting of the overcharged interest. Upon information and belief, Bank of America remains in possession of certain funds which were obtained as a result of the overcharged interest on the Christes' mortgages, and the Bank continues to overcharge the Christes interest in violation of the SCRA and its own proprietary SCRA program.

130. In late October, 2014, Russell Christe received two checks from Bank of America with a cover letter stating as follows: "Based on a recent review of your accounts, we may not have provided you with the level of service you deserve, and are providing you this check. There is

nothing you need to do other than cash your check." Mr. Christe's checks totaled approximately $77,000.

131. The language chosen by Bank of America for this letter was plainly intended to conceal the Bank's actual violation of law, including the SCRA, and prevent the Christes from investigating the matter further.

132. The Christes called Bank of America and asked for more details about the purpose of the checks, but the Bank refused to provide any additional information. The Christes subsequently deposited the checks.

133. In or around January, 2015, Russell Christe received one 1099-INT form and one 1099-MISC form from Bank of America. The 1099-INT form listed $94.02 and $304.59 as "interest income." The 1099-MISC form listed $34,477.92 and $42,320.68 as miscellaneous income. However, Bank of America's 1099 forms and reports to the Internal Revenue Service erroneously overstated the Christes' taxable income.

134. The Christes suffered adverse tax consequences as a result of the checks the Bank sent to the Christes and the associated erroneous tax reporting. Among these consequences is that the Christes were penalized $4,002 by the Internal Revenue Service for supposed understatement of 2014 taxable income and charged $889 in interest.

135. The Christes never received an accounting or similar documentation related to the checks they received in October, 2014, or an explanation of how Bank of America determined the amount of taxable income reported to the Internal Revenue Service.

136. On information and belief, Bank of America's excessive interest charges and erroneous tax reporting has damaged the Christes' credit. In 2015, a Bank of America customer

service representative promised to rectify the damage to the Christes' credit but the Bank has failed to do so.

General Allegations

137. In their communications with plaintiffs and other class members, Bank of America represented that it monitored the accounts of servicemembers using a nationwide proprietary and SCRA-compliant program.

138. The terms of Bank of America's proprietary program included certain benefits that it considered to be more generous than those required by the SCRA. Further, the terms of this proprietary program were consistent with the benefits provided to servicemembers by other banks.

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

140. Upon information and belief, Bank of America promised servicemembers the more favorable benefits of its proprietary program in an effort to appear competitive in the consumer banking market and to retain the business of servicemembers. Plaintiffs and other class members relied on Bank of America's representations regarding its proprietary program when deciding to maintain their accounts, incur more debt on those accounts, and/or enter into, maintain, and/or refinance their mortgages with the Bank. If Defendant had failed to provide this competitive program, plaintiffs and other class members would have refinanced their loans with another bank.

141. Despite their representations to plaintiffs and other class members, Bank of America failed to comply with the SCRA and the terms of its 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 its own proprietary program.

142. Among other improper calculations, Bank of America employed the "Interest Subsidy Method" whereby the Bank paid the difference between 6% interest and a military customer's home loan interest rate during some periods that the customer was eligible for interest *forgiveness* under the SCRA, and also failed to re-amortize the loan to account for any SCRA-mandated interest rate reduction. Thus, Bank of America failed to permanently forgive interest in excess of 6% as required by the SCRA. As a result, plaintiffs the Loves, Champagnes, and Christes, and other class members were charged excess interest and did not acquire as much equity in their homes as they were legally entitled to.

143. Also as a result of Bank of America's use of the Interest Subsidy Method, the Bank failed to timely credit servicemembers' payments, erroneously characterizing servicemembers' payments as insufficient and late until the Bank credited the account with the interest subsidy amount. Plaintiffs the Loves, Champagnes, and Christes, and other class members suffered adverse credit reports and other damages because of Bank of America's use of the Interest Subsidy Method.

144. Further, Bank of America failed to comply with the timing requirements of the SCRA and its own proprietary program, under which reductions in the interest rates on servicemembers' accounts are effective on the date military orders are received.

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

146. Bank of America has not maintained adequate internal systems to ensure compliance with the SCRA. For example, servicemembers must often contact the Bank repeatedly to request interest rate reductions on their accounts to which they are entitled.

147. Bank of America's violations of the SCRA and its 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 compliant interest rate on servicemembers' accounts.

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

149. Further, Bank of America's violations of the terms of their own proprietary SCRA program constituted breach of their contracts with plaintiffs and other class members.

150. As part of its proprietary program, Bank of America represented that additional debts incurred on the accounts of servicemembers during active military service would accrue interest at 5.9%. In reliance on these terms, servicemembers and their families continued to incur debt on their accounts with the Bank during their active duty.

151. However, the Bank charged a much higher rate than 5.9% or 6% on this additional debt, despite its representation to plaintiffs and class members and in violation of the terms of the Bank's proprietary program.

152. Upon information and belief, both Bank of America's own 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.

153. In addition, Bank of America 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.

154. In addition to violating the SCRA and its own proprietary programs, Bank of America 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.

155. For example, on a monthly basis, Bank of America sent plaintiffs and class members account statements which reflected an interest rate that complied with the SCRA and its own proprietary program during times of active duty, when the Bank was 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 Bank of America then used to charge additional interest.

156. Bank of America conducted an internal audit of its SCRA compliance, and determined that it had systematically and repeatedly violated the SCRA by failing to apply the required 6% interest rate cap to servicemembers' accounts during times of active military service.

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

158. Instead, Bank of America 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."

159. Many class members, including certain plaintiffs, deposited or cashed the payment checks they received from Bank of America in reliance on the explanation it provided—as compensation for Bank of America's poor level of service.

160. Plaintiffs and other class members later received tax forms from the Bank suggesting that at least a portion of the payment checks were taxable income. The representations on the tax forms were contrary to the explanations the Bank provided to plaintiffs and other class members in the correspondence which accompanied the payment checks.

161. In addition, upon information and belief, Bank of America's 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 Bank of America's SCRA violations and reimbursement program, plaintiffs and class members are without recourse to challenge its reporting to taxing authorities.

162. Through various forms of communication, Bank of America has admitted to plaintiffs and other class members that it charged improperly high interest rates on servicemembers' accounts during times of active duty in violation of the SCRA and its own proprietary program. The Bank's admission has been confirmed by an investigation of the Office of the Comptroller of Currency, which found that Bank of America:

> (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.

163. Bank of America's acts and omissions, including failure to comply with the SCRA and its own proprietary program, caused damage to the plaintiffs and class members, including but not limited to payment of additional, unnecessary, and improper interest, charges and fees, and depriving plaintiffs and class members of equity in their properties.

164. In addition, upon information and belief, the Bank remains in possession of certain funds belonging to plaintiffs and class members which were obtained as a result of the overcharged interest on servicemembers' accounts.

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

166. Bank of America's 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

167. Due to Bank of America's misrepresentations to plaintiffs and class members and its concealment of SCRA violations, plaintiffs and class members had no reasonable opportunity to discover the violations until prompted to investigate by Bank of America's misleading correspondence which accompanied payment checks in late 2014 and IRS forms 1099 the Bank

sent in 2015. That its violations were self-concealing is evident by the fact that Bank of America continued its nationwide practice of overcharging active military servicemembers for more than a decade.

168. Bank of America's 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 Bank of America 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.

169. Each month, Bank of America sent incorrect periodic statements to plaintiffs and class members, constituting ongoing violations of the SCRA, TILA, the North Carolina Unfair and Deceptive Trade Practices Act ("UDTPA"), and other laws and regulations.

170. Bank of America further violated the TILA and the UDTPA by sending correspondence to servicemembers containing misrepresentations that were designed to conceal its violations of the SCRA and discourage further investigation by plaintiffs and class members. Bank of America's actions, including its misrepresentations, failure to provide an accounting of its SCRA violations, and its incorrect reporting to taxing authorities, constitute further violations of statutory and common law and have caused further damages to plaintiffs and class members.

171. The logic of the SCRA, and the facts described in this Complaint, require an equitable tolling of any statute of limitations applicable here. Bank of America overcharged servicemembers for over a decade, and in many cases, the servicemembers' active duty status hindered their ability to discover these violations. Bank of America should not be allowed to retain ill-gotten gains resulting from such improper activity.

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

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

173. Plaintiffs have a private right of action for violations of the SCRA pursuant to 50 U.S.C.S. § 4042 (formerly 50 U.S.C. App. § 597(a)).

174. The SCRA mandates that:

> An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent—
>
> (A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage; or
>
> (B) during the period of military service, in the case of any other obligation or liability.

50 U.S.C.S. § 3937(1) (formerly 50 App. U.S.C. § 527(a)(1)(A)).

175. Several classes of fees and charges qualify as interest. Any interest above the 6% must be forgiven and cannot be deferred.

176. Bank of America violated the SCRA by failing to properly apply its provisions to plaintiffs' and other class members' interest-bearing obligations. Specifically, Bank of America charged interest rates higher than 6% on the accounts of plaintiffs and class members during active military service, failed to re-amortize plaintiffs' and class members' mortgages to reflect the required SCRA interest rate reductions, and failed to forgive overcharged interest as required by

the SCRA. As a result, the Bank improperly inflated servicemembers' principal balances, and subsequently charged compounded interest on those balances.

177. Further, Bank of America 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.

178. Bank of America was aware of the provisions and requirements of the SCRA. It either knew of, reasonably should have known, or recklessly disregarded its failure to comply with the SCRA and the exploitative and deceptive nature of its policies, procedures, and decisions.

179. Plaintiffs incurred damages as a result of Bank of America's 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)

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

181. Bank of America developed a propriety SCRA-related program that was implemented nationwide. The Bank's 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. This proprietary program was developed and offered to maintain competitiveness in the banking industry and to retain the business of servicemembers, mindful that if its program was not competitive many servicemembers would move their business to another bank.

182. Bank of America's proprietary SCRA program either constituted an enforceable term of its contracts with plaintiffs and class members or constituted a separate enforceable contract between the Bank, plaintiffs, and other class members.

183. In addition, Bank of America's contracts with plaintiffs and class members contain an implied covenant of good faith and fair dealing which required the Bank to deal fairly and in good faith with plaintiffs and class members.

184. Plaintiffs and other class members maintained their accounts with the Bank, incurred additional debt on their accounts, and/or refrained from refinancing their mortgages, to the Bank's benefit, in reliance on the proprietary program and the purported benefits offered by it, which were competitive with those offered by other banks.

185. For example, but not by way of limitation, Bank of America represented that it would (1) apply a 5.9% interest rate to additional debts incurred during active duty service; (2) provide equal benefits to spouses of active military servicemembers; and (3) lower interest rates on active duty military customers' home loans to 4%. This proprietary program contained additional valuable benefits.

186. Bank of America violated the terms of its promised proprietary SCRA program and thereby breached contracts with plaintiffs and class members.

187. Bank of America charged plaintiffs and class members more interest than was permitted by its proprietary SCRA program. Plaintiffs, in reliance on the program and certain representations from Bank of America, as described in this Complaint, paid the improper interest charges, and Bank of America currently retains those payments.

188. In addition, Bank of America 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.

189. Bank of America's actions also constituted a breach of the implied covenant of good faith and fair dealing contained in its contracts with plaintiffs and other class members.

190. The plaintiffs and class members have been damaged by Bank of America's breach of contract in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Violation of Truth in Lending Act – Open Consumer Credit Plans)

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

192. 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).

193. Bank of America violated § 1637 and, upon information and belief, other provisions of the Truth in Lending Act ("TILA") by providing monthly account statements to the Childresses,

Boltons, and Lumbleys and other class members which inaccurately reflected that the Bank was applying an interest rate of 6% to the outstanding debt of servicemembers during active military duty. In reality, the Bank applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA and the proprietary program.

194. Plaintiffs and other class members relied on the misrepresentations contained in Defendant's monthly account statements when choosing to maintain their accounts with Bank of America. Had plaintiffs known that the Bank was charging them an illegally high interest rate in violation of the SCRA and Bank of America's proprietary program, or that the Bank's 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 Bank of America and moved to another bank.

195. Defendant's violations of the TILA deceived plaintiffs, concealed Bank of America's SCRA violations, and caused damage to plaintiffs.

FOURTH CAUSE OF ACTION
(Violation of Truth in Lending Act – Residential Mortgage Loans)

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

197. Pursuant to 15 U.S.C. § 1638(f), monthly statements provided by "[t]he creditor, assignee, or servicer with respect to any residential mortgage loan" shall include, *inter alia*:

- "The amount of the principal obligation under the mortgage."
- "The current interest rate in effect for the loan."
- "The date on which the interest rate may next reset or adjust."
- "The amount of any prepayment fee to be charged, if any."
- "A description of any late payment fees."

- "A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage."

198. Bank of America violated § 1638 and, upon information and belief, other provisions of TILA by providing monthly account statements to the Loves, Champagnes, and Christes, and other class members, which failed to accurately and consistently state the current rate of interest in effect for the outstanding debt of servicemembers during active military duty and for a year thereafter. Bank of America applied a mathematical formula that charged interest at a rate significantly higher than that permitted under the SCRA and the proprietary program, which was not accurately reflected anywhere on plaintiffs' and other class members' monthly billing statements.

199. Plaintiffs and other class members relied on the misrepresentations contained in Bank of America's monthly billing statements when choosing to maintain their accounts with the Bank. Had plaintiffs known that Bank of America was charging them an illegally high interest rate in violation of the SCRA and its own proprietary program, or that Bank of America's SCRA benefits were not competitive with those offered by other banks, they would have refinanced or otherwise taken their business to another bank.

200. Bank of America's violations of TILA deceived plaintiffs, concealed its SCRA violations, and caused damage to plaintiffs.

FIFTH CAUSE OF ACTION
(Violation of Truth in Lending Act – Crediting Delays)

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

202. 15 U.S.C.S. § 1639f provides that: "In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment

to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency."

203. As part of its application of the Interest Subsidy Method to Plaintiffs' accounts, Bank of America violated § 1639f and, upon information and belief, other provisions of the Truth in Lending Act, by failing to credit plaintiffs' mortgage payments as of the date of receipt, which delays resulted in damage to plaintiffs and the reporting of erroneous negative information about plaintiffs to consumer reporting agencies.

204. At the time they applied the Interest Subsidy Method to plaintiffs' accounts, Bank of America included the "servicer" of those accounts within the meaning of 15 U.S.C.S. § 1639f.

205. Bank of America's violations of the TILA deceived plaintiffs, concealed its SCRA violations, and caused damage to plaintiffs.

SIXTH CAUSE OF ACTION
(Negligence)

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

207. Certain actions by Bank of America, including but not limited to the creation of its 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.

208. Bank of America breached its 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.

209. Bank of America knew, reasonably should have known, or recklessly disregarded its duty to treat plaintiffs and class members fairly and deal with them in good faith.

210. Further, Bank of America's 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.

211. Bank of America's negligence and breach of their duties was the proximate cause of damage sustained by the plaintiffs.

SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

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

213. As described in this Complaint, Bank of America 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.

214. Specifically, plaintiffs' and class members' periodic account statements reflected a SCRA-compliant interest rate on their outstanding debt during active duty, and Bank of America claimed that the payment checks were compensation for poor or substandard service discovered during routine account review.

215. This information was false, as Bank of America was actually charging plaintiffs and class members improperly high interest rates in violation of the SCRA and its proprietary program, and the communications were designed to conceal that the payment checks were related to its own violations of the SCRA and thereby discourage investigation into such violations.

216. In addition, Bank of America failed to correct the false information it provided to plaintiffs and other class members until forced to reveal its failure to comply with the SCRA as a result of investigations by plaintiffs and third parties.

217. Bank of America intended for plaintiffs and other class members to rely on the false information it provided in their decisions to maintain accounts with Bank of America and deposit the payment checks without investigating the Bank's violations of the SCRA.

218. By providing false information to plaintiffs and other class members and then failing to correct it prior to plaintiffs' investigations, Bank of America failed to use reasonable care or competence in communicating the false information.

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

220. As a direct result of Bank of America's 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.

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

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

222. Bank of America's negligence and negligent misrepresentations toward plaintiffs and other class members constitute violations of the Unfair and Deceptive Trade Practices Act ("UDTPA").

223. Specifically, Bank of America 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 Bank of America was actually charging rates much higher than that in violation of the SCRA.

224. Further, Bank of America, 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 Bank of America secretly intended to reimburse plaintiffs and other class members for its own violations of the SCRA and its proprietary program while ensuring that plaintiffs and class members would not investigate such violations.

225. Bank of America's actions were egregious, aggravated, and undertaken with disregard for the rights of plaintiffs and other class members.

226. In the alternative, Bank of America's violations of the SCRA and TILA, as described in this Complaint, constitute per se violations of the UDTPA.

227. Bank of America's 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 and mortgage markets, and may have affected plaintiffs' and other class members' credit ratings and financial well-being.

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

229. Due to Bank of America's 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.

230. 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.

NINTH CAUSE OF ACTION
(Constructive Trust)

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

232. As described above, Bank of America has engaged in improper conduct in violation of federal law which has caused damage to plaintiffs and other class members.

233. In addition, Bank of America has 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.

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

TENTH CAUSE OF ACTION
(Accounting)

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

236. 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 Bank of America based on its fraudulent, improper, and illegal actions.

237. 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 Bank of America which are attributable to its wrongful and illegal acts.

238. Accordingly, plaintiffs and other class members are entitled to an accounting of all assets, funds, revenues, and profits received and retained by Bank of America 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 Bank of America has 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 Bank of America's 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 Bank of America's wrongful acts, with the Bank

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 Bank of America 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 22nd day of June, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Second 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 22nd day of June, 2017.

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