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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 IN RE: BANK OF AMERICA CREDIT  
16 PROTECTION MARKETING AND SALES  
17 PRACTICES LITIGATION

MD No. 3:11-md-02269 TEH

MDL Docket No. 2269

18 THIS DOCUMENT RELATES TO ALL  
19 ACTIONS

20 **PLAINTIFFS' FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

21 Plaintiffs Juan Arevalo, Mitchell Sandow, Jason Chan, Blanche Melendez, Dominick  
22 Mattiello, Jr., as Executor of the Estate of Dominick M. Mattiello, Rose Rowley, Mary  
23 Richmond, Wilfred Somers, and Cheryl Ross, individually and on behalf of all others similarly  
24 situated (the "Class"), bring Plaintiffs' First Amended Consolidated Class Action Complaint  
25 ("Complaint") against Defendants Bank of America Corporation and FIA Card Services, N.A.  
26 (collectively, "Defendants"), and, by and through their attorneys, allege upon personal knowledge  
27 as to their own acts and jurisdictional allegations, and upon information and belief based on  
28 investigation by Counsel as to other acts, as follows:

**NATURE OF THE ACTION**

1. This class action involves Defendants' fraudulent, unfair, and unlawful course of  
conduct in imposing, marketing, selling, and/or administering products associated with their

1 credit cards known as “Credit Protection,” “Credit Protection Plus,” or other similar monikers that  
2 all offer similar coverage (collectively referred to as “Credit Protection”). On August 16, 2011,  
3 the Judicial Panel on Multidistrict Litigation issued a Transfer Order. The common fact pattern  
4 that informed the JPML’s Transfer Order included allegations that Defendants impose, market,  
5 sell, and/or administer Credit Protection for which consumers pay monthly payments, but get  
6 nothing meaningful in return. Defendants have engaged in two related fraudulent, unfair, and  
7 unlawful practices: (1) charging customers for Credit Protection without the customers’  
8 permission (“slamming”) and (2) enrolling customers in Credit Protection through deceptive  
9 marketing based on misrepresentations and material omissions, including marketing that does not  
10 disclose that Defendants administer Credit Protection in a way that is designed to and does deny  
11 benefits to even those Credit Protection customers who attempt to use the benefits.

12       2.     Slamming: Defendants impose Credit Protection on customers who did not  
13 authorize the charges. Because these customers do not know this “coverage” has been imposed  
14 on them and that they were charged without their consent, they do not know they can avail  
15 themselves of it. These customers do not have the necessary information to determine what  
16 Credit Protection covers and whether it would be financially sound to continue paying for the  
17 plan.

18       3.     Defendants have exacerbated their fraudulent and deceptive slamming practices by  
19 claiming that Plaintiffs and Class Members voluntarily enrolled in Credit Protection and,  
20 additionally, by attempting to convince slamming victims through deceptive marketing that they  
21 should stay “enrolled” in Credit Protection instead of canceling the plan, and refusing to refund  
22 the money of customers who were involuntarily charged.

23       4.     Defendants violated federal and various states’ statutory and common law by  
24 engaging in the following unfair, deceptive, and misleading practices: (1) imposing charges for  
25 Credit Protection on customers who did not voluntarily enroll in the program; (2) charging  
26 consumers for Credit Protection without their consent or knowledge through the use of  
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1 misrepresentations and material omissions; and (3) subsequently refusing to refund money to  
2 customers who Defendants charged for Credit Protection without their consent or knowledge.

3 5. Uniform Deceptive Marketing: Defendants employ uniform, fraudulent, unfair,  
4 and unlawful marketing practices to enroll customers in Credit Protection who cannot use the  
5 product or for whom the product is virtually worthless.

6 6. Defendants market Credit Protection through direct mail and solicit Credit  
7 Protection customers over the phone. Through misrepresentations and material omissions,  
8 Defendants deceptively represent Credit Protection as a service that prevents accounts from  
9 becoming delinquent by paying the required minimum monthly payment due on the subscriber's  
10 credit card account and the Credit Protection plan fee if certain triggering situations occur, such  
11 as involuntary unemployment, illness, or changes in family status.

12 7. However, Defendants fail to disclose the real nature of Credit Protection. While,  
13 *inter alia*, representing to consumers that Credit Protection provides an "important safety net"  
14 that makes "future[s] more secure," Defendants know that consumers are not eligible for Credit  
15 Protection benefits that Defendants claim to exist. Additionally, Defendants' Credit Protection is  
16 a maze of limitations, exclusions, and restrictions that make it impossible for consumers who  
17 voluntarily enroll to determine what Credit Protection covers and whether purchasing it would be  
18 a sound financial choice. Defendants' maze of limitations, exclusions, restrictions and deceptive  
19 trade practices makes it difficult or impossible for consumers to get benefits--even if they are  
20 eligible for them.

21 8. Defendants have violated federal and various states' statutory and common law  
22 through the deceptive, unfair, misleading, harassing, and bait-and-switch manner in which they  
23 marketed Credit Protection, enrolled consumers, and administered claims for Credit Protection  
24 benefits.

25 9. As a result of Defendants' fraudulent, unfair, and unlawful practice of imposing  
26 Credit Protection on some consumers without their authorization and consent and using deceptive  
27 marketing to enroll other consumers who are not eligible for benefits or whom Defendants  
28

1 prevent from receiving benefits with their ever-increasing restrictions and qualifications,  
2 Defendants have increased their profits from a product that provides virtually no benefits to  
3 consumers charged for the product month after month.

4 10. Defendants' unfair, unlawful, and fraudulent practices have significantly and  
5 substantially harmed Plaintiffs and Class Members, who have paid hundreds of millions or  
6 billions in fees for little or no benefit.

### 7 JURISDICTION AND VENUE

8 11. This First Amended Consolidated Class Action Complaint is filed pursuant to this  
9 Court's Orders of November 23, 2011 and April 3, 2012, and is an amendment to an action  
10 (*Arevalo v. Bank of America Corp.*, Case No. 3:10-cv-04959-TEH) previously filed in this  
11 district. This Court has jurisdiction over this matter for all purposes, including trial.

12 12. This action asserts claims under the Truth-in-Lending Act, 15 U.S.C. §§ 1601, *et*  
13 *seq.* This Court has jurisdiction over the federal claim asserted herein under the Truth-in-Lending  
14 Act, 15 U.S.C. § 1640(e), and has supplemental jurisdiction over the state law claims asserted  
15 herein under 28 U.S.C. § 1367.

16 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because  
17 the declaratory relief claim arises under federal law, 47 U.S.C. § 201.

18 14. This Court has subject matter jurisdiction over this matter pursuant to the Class  
19 Action Fairness Act, 28 U.S.C. § 1332(d)(2) and (6), in that:

- 20 (a) the matter in controversy exceeds \$5,000,000.00, exclusive  
21 of interest and costs;
- 22 (b) this is a class action involving 100 or more class members;  
23 and
- 24 (c) this is a class action in which at least one member of the Plaintiff class is a  
25 citizen of a State different from at least one Defendant.

26 15. The Court has personal jurisdiction over Defendants, which have at least minimum  
27 contacts with the State of California because they have conducted business there and have availed  
28 themselves of California's markets through their marketing, enrollment, and administration of  
Credit Protection.



1 such, all parties would expect Delaware law to apply to Defendants' alleged misconduct and  
2 application of Delaware law is necessary to ensure certainty, predictability, and uniformity.

3 21. Application of Delaware law to Defendants and the claims of Plaintiffs and all  
4 Proposed Class members comports with Due Process because Delaware has significant contact or  
5 aggregation of contacts with the claims of all Proposed Class members such that application of  
6 Delaware law is neither arbitrary nor unfair.

### 7 PARTIES

8 22. Plaintiff Juan Arevalo ("Arevalo") is a citizen of the State of California, residing  
9 in the city of San Bruno. Defendants charged Plaintiff Arevalo for Credit Protection on one of his  
10 Bank of America cards without his permission.

11 23. Plaintiff Mitchell Sandow ("Sandow") is a citizen of the State of California,  
12 residing in the city of San Diego. Defendants charged Plaintiff Sandow for Credit Protection on  
13 one of his Bank of America cards without his permission.

14 24. Plaintiff Jason Chan ("Chan") is a citizen of the State of California, residing in the  
15 city of San Francisco. Defendants charged Plaintiff Chan for Credit Protection on one of his  
16 Bank of America cards without his permission.

17 25. Plaintiff Blanche Melendez ("Melendez") is a citizen of the State of New York,  
18 residing in the city of Westbrookville. Defendants deceptively marketed Credit Protection to  
19 Plaintiff Melendez through misrepresentations and material omissions, enrolled her in Credit  
20 Protection on one of her Bank of America cards, and improperly denied her benefits under the  
21 plan.

22 26. Plaintiff Dominick Mattiello, Jr., as Executor of the Estate of Dominick M.  
23 Mattiello, ("Mattiello") is a citizen of the state of New Jersey, residing in Secaucus. Defendants  
24 deceptively marketed Credit Protection to Dominick M. Mattiello through misrepresentations and  
25 material omissions, enrolled him in Credit Protection on one of his Bank of America cards and  
26 improperly denied him benefits under the plan. Dominick M. Mattiello, a veteran of the Korean  
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1 War, died as a result of lung cancer while a citizen of the state of New Jersey, residing in the city  
2 of Belleville.

3 27. Plaintiff Rose Rowley (“Rowley”) is a citizen of the State of Wisconsin, residing  
4 in the city of Niagra. Defendants deceptively marketed Credit Protection to Plaintiff Rowley  
5 through misrepresentations and material omissions, enrolled her in Credit Protection on two of  
6 her Bank of America credit cards, and improperly denied her benefits under the plan.

7 28. Plaintiff Wilfred Somers (“Somers”) is a citizen of the state of Washington,  
8 residing in the city of Port Angeles. Defendants deceptively marketed Credit Protection to  
9 Plaintiff Somers through misrepresentations and material omissions, and enrolled her in Credit  
10 Protection even though, at the time of enrollment through the current date, Credit Protection  
11 precluded him from obtaining certain benefits under the plan because he was retired and not  
12 working.

13 29. Plaintiff Cheryl Ross (“Ross”) is a citizen of the state of Washington, residing in  
14 the city of Port Angeles. Defendants deceptively marketed Credit Protection to Plaintiff Ross  
15 through misrepresentations and material omissions, and enrolled her in Credit Protection even  
16 though, from the date of enrollment through the date on which Credit Protection was cancelled,  
17 Credit Protection precluded him from obtaining certain benefits under the plan because Plaintiff  
18 Ross never held a full time job and experienced periods of complete unemployment.

19 30. Plaintiffs Maryellen Richmond (“Richmond”) is a citizen of the state of Florida,  
20 residing in the city of Inverness. Defendants deceptively marketed Credit Protection to Plaintiff  
21 Richmond through misrepresentations and material omissions, and enrolled her in Credit  
22 Protection even though, from the date of enrollment through the current date, Credit Protection  
23 precluded her from obtaining certain benefits under the plan because Plaintiff Richmond was  
24 retired and not working.

25 31. Defendant Bank of America Corporation is a Delaware corporation with its  
26 principal place of business in Charlotte, North Carolina.





1 Defendants send written materials to consumers who did not voluntarily enroll, they would have  
2 no reason to look for or review such materials to affirmatively opt out.

3 37. As a result of Defendants' actions, many consumers are unaware they are  
4 "enrolled" in Credit Protection. When Credit Protection is imposed without consumers' consent,  
5 the only way consumers could ever know they have been enrolled in Credit Protection--and are  
6 being charged for this product--is by noticing a line-item fee listed on their monthly credit card  
7 statements. Rather than provide a separate invoice for these monthly fees, Defendants charge the  
8 fee directly to consumers' credit cards.

9 38. Defendants provide misleading and false information to customers by involuntarily  
10 enrolling them in Credit Protection and then claiming that they consented to enrollment in those  
11 instances when consumers challenge or question the unauthorized fees. Defendants also  
12 encourage slammed customers to keep paying for Credit Protection through deceptive marketing  
13 about the program, and make it difficult for customers to cancel Credit Protection or obtain a  
14 refund if they do not want the service. In fact, if subscribers complain that they did not authorize  
15 charges for Credit Protection, Defendants do not affirmatively remove those subscribers from  
16 Credit Protection enrollment going forward, and instead attempt to convince the subscribers to  
17 remain enrolled in the program when they try to cancel.

18 39. Uniform Deceptive Marketing: Even for consumers who enroll voluntarily in  
19 Credit Protection, the uniform and deceptive terms of Defendants' Credit Protection is replete  
20 with misrepresentations and material omissions. Defendants' marketing materials not adequately  
21 explain to consumers Credit Protection's restrictions, limitations, and exclusions associated with  
22 "protected events" and the proof required to establish them.

23 40. Through high pressure sales tactics, promises to help in times of need, and  
24 misrepresentations and material omissions, Defendants uniformly solicit consumers to purchase  
25 Credit Protection.

26 41. Days or weeks after their enrollment in Credit Protection, Defendants may, in  
27 some instances, mail written material to the consumers. Consumers cannot understand the  
28

1 confusing way the written materials present the terms and conditions of Credit Protection.  
2 According to the written materials, which are only provided (if at all) after subscribers have  
3 already been enrolled in the plan, there are numerous restrictions and qualifications on Credit  
4 Protection coverage. These restrictions appear in small print in incomplete, indecipherable,  
5 misleading, and obfuscatory language, and are therefore not readily comprehensible to  
6 subscribers. Based on the deceptive, limited, and incomplete materials provided by Defendants,  
7 consumers cannot determine all of the exclusions and limitations of Credit Protection, the proof  
8 required for claims, or the value of the product.

9 42. After Defendants enroll a consumer, the consumer may affirmatively cancel the  
10 plan only through what Defendants market as a “30-day review period.” Defendants deceptively  
11 characterize this sales scheme as a review period during which consumers can cancel their  
12 enrollment within 30 days of the effective date and “all Plan fees billed to your account will be  
13 refunded as a credit to the protected card.” [See  
14 <https://www8.bankofamerica.com/insurance/protection/credit-protection/overview.go?state=CA>,  
15 last visited on December 13, 2011.]

16 43. Defendants do not adequately describe or explain the exclusions to prospective  
17 subscribers so they can determine whether they have certain characteristics or meet certain factors  
18 that would bar them from being eligible for benefits under Credit Protection, even though  
19 Defendants have a common practice of limitations on full coverage based on exclusions.

20 44. Through these misrepresentations and material omissions, Defendants deceptively  
21 market Credit Protection as a viable option for consumers who are not eligible for the product.  
22 For example, Defendants charge numerous senior citizens and retired persons for Credit  
23 Protection although they are excluded from receiving benefits because they are not employed.

24 45. Harm from Defendants’ Practices: Defendants further increase the harm caused by  
25 their slamming and deceptive marketing practices by manipulating the administration process and  
26 misleading consumers who call to inquire about submitting claims. Defendants inform  
27 consumers that submitting a claim would be futile because they are ineligible to receive benefits.  
28

1 Defendants provide consumers with incorrect information about submitting a claim, including the  
2 type of information necessary to substantiate a claim, and the timing in which that information  
3 must be submitted.

4 46. Defendants provide themselves with unfettered and unchallengeable discretion in  
5 the claims administration process. Defendants exercise their discretion in bad faith in order to  
6 maximize the number of claims denied by, *inter alia*, blocking and stonewalling the filing of  
7 claims, harassing claimants or potential claimants with abusive phone calls to deny and impede  
8 Credit Protection claims that deny knowledge of the program, setting up arbitrary impediments to  
9 filing a claim, and denying claims for arbitrary reasons or no reason at all.

10 47. Defendants impose a monthly charge of approximately \$0.95 per \$100 of each  
11 customer's month-ending credit card balance for Credit Protection. Defendants have collected  
12 hundreds of millions or billions of dollars from class members while paying out little in the way  
13 of benefits.

14 48. Defendants' practices have caused substantial and significant harm to consumers.

15 49. Unenforceable Arbitration Clauses: Defendants have imposed take-it-or-leave-it  
16 arbitration clauses in the underlying credit card contracts with Plaintiffs and the Class Members.  
17 These clauses are not enforceable or applicable to the claims here because Defendants have  
18 agreed, pursuant to a separate settlement agreement, not to enforce consumer arbitration clauses.  
19 In addition, there are no arbitration clauses in the Credit Protection agreements themselves.  
20 Therefore, the arbitration clause found in the credit card agreement is separate and independent of  
21 the Credit Protection plans at issue here such that Plaintiffs did not agree to arbitrate their claims  
22 with respect to Credit Protection. Likewise, the Slamming Plaintiffs could not have agreed to  
23 arbitrate claims about Credit Protection because they did not even agree to enroll in Credit  
24 Protection. Further, the arbitration clause in the underlying credit card agreements is void  
25 inasmuch as they are illusory contracts. Any arbitration clauses are unenforceable for other  
26 reasons as well, among them that: (a) Defendants had selected an arbitration forum, National  
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1 Arbitration Forum (“NAF”), that is no longer accepting consumer arbitrations and was effectively  
2 shut down for corruption, and (b) Defendants have waived their right to seek arbitration.

3  
4 **PLAINTIFF JUAN AREVALO**

5 50. Plaintiff Juan Arevalo (“Arevalo”) is a citizen of the State of California, residing  
6 in San Bruno.

7 51. Plaintiff Arevalo called Bank of America on or around January 2010 to activate  
8 cash advance checks received through his credit card. During the call, Bank of America tried to  
9 sell him the Credit Protection plan, telling him that it would give him peace of mind in the event  
10 of losing his job or some other life event. Plaintiff Arevalo declined to enroll.

11 52. Although Bank of America nevertheless said it would send materials about Credit  
12 Protection, Plaintiff Arevalo does not recall receiving any. Moreover, he never voluntarily  
13 enrolled in the Credit Protection program, either on the telephone or thereafter, and did not  
14 believe that he was enrolled in the program.

15 53. On or around April 2010, Plaintiff Arevalo discovered unauthorized charges for  
16 “Credit Protection Plus” on his credit card statements. He then reviewed his previous statements  
17 and discovered two other charges for Credit Protection Plus on his February and March 2010  
18 statements.

19 54. Because Plaintiff Arevalo had never enrolled in the Credit Protection program, he  
20 called the customer service line listed on his credit card statement next to the Credit Protection  
21 charge to complain about the charges and seek reversal of the charges.

22 55. The Credit Protection customer service representative made it difficult for Plaintiff  
23 Arevalo to cancel the plan and tried to pressure Plaintiff Arevalo to keep the Credit Protection  
24 plan. Finally, after Plaintiff Arevalo repeatedly told the representative he did not want the plan,  
25 wanted his money back, and refused to speak to anyone else, the representative told Plaintiff  
26 Arevalo he could cancel the plan but they could not refund his money. Plaintiff Arevalo then  
27 called the Bank of America customer service line to complain, but the representative also refused  
28 to refund his money and told him to call Credit Protection.



1 which allowed you time to review the product and cancel for any  
2 reason within 30 days without being billed for the premiums.”

3 64. Bank of America itself acknowledged that Plaintiff Sandow declined to enroll in  
4 the Credit Protection program through Defendants.

5 65. Plaintiff Sandow has no recollection of receiving any written materials from  
6 Defendants to inform him of how to opt out of the Credit Protection program in which he did not  
7 enroll in the first place.

8 66. Plaintiff Sandow’s city of birth is not “Falanagan” and he has no memory of  
9 providing (or reason to provide) Flanagan as a city of birth to Defendants.

10 67. Although Defendants have stopped charging Plaintiff Sandow for Credit  
11 Protection, they have not refunded him any money, even though he did not authorize the charges  
12 and requested a refund.

13 68. Plaintiff Sandow has paid premiums of \$0.95 to the \$100 monthly for his card. In  
14 total, Mr. Sandow estimates he has paid more than \$700.00 in premiums for a service he never  
15 enrolled in, plus Defendants have charged him an interest rate of 19.99% on his balances that  
16 include the premiums paid to Defendants.

17 **PLAINTIFF JASON CHAN**

18 69. Plaintiff Jason Chan (“Chan”) is a citizen of the State of California, residing in San  
19 Francisco.

20 70. Plaintiff Chan held a Bank of America Platinum Plus Visa.

21 71. Plaintiff Chan never voluntarily enrolled in the Credit Protection program and did  
22 not believe that he was enrolled in the program.

23 72. In or around August 2008, Plaintiff Chan discovered unauthorized charges for  
24 Credit Protection on his credit card statements.

25 73. Because Plaintiff Chan had never enrolled in the Credit Protection program, he  
26 called the customer service line to complain about, and seek reversal of, the charges.

27 74. The Credit Protection customer service representative told Plaintiff Chan he could  
28 cancel the plan only if Plaintiff Chan agreed not to file a formal complaint. However, even if

1 Plaintiff Chan agreed to those conditions, the customer service representative stated that they  
2 could only provide a partial refund of Plaintiff's Chan's money.

3 75. In or around September 2008, Plaintiff Chan submitted a formal complaint to  
4 Defendants.

5 76. On or around October 20, 2008, Defendants responded with a letter stating that  
6 Plaintiff Chan's enrollment in Credit Protection was valid and refusing to provide him with a full  
7 refund of the unauthorized charges.

8 77. Plaintiff Chan has paid hundreds or thousands of dollars for Credit Protection, plus  
9 interest.

10 78. Defendants have not refunded the money Plaintiff Chan paid towards the Credit  
11 Protection premiums, even though he did not voluntarily enroll in the program and requested a  
12 refund for the unauthorized charges.

13 **PLAINTIFF BLANCHE MELENDEZ**

14 79. Plaintiff Blanche Melendez ("Melendez") is a citizen of the State of New York,  
15 residing in Westbrookville.

16 80. In or around 2005, Plaintiff Melendez received phone solicitations from Bank of  
17 America which employed high pressure scare tactics and promised help in times of need. Based  
18 on Defendants' sales presentation through representations and material omissions that she would  
19 be protected to the extent she ever needed the program benefits after suffering a qualifying event,  
20 she enrolled.

21 81. Plaintiff Melendez made payments to her credit card account including the Credit  
22 Protection Plus fees applied to her balance.

23 82. In December 2008, Plaintiff Melendez left her employment on account of a  
24 disability related to hypertension, deep vein thrombosis, angina, and diabetes mellitus. On  
25 account of her condition, Plaintiff Melendez applied for state disability benefits, for which she  
26 was approved and later was also approved for Social Security benefits.

1           83. Plaintiff Melendez contacted Bank of America following her disability and was  
2 told that it was too early for her to file a claim and receive benefits. Instead, Defendants told her  
3 that she first had to be out of work on disability for three to five months before she could make a  
4 claim and be considered for benefits. Despite being disabled and out of work, Plaintiff Melendez  
5 continued to make payments as Defendants billed her for Credit Protection on her Bank of  
6 America credit card.

7           84. In or around March 2009, Plaintiff Melendez submitted a claim for Credit  
8 Protection benefits. Bank of America responded that Plaintiff Melendez did not qualify for  
9 benefits under the Credit Protection program, even though Plaintiff Melendez provided Bank of  
10 America with sufficient information to support her claim, and in fact was approved for benefits  
11 both by New York State and the Social Security Administration. In contrast to the state and  
12 federal agencies that approved her claims, and despite the fact that Plaintiff Melendez had paid  
13 hundreds or thousands in premiums to be protected in case of disability and unemployment, Bank  
14 of America refused to honor her claim and took numerous steps to stonewall and block her claim.

15           85. Instead of honoring her claim, Defendants began harassing Plaintiff Melendez,  
16 making upwards of 50 harassing phone calls to her about her account. Defendants ignored  
17 Plaintiff Melendez's pleas that her payments should be covered by Credit Protection and  
18 responded that Credit Protection was handled by another department.

19           86. During Defendants' harassing phone calls, Plaintiff Melendez explained that the  
20 Defendants should make payments for her account under the Credit Protection plan, but the  
21 Defendants' representatives consistently and consciously ignored her. Instead of using their  
22 resources to administer and pay claims fairly, Defendants continued to harass Plaintiff Melendez  
23 regarding her credit account, including continuing to bill Plaintiff Melendez for Credit Protection.

24           87. Plaintiff Melendez has paid hundreds or thousands of dollars for Credit Protection,  
25 plus interest, but received no benefits from the program. Defendants refused to honor the Credit  
26 Protection program and refused to pay Plaintiff's claim.



1 88. Plaintiff Melendez would not have voluntarily enrolled in Credit Protection and  
2 paid the amount in fees that she did had she known the true nature of Defendants' claims process  
3 and that Defendants' would refuse to pay her benefits for which she was eligible.

4 **PLAINTIFF DOMINICK MATTIELLO, JR., AS**  
5 **EXECUTOR OF THE ESTATE OF DOMINICK M. MATTIELLO**

6 89. Plaintiff Dominick Mattiello, Jr., as executor of the estate of decedent Dominick  
7 M. Mattiello, ("Mattiello") is a citizen of the state of New Jersey, residing in the city of Secaucus,  
8 New Jersey.

9 90. At all relevant times, decedent Dominick M. Mattiello was a citizen of the State of  
10 New Jersey, residing in the city of Belleville, New Jersey. Dominick M. Mattiello, a Korean War  
11 Veteran, died on November 29, 2009 from lung cancer while a citizen of the state of New Jersey,  
12 residing in Belleville.

13 91. At all relevant times, Dominick M. Mattiello was a Bank of America Card  
14 Member. Defendants enrolled Dominick M. Mattiello in Credit Protection through his date of  
15 death and charged him fees associated with the plan.

16 92. Defendants fraudulently conveyed through representations and material omissions  
17 that Mattiello would be covered by Credit Protection in the event of triggering conditions, like  
18 death.

19 93. Following Dominick M. Mattiello's death, Dominick Mattiello, Jr. was appointed  
20 as the executor of the Estate of Dominick M. Mattiello.

21 94. In December, 2009, Dominick Mattiello, Jr., as Executor of the Estate of  
22 Dominick M. Mattiello, contacted Bank of America to cancel the decedent's Bank of America  
23 credit cards and to obtain the "Loss of Life" death benefit under the Credit Protection plan.

24 95. In accordance with the directives from Bank of America, Dominick Mattiello, Jr.  
25 duly submitted the decedent's proof of enrollment in the Credit Protection plan and the Death  
26 Certificate.

27 96. Thereafter, Bank of America acknowledged receipt of the documents.  
28



1           105. After becoming enrolled in Credit Protection, Plaintiff Rowley received the  
2 welcome package from Defendants with written materials outlining the plan. These materials  
3 were confusing, unclear, and in small print.

4           106. Plaintiff Rowley continued to pay for Credit Protection from Defendants only  
5 because Defendants' representations and material omissions indicated that she would be eligible  
6 for the benefits touted by Defendants.

7           107. In summer 2010, Plaintiff Rowley was let go from her position as a medical  
8 transcriptionist after approximately three years at the company. She thereafter applied to  
9 Defendants' Credit Protection to activate the benefits. In August 2010, Defendants denied her  
10 requests because they determined that she was self-employed and her "unemployment was not  
11 caused exclusively by business bankruptcy, failure or loss of required equipment to conduct  
12 business, or damage to the business premises caused by fire, theft or natural disaster."

13           108. At the time Defendants enrolled Plaintiff Rowley in Credit Protection, Defendants'  
14 representatives did not ask if she was self-employed or determine that she was self-employed.  
15 Defendants never told Plaintiff Rowley that being self-employed could prevent her from being  
16 eligible for Credit Protection coverage or benefits.

17           109. Plaintiff Rowley did not consider herself to be self-employed and did not believe  
18 she would be considered self-employed by the State of Wisconsin or Defendants.

19           110. Defendants did not disclose to Plaintiff Rowley that being self-employed by their  
20 definition would bar her from receiving benefits under the Credit Protection plan. If Plaintiff  
21 Rowley had known that Defendants considered her to be self-employed and ineligible for benefits  
22 under Credit Protection, she would not have enrolled.

23           111. Plaintiff Rowley and her husband have paid premiums of approximately \$0.95 for  
24 every \$100 monthly for each of their cards, and, upon information and belief, have paid  
25 approximately \$20-30/month for all of their credit cards issued by Defendants for the last several  
26 years. The exact amount of Credit Protection charges made by Defendants, and paid by Plaintiff  
27 Rowley, can be readily compiled and calculated by Defendants.  
28



1 Richmond, when those facts were material to Plaintiff Richmond's decision to purchase Credit  
2 Protection, and when: (1) those facts were false; (2) Defendants knew the facts were false or was  
3 ignorant of their truth; (3) Defendants intended Plaintiff Richmond to act on the facts; (4) Plaintiff  
4 Richmond did not know the facts were false; (5) Plaintiff Richmond relied on the truth of the  
5 facts; (6) Plaintiff Richmond had the right to rely on the truth of the facts; and, (7) Plaintiff  
6 Richmond suffered damages.

7 121. Had the Plaintiff Richmond known the true facts about Credit Protection, Plaintiff  
8 Richmond would not have purchased Credit Protection.

9 **PLAINTIFF WILFRED SOMERS**

10 122. Plaintiff Wilfred Somers ("Somers") is a citizen of the State of Washington,  
11 residing in Port Angeles, and is over the age of 65. Plaintiff Somers retired in 1980 due to a  
12 physical disability.

13 123. Approximately nine years ago, Plaintiff Somers became a Bank of America credit  
14 card holder. Plaintiff Somers became enrolled in Defendants' plan several years ago.

15 124. Defendants' representations and material omissions indicated that Plaintiff Somers  
16 would be eligible for the benefits touted by Defendants in the event of triggering conditions.

17 125. At all material times, Plaintiff Somers was ineligible for Credit Protection benefits.  
18 From the time Defendants enrolled him in Credit Protection through the present, both Plaintiff  
19 Somers and his wife were retired.

20 126. Defendants concealed, omitted, or failed to disclose existing material facts to  
21 Plaintiff Somers, such as the fact that certain benefits were subject to so many exclusions that it  
22 was unlikely that Plaintiff Somers could or would ever receive those benefits. Defendants made  
23 material representations to Plaintiff Somers, including the representation that Credit Protection  
24 provided Plaintiff Somers with certain benefits that were not, in fact, available to Plaintiff  
25 Somers. Such representations were material to Plaintiff Somers' decision to purchase Credit  
26 Protection. However, (1) those representations were false; (2) Defendants knew the  
27 representations were false or were ignorant of their truth; (3) Defendants intended Plaintiff  
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1 Somers to act on the representations; (4) Plaintiff Somers did not know the representations were  
2 false; (5) Plaintiff Somers relied on the truth of the representations; (6) Plaintiff Somers had the  
3 right to rely on the truth of the representations; and, (7) Plaintiff Somers suffered damages.

4 127. Had Plaintiff Somers known the true facts about Credit Protection, he would not  
5 have purchased Credit Protection from Defendants.

6 **PLAINTIFF CHERYL ROSS**

7 128. Plaintiff Cheryl Ross (“Ross”) is a citizen of the state of Washington, residing in  
8 Port Angeles.

9 129. In approximately 1995, Plaintiff Ross became a Bank of America credit card  
10 holder.

11 130. In approximately 2006, Plaintiff Ross became enrolled in Defendants’ Credit  
12 Protection program.

13 131. Defendants’ representations and material omissions indicated that Plaintiff Ross  
14 would be eligible for the benefits touted by Defendants in the event of triggering conditions.

15 132. At all material times, from the time Defendants enrolled her in Credit Protection  
16 up to and through the date on which Credit Protection was cancelled, Plaintiff Ross was ineligible  
17 for Credit Protection benefits because Plaintiff Ross never held a full time job and experienced  
18 periods of complete unemployment.

19 133. Plaintiff Ross attempted to cancel Credit Protection, but Defendants prevented her  
20 from doing so.

21 134. In June of 2010, Plaintiff Ross started a special repayment program with  
22 Defendants to pay off her credit card balance. This program lasts for sixty billing cycles. As a  
23 result of admission into this program, Plaintiff Ross’s Credit Protection was cancelled; however,  
24 the debt that she is paying through the special repayment program includes the charges for Credit  
25 Protection, as well as the interest charged on those fees.



1           142. Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, and Ross also seek  
2 certification on behalf of the following: All persons in the United States included in the Class  
3 who enrolled in Credit Protection (the “Nationwide Voluntary Enrollment Subclass”).

4           143. In the alternative, Plaintiffs Arevalo and Sandow seek certification of a Subclass of  
5 all persons in California who paid for Credit Protection at any time during the relevant time  
6 period (the “California Subclass”).

7           144. In the alternative, Plaintiff Melendez seeks certification of a Subclass of all  
8 persons in New York who paid for Credit Protection at any time during the relevant time period  
9 (the “New York Subclass”).

10           145. In the alternative, Plaintiff Mattiello seeks certification of a Subclass of all persons  
11 in New Jersey who paid for Credit Protection at any time during the relevant time period (the  
12 “New Jersey Subclass”).

13           146. In the alternative, Plaintiff Rowley seeks certification of a Subclass of all persons  
14 in Wisconsin who paid for Credit Protection at any time during the relevant time period (the  
15 “Wisconsin Subclass”).

16           147. In the alternative, Plaintiffs Somers and Ross seek certification of a Subclass of all  
17 persons in Washington who paid for Credit Protection at any time during the relevant time period  
18 (the “Washington Subclass”).

19           148. In the alternative, Plaintiff Richmond seeks certification of a Subclass of all  
20 persons in Florida who paid for Credit Protection at any time during the relevant time period (the  
21 “Florida Subclass”).

22           149. Plaintiffs reserve the right to modify or amend the definition of the proposed Class  
23 and Subclasses before the Court determines whether certification is appropriate.

24           150. Excluded from the Class and Subclasses are:

25                   a. Defendants and any entities in which Defendants have a controlling  
26 interest;

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- 1                   b. Any entities in which Defendants’ officers, directors, or employees  
2 are employed and any of the legal representatives, heirs, successors, or assigns of Defendants;  
3                   c. The Judge to whom this case is assigned and any member of the  
4 Judge’s immediate family and any other judicial officer assigned to this case;  
5                   d. All persons who received all Credit Protection benefits for which  
6 they applied and/or sought;  
7                   e. Persons or entities with claims for personal injury, wrongful death,  
8 and/or emotional distress;  
9                   f. All persons or entities that properly execute and timely file a  
10 request for exclusion from the Class and/or Subclasses;  
11                   g. Any attorneys representing the Plaintiffs or the Class and/or  
12 Subclasses; and  
13                   h. All governmental entities.

14           151. Numerosity—Fed. R. Civ. P. 23(a)(1). The Class is comprised of millions of  
15 consumers. Each Subclass is comprised of many thousands of individuals who were Defendants’  
16 customers, the joinder of whom in one action would be impracticable. The exact number or  
17 identification of the Class and Subclass members is presently unknown. The identity of the Class  
18 and Subclass members is ascertainable and can be easily determined based on Defendants’  
19 records.

20           152. Predominance of Common Questions—Fed. R. Civ. P. 23(a)(2), 23(b)(3).  
21 Common questions of fact and law that are capable of classwide resolution exist as to all Class  
22 and Subclass members and predominate over questions affecting only individual Class and  
23 Subclass members. The answers to these common questions will advance this litigation  
24 significantly. Common questions capable of generating common answers apt to drive the  
25 resolution of the litigation include, but are not limited to, the following:  
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1 a. Whether Defendants' enrollment, billing, and marketing scheme as  
2 alleged in this Complaint is fraudulent, deceptive, unlawful, and/or unfair in violation of common  
3 law and the law of the various states deceptive trade practices acts;

4 b. Whether Defendants' imposition of Credit Protection on individuals  
5 who did not sign up for it is unlawful, fraudulent, deceptive, unfair, and/or misleading; constitutes  
6 a breach of contract; and/or has been in bad faith.

7 c. Whether Defendants' marketing to and voluntary enrollment of  
8 customers who were not eligible for benefits is unlawful, fraudulent, deceptive, unfair, and/or  
9 misleading;

10 d. Whether Defendants' administration of Credit Protection is  
11 fraudulent, deceptive, unfair, and/or unlawful; constitutes a breach of contract; and/or has been in  
12 bad faith.

13 e. Whether Defendants' conduct constitutes unjust enrichment, and  
14 whether equity calls for disgorgement of unjustly obtained or retained funds, restitution to, or  
15 other remedies for the benefit of the Class;

16 f. Whether Plaintiffs and the Class members are entitled to  
17 prospective injunctive relief enjoining Defendants from continuing to engage in the fraudulent,  
18 deceitful, unlawful, and unfair common scheme as alleged in this Complaint; and

19 g. Whether Defendants' conduct rises to the level of reprehensibility  
20 under applicable law such that the imposition of punitive damages is necessary and appropriate to  
21 fulfill the societal interest in punishment and deterrence, and the amount of such damages and/or  
22 their ratio to the actual or potential harm to the Class.

23 153. Typicality—Fed. R. Civ. P. 23(a)(3). Plaintiffs assert claims that are typical of the  
24 entire Class, in that Plaintiffs paid for Credit Protection even though they were not eligible for  
25 benefits or were prevented from receiving benefits or they did not voluntarily enroll in Credit  
26 Protection and did not authorize the charges.

1           154. Adequacy—Fed. R. Civ. P. 23(a)(4); 23(g)(1). Plaintiffs are adequate  
 2 representatives of the Class because they fit within the class definition and their interests do not  
 3 conflict with the interests of the Members of the Class they seek to represent. Plaintiffs are  
 4 represented by experienced Class Counsel. Class Counsel have litigated numerous class actions,  
 5 and Plaintiffs' counsel intends to prosecute this action vigorously for the benefit of the entire  
 6 Class. Plaintiffs and Class Counsel can fairly and adequately protect the interests of all of the  
 7 Members of the Class.

8           155. Superiority—Fed. R. Civ. P. 23(b)(3). The class action is the best available  
 9 method for the efficient adjudication of this litigation because individual litigation of Class  
 10 Members' claims would be impracticable and individual litigation would be unduly burdensome  
 11 to the courts. Plaintiffs and members of the Class have suffered irreparable harm as a result of  
 12 Defendants' bad faith, fraudulent, deceitful, unlawful, and unfair conduct. Because of the size of  
 13 the individual Class members' claims, no Class members could afford to seek legal redress for the  
 14 wrongs identified in this Complaint. Without the class action vehicle, the Class would have no  
 15 reasonable remedy and would continue to suffer losses, as Defendants continue to engage in the  
 16 bad faith, unlawful, unfair, and deceptive conduct that is the subject of this Complaint, and  
 17 Defendants would be permitted to retain the proceeds of their violations of law. Further,  
 18 individual litigation has the potential to result in inconsistent or contradictory judgments. A class  
 19 action in this case presents fewer management problems and provides the benefits of single  
 20 adjudication, economies of scale, and comprehensive supervision by a single court.

21           156. Issue Certification and/or Subclasses—Fed. R. Civ. P. 23(b)(1),(b)(2), (c)(4), &  
 22 (c)(5). If and as appropriate, on the motion of a party and/or in the discretion of the Court, one or  
 23 more of the issues or claims set forth in this Complaint may be certified under the provisions of  
 24 Fed. R. Civ. P. 23 (b)(1),(b)(2), and/or (c)(4), and subclasses designated under Fed. R. Civ. P.  
 25 23(c)(5).

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **Violations of the Truth in Lending Act - 15 U.S.C. §1601 et seq.**

1  
2 **(On Behalf of All Plaintiffs, Nationwide Class, and Subclass Members)**

3 157. Plaintiffs restate and reallege the preceding paragraphs of this Complaint as though  
4 set out here word for word.

5 158. During the relevant time period, Defendants sold the credit services at issue in this  
6 lawsuit to the members of the proposed class, engaging in significant interstate commerce.

7 159. The purpose of the Truth in Lending Act of 1968, as amended, 15 U.S.C. §1601,  
8 1666j and Regulation Z, 12 C.F.R. part 226 (“TILA” and “Regulation Z”) is “to assure a  
9 meaningful disclosure of credit terms so that the consumer will be able to compare more readily  
10 the various credit terms available to him and avoid the uninformed use of credit, and to protect  
11 the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C.  
12 §1601(a); 12 C.F.R. 226.1(b).

13 160. TILA requires all solicitations for the extension of credit to clearly, conspicuously  
14 and in readily understood language disclose the terms of the commitment that the offeror is  
15 extending to the consumer.

16 161. Congress delegated authority for the implementation of the Truth-in-Lending Act  
17 to the Federal Reserve Board (“Board”). 15 U.S.C. §1604. The Board promulgated Regulation Z,  
18 which is the Truth In Lending Act’s implementing regulation. 12 C.F.R. §§226 *et seq.*

19 162. Defendants’ failure to disclose in their applications, solicitations, billing statement  
20 or otherwise, *inter alia*, that the premium charged for Credit Protection is a finance charge, that  
21 the minimum payment does not include all fees imposed, and that the interest is charged on  
22 penalty fees and costs in connection with Credit Protection violates sections 1605 and 1637(a)(3),  
23 (a)(4) and (b)(4) of the Truth in Lending Act.

24 163. As a result of Defendants’ violations of TILA and Regulation Z, Defendants are  
25 liable to Plaintiffs and members of the proposed class, who seek damages, pursuant to 15 U.S.C.  
26 §1640, including actual damages resulting from Defendants’ improper and illegal practices, “the  
27 lesser of \$500,000 or 1 per[cent]” of the net worth of Defendants, and costs and reasonable  
28 attorney fees.

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**SECOND CLAIM FOR RELIEF**  
**Violation of the Delaware’s Consumer Fraud Act,**  
**6 Del. C. §§ 2511-27, 2580-84**

**(On Behalf of All Plaintiffs, Nationwide Class, and Subclass Members)**

164. Plaintiffs restate and reallege the preceding paragraphs of this Complaint as though set out here word for word.

165. Each Defendants is a “person” as defined by 6 Del. C. §§ 2511(7).

166. Credit Protection is “merchandise” within the meaning of 6 Del. C. §§ 2511(6).

167. Credit Protection advertising and marketing materials are “advertisements” within the meaning of 6 Del. C. §§ 2511(1).

168. Delaware’s Consumer Fraud Act provides in relevant part that:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice.  
6 Del. C. § 2513.

169. Defendants violated the Delaware Consumer Fraud Act’s proscription against the act, use, or employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact by, *inter alia*, (a) concealing from Plaintiffs and all Class Members that Defendants enrolled them in Credit Protection, (b) affirmatively misrepresenting at all times to Plaintiffs and Class Members that Credit Protection has characteristics and benefits that they do not have, and (c) concealing from Plaintiffs and all Class Members that Defendants would not honor Credit Protection.

170. Defendants intended that Plaintiffs and the Class Members would rely upon their deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, and/or omission in connection with Credit Protection.

1                   171. Defendants' Credit Protection occurred "in the conduct of any trade or  
2 commerce in part or wholly within this State" under the Delaware Consumer Fraud Act as:  
3 (1) at least some of the deceiving conduct that violates 6 Del. C. § 2513 originated, arose, was  
4 directed, and emanated from Delaware, and/or (2) the presence of Defendants in Delaware is  
5 sufficient grounds for the Delaware Consumer Fraud Act to apply.

6                   172. Plaintiffs and Class members may seek injunctive relief in the form of  
7 "temporary restraining orders, preliminary or permanent injunctions, and such other relief as  
8 may be necessary" to prevent Defendants from engaging in activities declared by the Delaware  
9 Consumer Fraud Act to be unlawful. 6 Del. C. § 2523.

10                   173. As a direct and proximate result of Defendants' misconduct, Plaintiffs and  
11 Class members have been damaged in an amount to be proven at trial.

12                   174. In addition to compensatory damages, Plaintiffs and the Class are entitled  
13 to punitive damages because Defendants' conduct was fraudulent, gross, oppressive, and/or  
14 reckless, in an amount to be proven at trial.

15                   175. Elderly or disabled Class members are entitled to a civil penalty of  
16 \$10,000, court costs, attorneys' fees, and treble damages for each violation of the Delaware  
17 Consumer Fraud Act. 6 Del. C. §§ 2581, 2583.

18                   **CLAIMS FOR RELIEF UNDER OTHER STATES' LAWS**

19                   176. Plaintiffs allege, based upon the discovery to date, that Delaware law will apply to  
20 Plaintiffs' nationwide state law claims for the reasons listed in paragraphs 18-21, namely that: (1)  
21 Defendants imposed a uniform choice-of-law provision on Plaintiffs and Class Members that  
22 governs the conduct that forms the bases of Plaintiffs' claims; (2) Defendants' unlawful practices  
23 occurred and were conceived in, and emanated and were orchestrated from, Delaware; (3)  
24 Delaware has the most significant relationship to Plaintiffs' claims; and (4) application of  
25 Delaware law to Defendants and the claims of Plaintiffs and all Proposed Class members  
26 comports with Due Process.  
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177. It is well-settled that a court may apply the substantive law of many states to the claims of a nationwide class without violating the federal due process clause or full faith and credit clause so long as each state has a “significant contact or significant aggregation of contacts” to the claims of each class member such that application of the state’s law is “not arbitrary or unfair.” *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985). To the extent that discovery reveals that Delaware law does not govern the conduct of Defendants in this controversy, Plaintiffs allege that application of other states’ law (including the states of California, New York, New Jersey, Wisconsin, Washington, and Florida where Plaintiffs reside) would be constitutionally permissible.

178. The state deceptive trade practices acts were enacted by the various states following the passage of the Federal Trade Commission Act (“FTC Act”), which prohibits deceptive acts and practices in the sale of products to consumers. The state laws in this area are modeled on the FTC Act and are therefore highly similar in content.

179. Defendants’ actions violate the Deceptive Trade Practices Acts of the various states, as set out above. With respect to Credit Protection, Defendants have engaged in deceptive practices by representing that services have characteristics and benefits that they do not have; representing that services are of a particular standard, quality, or grade when they are of another; advertising services with intent not to sell them as advertised; making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and engaging in other conduct which similarly creates a likelihood of confusion or of misunderstanding.

180. The conduct described in the statement of facts constitutes unfair and deceptive trade practices predominantly and substantially affecting the conduct of trade or commerce throughout the United States in violation of the state deceptive trade practices acts and other similar state statutes prohibiting unfair and deceptive acts and practices. The deceptive trade practices acts violated by Defendants are set forth in the next paragraph.

1           181. The violations of the various state consumer protection acts (Alabama: the  
2 Alabama Deceptive Trade Practices Act (Ala. Code §8-19-1 et seq.); Alaska: Alaska Unfair Trade  
3 Practices and Consumer Protection Act (Alaska Stat. §45.50.471 et seq.); Arizona: the Arizona  
4 Consumer Fraud Statute (Ariz. Rev. Stat. Ann. §44-1521 et seq.); Arkansas: the Arkansas  
5 Deceptive Trade Practices Act (Ark. Code Ann. §4-88-101 et seq.); California: the California  
6 Consumers Legal Remedies Act (Cal. Civ. Code § 1750, et seq.), the California Unfair Business  
7 Practices Act (California Business & Professions Code §17200, et seq.), and the California False  
8 Advertizing Law (Cal. Bus. & Prof. Code § 17500, et seq.); Colorado: the Colorado Consumer  
9 Protection Act (Colo. Rev. Stat. §6-1-101 et seq.); Connecticut: the Connecticut Unfair Trade  
10 Practices Act (Conn. Gen. Stat. §42-110a et seq.); Washington, D.C. the Consumer Protection  
11 Procedures Act (D.C. Code Ann. §28-3901 et seq.); Florida: the Florida Deceptive and Unfair  
12 Trade Practices Act (Fla. Stat. Ann. §501.201 et seq. (West)) and the Florida False Advertising  
13 Statutes (Fla. Stat. Ann. §817.40 et seq. (West)); Georgia: Uniform Deceptive Trade Practices  
14 Act (Ga. Code Ann. §10-1-370 et seq.); the Fair Business Practices Act (Ga. Code Ann. §10-1-  
15 390 et seq.); and the False Advertising Statute (Ga. Code Ann. §10-1-420 et seq.); Hawaii: The  
16 Hawaii Federal Trade Commission Act (Hawaii Rev. Stat. §480 et seq.) and the Uniform  
17 Deceptive Trade Practice Act (Hawaii Rev. Stat. §481A et seq.); Idaho: the Idaho Consumer  
18 Protection Act (Idaho Code §48-601 et seq.); Illinois: the Illinois Consumer Fraud and Deceptive  
19 Business Practices Act (815 Ill. Comp. Stat. Ann. §505/1 et seq. (Smith Hurd)) and the Uniform  
20 Deceptive Trade Practices Act (815 Ill. Comp. Stat. Ann. 510/1 et seq. (Smith Hurd)); Indiana:  
21 the Deceptive Consumer Sales Act (Ind. Code Ann. §24-5-0.5-1 et seq. (Burns)); Iowa: the Iowa  
22 Consumer Fraud Act (Iowa Code Ann. §714.16 (West)); Kansas: the Kansas Consumer  
23 Protection Act (Kan. Stat. Ann. §50-623 et seq.); Kentucky: the Consumer Protection Act (Ky.  
24 Rev. Stat. §367.110 et seq.); Louisiana: the Unfair Trade Practices and Consumer Protection Law  
25 (La. Rev. Stat. Ann. §51:1401 (West)); Maine: the Maine Unfair Trade Practices Act (Me. Rev.  
26 Stat. Ann. Tit. 5 §206 et seq.) and the Uniform Deceptive Trade Practices Act (Me. Rev. Stat.  
27 Ann. Tit. 10 §1211 et seq.); Maryland: the Maryland Consumer Protection Act (Md. Com. Law  
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1 Code Ann. §§13-101 et seq., 14-101 et seq.); Massachusetts: the Consumer Protection Act (Mass.  
2 Gen. Laws Ann. Ch. 93A); Michigan: the Michigan Consumer Protection Act (Mich. Comp.  
3 Laws Ann. §445.901 et seq.) and the Michigan Pricing and Advertising Act (Mich. Comp. Laws  
4 Ann. §445.351 et seq.); Minnesota: the Consumer Fraud Act (Minn. Stat. Ann. §325 F. 69); the  
5 False Statement in Advertisement Statute (Minn. Stat. Ann. §325 F. 67); the Uniform Deceptive  
6 Trade Practices Act (Minn. Stat. Ann. §325D.44); and the Unlawful Trade Practices Act (Minn.  
7 Stat. Ann. §325D.13); Mississippi: the Consumer Protection Act (Miss. Code Ann. §75-24-1 et  
8 seq.) and the False Advertising Statutes (Miss. Code Ann. §97-23-3); Missouri: the Missouri  
9 Merchandising Practices Act (Mo. Rev. Stat. §407.010 et seq.); Montana: the Montana Unfair  
10 Trade Practices and Consumer Protection Act (Mont. Code Ann. §30-14-101 et seq.); and the  
11 Statutory Deceit Statute (Mont. Code Ann. §27-1-712); Nebraska: the Nebraska Consumer  
12 Protection Act (Neb. Rev. Stat. §59-1601 et seq.) and the Nebraska Uniform Deceptive Trade  
13 Practices Act (Neb. Rev. Stat. §87-301 et seq.); Nevada: the Deceptive Trade Statutes (Nev. Rev.  
14 Stat. §§598.0903 et seq., 41.600 et seq.); New Hampshire: the Regulation of Business Practices  
15 for Consumer Protection Act (N.H. Rev. Stat. Ann. §358-A:1 et seq.); New Jersey: the New  
16 Jersey Consumer Fraud Act (N.J. Stat. Ann. §56:8-1 et seq. (West)); New Mexico: New Mexico  
17 Unfair Practices Act (N.M. Stat. Ann. §57-12-1 et seq.); New York: New York Consumer  
18 Protection Act (N.Y. Gen. Bus. Law §§349, 350 (Consol.)); North Carolina: North Carolina  
19 Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. §75-1.1 et seq.); North Dakota:  
20 Deceptive Act or Practice Statutes (N.D. Gen. Stat. §51-15-01 et seq.); Ohio: Ohio Consumer  
21 Sales Practices Act (Ohio Rev. Code Ann. §1345.01 et seq. (Baldwin)); Oklahoma: Oklahoma  
22 Consumer Protection Act (Okla. Stat. Ann. Tit. 15, §751 et seq. (West)) and the Oklahoma  
23 Deceptive Trade Practices Act (Okla. Stat. Ann. Tit. 78, §51 et seq. (West)); Oregon: the  
24 Unlawful Trade Practices Act (Or. Rev. Stat. §646.605 et seq.) and the Oregon Food and Other  
25 Commodities Act (Or. Rev. Stat. §616.005 et seq.); Pennsylvania: Unfair Trade Practices Act and  
26 Consumer Protection Law (Pa. Stat. Ann. Tit. 73 §201-1 et seq. (Purdon)); Rhode Island:  
27 Consumer Protection Act (R.I. Gen. Law §6-13.1-1 et seq.); South Carolina: South Carolina  
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1 Unfair Trade Practices Act (S.C. Code Ann. §39-5-10 et seq.); South Dakota: South Dakota  
 2 Deceptive Trade Practices and Consumer Protection Law (S.D. Codified Laws Ann. §37-24-1 et  
 3 seq.); Tennessee: Tennessee Consumer Protection Act (Tenn. Code Ann. §47-18-101 et seq.);  
 4 Texas: Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code Ann. §17.41 et seq.  
 5 (Vernon)); Utah: Utah Consumer Sales Practices Act (Utah Code Ann. §13-11-1 et seq.) and the  
 6 Utah Truth in Advertising Act (Utah Code Ann. §13-11a-1 *et seq.*); Vermont: Vermont Consumer  
 7 Fraud Statute (Vt. Stat. Ann. Tit. 9, §2451 et seq.); Virginia: Virginia Consumer Protection Act  
 8 (Va. Code 59.1-196 et seq.); Washington: Washington Consumer Protection Act (Wash. Rev.  
 9 Code Ann. §19.86 et seq.); West Virginia: West Virginia Consumer Credit and Protection Act  
 10 (W. Va. Code §46A-6-101 et seq.); Wisconsin: Wisconsin Fraudulent Representations Act (Wis.  
 11 Stat. Ann. §100.18 et seq. (West)); Wyoming: Consumer Protection Act (Wyo. Stat. §40-12-101 et  
 12 seq.) have directly, foreseeably, and proximately caused damages to Plaintiffs and the proposed  
 13 class in amounts yet to be determined.

14 182. As a result of Defendants' violations of the Deceptive Trade Practices Acts of the  
 15 various states prohibiting unfair and deceptive acts and practices, Plaintiffs and members of the  
 16 proposed class have suffered actual damages for which Defendants are liable.

17  
 18 **THIRD CLAIM FOR RELIEF**  
**Delaware Breach of Contract**

19 **(On Behalf of Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, and Ross, and the**  
 20 **Nationwide Voluntary Enrollment Class, and Subclass Members)**

21 183. Plaintiffs restate and reallege the preceding paragraphs of this Complaint as though  
 22 set out here word for word.

23 184. Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, and Ross and  
 24 Members of the Voluntary Enrollment Subclass purchased Credit Protection from Defendants  
 25 with the justified expectation that they were eligible for the benefits spelled out in Defendants'  
 26 advertising and marketing.

27 185. Plaintiffs and Voluntary Enrollment Subclass Members paid monthly Credit  
 28 Protection premiums to obtain the purported benefits of Credit Protection.



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193. Plaintiffs and the Involuntary Enrollment Subclass Members entered into credit card agreements with Defendants with the expectation that they not be charged for services not specifically set forth in their credit card agreements. To the extent that the credit card agreements specify allowable fees and charges, Credit Protection is not among the allowable fees and charges. Defendants therefore implicitly promised not to charge anything beyond what was specified in the contract.

194. Defendants charged Plaintiffs and the Involuntary Enrollment Subclass for Credit Protection without their consent or authorization and despite the absence of any provision in Plaintiffs and Members of the Involuntary Enrollment Subclass's credit card agreements allowing Defendants to do so.

195. Good faith is an element of Defendants' credit card contract. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

196. Under the Defendants' credit card contract, Defendants impliedly promise to administer these contract obligations in accordance with principles of good faith and fair dealing.

197. By reason of the foregoing, Defendants have frustrated the purpose of the contract by going beyond the explicitly allowed charges. Defendants therefore breached the covenant of good faith and fair dealing through their policies and practices as alleged herein and are liable to Plaintiffs and the Involuntary Enrollment Subclass.

198. Plaintiffs and the Involuntary Enrollment Subclass have sustained damages as a result of Defendants' breach of the covenant of good faith and fair dealing.

199. As a direct and proximate result of Defendants' actions as described herein, Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, and Ross and the Voluntary

1 Enrollment Subclass have suffered, and continue to suffer, injury in fact and have lost money as a  
2 result of Defendants' breach.

3 200. Defendants' uniform advertising and marketing to Plaintiffs and the Voluntary  
4 Enrollment Subclass Members described that consumers would receive Credit Protection benefits  
5 after a qualifying or "life changing" event.

6 201. Defendants enrolled Plaintiffs and the Voluntary Enrollment Subclass Members in  
7 Credit Protection when they were not eligible for certain benefits because of Credit Protection's  
8 restrictions and exclusions.

9 202. Defendants' processing of claims for benefits by Plaintiffs and the Voluntary  
10 Enrollment Subclass involved delay tactics and ever-increasing restrictions, qualifications, and  
11 proof in order to receive benefits, and even after Plaintiffs and the Voluntary Enrollment Subclass  
12 Members submitted such proof or demonstrated their qualifications, they were denied Credit  
13 Protection benefits.

14 203. As such, Plaintiffs and the Voluntary Enrollment Subclass Members have not  
15 obtained the benefit of their bargain from Defendants, and the essential purpose of the Credit  
16 Protection sales contract has been frustrated.

17 204. Good faith is an element of the contract pertaining to the Credit Protection plan.  
18 Whether by common law or statute, all such contracts impose upon each party a duty of good  
19 faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and  
20 discharging performance and other duties according to their terms, means preserving the spirit—  
21 not merely the letter—of the bargain. Put differently, the parties to a contract are mutually  
22 obligated to comply with the substance of their contract in addition to its form. Evading the spirit  
23 of the bargain and abusing the power to specify terms constitute examples of bad faith in the  
24 performance of contracts.

25 205. Under the Credit Protection Agreement, Defendants impliedly promise to  
26 administer these contract obligations in accordance with principles of good faith and fair dealing.  
27  
28



1 Sandow, and Chan and the Involuntary Enrollment Subclass members never requested or  
2 authorized.

3 214. Defendants were unjustly enriched by charging Plaintiffs Arevalo, Sandow, and  
4 Chan and the Involuntary Enrollment Subclass members multiple Credit Protection charges if the  
5 cardholder had multiple Bank of America credit cards.

6 215. Defendants were unjustly enriched by forcibly enrolling and charging Plaintiffs  
7 Arevalo, Sandow, and Chan and the Involuntary Enrollment Subclass Members who were retired  
8 or who were senior citizens for Credit Protection even though they were ineligible to receive  
9 benefits by the terms of the Credit Protection documents.

10 216. As a result of Defendants' unjustified actions which constitute unjust enrichment,  
11 Plaintiffs Arevalo, Sandow, and Chan and the Involuntary Enrollment Subclass members suffered  
12 actual damages for which Defendants are liable. Defendants' liability for such damages should  
13 be measured by the extent of Defendants' unjust enrichment.

14 217. In seeking to increase their fee revenue, Defendants also unjustifiably enrolled  
15 Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, and Ross and the Voluntary  
16 Enrollment Subclass.

17 218. By paying charges to Defendants for Credit Protection, Plaintiffs and the  
18 Voluntary Enrollment Subclass conferred a benefit on Defendants, which Defendants knowingly  
19 accepted.

20 219. Defendants were unjustly enriched by charging Plaintiffs and the Voluntary  
21 Enrollment Subclass for illusory benefits.

22 220. Defendants were unjustly enriched by charging Plaintiffs and the Voluntary  
23 Enrollment Subclass multiple Credit Protection charges if the cardholder had multiple Bank of  
24 America credit cards.

25 221. Defendants were unjustly enriched by enrolling and charging Plaintiffs and the  
26 Voluntary Enrollment Subclass members who were retired or who were senior citizens for Credit  
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1 Protection even though they were ineligible to receive benefits by the terms of the Credit  
2 Protection documents.

3 222. As a result of Defendants' unjustified actions which constitute unjust enrichment,  
4 Plaintiffs and the Voluntary Enrollment Subclass members suffered actual damages for which  
5 Defendants are liable. Defendants' liability for such damages should be measured by the extent  
6 of Defendants' unjust enrichment.  
7

8 **SIXTH CLAIM FOR RELIEF**  
9 **Delaware Fraud**

10 **(On Behalf of All Plaintiffs, Nationwide Class, and Subclass Members)**

11 223. Plaintiffs restate and reallege the preceding paragraphs of this Complaint as though  
12 set out here word for word.

13 224. Defendants charged Plaintiffs Arevalo, Sandow, and Chan and Members of the  
14 Involuntary Enrollment Subclass for Credit Protection without their affirmative consent or  
15 knowledge that they would be charged.

16 225. Defendants knew that Plaintiffs Arevalo, Sandow, and Chan and Involuntary  
17 Enrollment Subclass Members had not affirmatively or voluntarily authorized their enrollment in  
18 the Credit Protection plan.

19 226. Defendants intended to induce their customers, including Plaintiffs Arevalo,  
20 Sandow, and Chan and the Involuntary Subclass Members, into paying for Credit Protection  
21 services that they never requested or authorized by involuntarily enrolling them in Credit  
22 Protection and charging them fees on their credit card statements.

23 227. Defendants' fraudulent conduct of involuntarily enrolling Plaintiffs Arevalo,  
24 Sandow, and Chan and the Involuntary Enrollment Subclass Members in Credit Protection was  
25 objectively material in that a reasonable consumer would attach importance to such information  
26 as knowing they were enrolled in and charged for Credit Protection without their consent.

27 228. Plaintiffs Arevalo, Sandow, and Chan and the Involuntary Enrollment Subclass  
28 Members reasonably and justifiably relied to their detriment on Defendants' fraudulent



1 nondisclosure of the fact that they had been involuntarily enrolled in Credit Protection. Plaintiffs  
2 Arevalo, Sandow, and Chan and the Involuntary Enrollment Subclass Members acted as  
3 reasonably prudent consumers by relying on Defendants' fraudulent omissions and failure to  
4 disclose that they had been enrolled and paying the Credit Protection fees.

5 229. Defendants also intentionally omitted material information, such as distributing  
6 materials about Credit Protection, if at all, without making it clear to them that customers had to  
7 affirmatively decline enrollment in order to avoid incurring ongoing charges.

8 230. Defendants intentionally perpetuated their fraud by refusing to refund consumers'  
9 money after they discovered the charges for Credit Protection on their credit card statements and  
10 realized they had been involuntarily enrolled in the plan.

11 231. Plaintiffs Arevalo, Sandow, and Chan and the Involuntary Enrollment Subclass  
12 Members would not have paid for the unauthorized charges for Credit Protection but for  
13 Defendants' knowing fraudulent conduct in enrolling them in Credit Protection without their  
14 consent.

15 232. Plaintiffs Arevalo, Sandow, and the Involuntary Enrollment Subclass Members  
16 have been damaged in that they paid Defendants for unauthorized charges for Credit Protection,  
17 and by the subsequent time and expense of attempting to dispute such charges that appeared on  
18 their Bank of America credit card statements.

19 233. Through advertisements and marketing representations, Defendants intended to  
20 and did misrepresent to Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, Ross, and  
21 Members of the Voluntary Enrollment Subclass, at the time of purchase and at all relevant times,  
22 the eligibility, terms, and conditions of their Credit Protection coverage and the qualifications and  
23 proof that would be needed to obtain such coverage.

24 234. Specifically, Defendants' advertisements stated that Plaintiffs Melendez, Mattiello,  
25 Rowley, Richmond, Somers, Ross, and Voluntary Enrollment Subclass members were eligible,  
26 would remain eligible, and would receive benefits under Defendants' Credit Protection plan,  
27 when these material misrepresentations and omissions were false and misleading.  
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1           235. After and due to seeing and hearing Defendants' advertisements and marketing  
2 representations, Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, Ross, and the  
3 Voluntary Enrollment Subclass Members reasonably believed, and were reasonably likely to  
4 believe, that they were eligible, would remain eligible, and would receive benefits under  
5 Defendants' Credit Protection plan.

6           236. Defendants intended that Plaintiffs Melendez, Mattiello, Rowley, Richmond,  
7 Somers, Ross, and the Subclass rely upon Defendants' unfair, false, deceptive, and misleading  
8 representations regarding the nature and character of their Credit Protection plan and the  
9 exclusions, restrictions, and limitations.

10           237. Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, Ross, and the  
11 Voluntary Enrollment Subclass Members were in reality not eligible for benefits under  
12 Defendants' Credit Protection plan due to exclusions or limitations not previously disclosed to  
13 them by Defendants, or were eligible but were denied benefits by Defendants after being faced  
14 with increasing levels of qualifications and proof not previously revealed to them before  
15 purchasing Credit Protection, and even after meeting such qualifications and proof as set forth by  
16 Defendants.

17           238. Defendants' representations regarding the benefits and exclusions and limitations  
18 of the Credit Protection plan were material to Plaintiffs Melendez, Mattiello, Rowley, Richmond,  
19 Somers, Ross, and the Voluntary Enrollment Subclass members in deciding to purchase Credit  
20 Protection.

21           239. Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, Ross, and the  
22 Voluntary Enrollment Subclass members would not have purchased Defendants' Credit  
23 Protection altogether, or would have paid less for the product, had they known, or had reason to  
24 have known, the terms and conditions pertaining to Defendants' Credit Protection coverage and  
25 the qualifications and proof that would be required to make any claims for coverage.

26           240. Defendants' advertisements and marketing concerning their Credit Protection plan  
27 and coverage were false, deceptive, and/or fraudulent, and induced Plaintiffs Melendez, Mattiello,  
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1 Rowley, Richmond, Somers, Ross, and the Voluntary Enrollment Subclass Members to make  
2 purchases that they would not have made otherwise if they had been in possession of all of the  
3 material facts.

4 241. Plaintiffs Melendez, Mattiello, Rowley, Richmond, Somers, Ross, and the  
5 Voluntary Enrollment Subclass Members have been damaged in that they paid Defendants for  
6 Credit Protection, but did not receive benefits from Defendants, and by the subsequent time and  
7 expense of attempting to apply for benefits after meeting Defendants' previously undisclosed  
8 higher levels of proof to qualify for the benefits.

9 242. As a result of Defendants' fraudulent conduct and practices, Plaintiffs, the Class,  
10 and the Subclasses suffered pecuniary loss in an amount not less than the monthly premiums paid  
11 for Defendants' Credit Protection plan, plus interest.

12 **SEVENTH CLAIM FOR RELIEF**  
13 **Injunctive Relief**

14 **(On Behalf of All Plaintiffs, Nationwide Class, and Subclass Members)**

15 243. Plaintiffs restate and reallege the preceding paragraphs of this Complaint as though  
16 set out here word for word.

17 244. Plaintiffs ask the Court to grant the remedy of restitution to themselves and to all  
18 members of the class who made payments to Defendants for Credit Protection. The Plaintiffs ask  
19 the Court to grant the following relief:

- 20
- 21 a. a refund of all Credit Protection payments made to Defendants;
  - 22 b. a refund to any consumer who was retired at the time they were sold Credit  
23 Protection by Defendants;
  - 24 c. a refund to any consumer who was a senior citizen at the time they were sold  
25 Credit Protection by Defendants;
  - 26 d. a full refund to any consumer who was otherwise not eligible for Credit Protection  
27 due to the restrictions in the coverage at the time the product was sold to the  
28 consumer and who paid for the product; and
  - e. a full refund to any consumer who did not consent to enrollment in Credit  
Protection and who paid for the product.



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253. Defendants are “persons” as defined in Cal. Civil Code § 1761(c).

254. Plaintiffs and the California Subclass members are “consumers” as defined in Cal. Civil Code § 1761(d).

255. The Credit Protection program of Defendants in which Plaintiffs and the California Subclass were enrolled is a “service” within the meaning of Cal. Civil Code § 1761(b).

256. The premiums paid by Plaintiffs and the California Subclass for the services sold by Defendants, alleged herein, constitute “transactions” within the meaning of Cal. Civ. Code §§ 1761(e) and 1770.

257. By unilaterally imposing Credit Protection charges on Plaintiffs and California Subclass Members who did not voluntarily enroll or by voluntarily enrolling Plaintiffs and California Subclass Members who were ineligible for benefits or who were eligible but denied benefits after Defendants imposed increasing levels of proof on their claims, Defendants violated the Consumer Legal Remedies Act (“CLRA”) in at least the following ways:

a. Misrepresenting to Plaintiffs and the California Subclass that Defendants’ services under the Credit Protection program had benefits they did not have because Plaintiffs and California Subclass Members did not know the program had been imposed upon them and did not know they could avail themselves of it or if they were even eligible, did not know they were ineligible for benefits because of exclusions of Credit Protection, or were denied benefits after having to jump through hoops when they were eligible for the benefits, in violation of Cal. Civ. Code § 1770(a)(5);

b. Misrepresenting to Plaintiffs and the California Subclass that the subject of a transaction has been supplied in accordance with a previous representation when it has not by imposing Credit Protection charges on credit card statements when they did not previously appear on the statements and were not authorized and by stating that Plaintiffs and California Subclass Members were eligible, would remain eligible, and would receive benefits under Defendants’ Credit Protection plan, in violation of Cal. Civ. Code § 1770(a)(16);

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2 c. Misrepresenting that Plaintiffs and California Subclass Members  
3 voluntarily signed up for Credit Protection through a salesperson, representative, or agent who  
4 was not authorized by Plaintiffs and California Subclass Members to negotiate the final terms of  
5 the transaction with them because, upon information and belief, the salesperson, representative, or  
6 agent enrolled Plaintiffs and California Subclass Members in Credit Protection without their  
7 consent or enrolled Plaintiffs and California Subclass Members when they were not eligible for  
8 benefits or represented that they could receive benefits when Defendants have prevented them  
9 from doing so, in violation of Cal. Civ. Code § 1770(a)(18);

10 d. Misrepresenting that their transactions with Plaintiffs and the  
11 California Subclass conferred benefits and rights on Plaintiffs and the California Subclass, and  
12 obligations on Defendants, which were not, in fact, conferred, in violation of Cal. Civ. Code  
13 § 1770(a)(14); and

14 e. Advertising services under the Credit Protection program to  
15 Plaintiffs and the California Subclass with the intent not to sell them as advertised by not  
16 obtaining authorization to charge Plaintiffs and California Subclass Members for Credit  
17 Protection or by telling Plaintiffs and California Subclass Members that they were eligible, would  
18 remain eligible, and would receive benefits under Defendants' Credit Protection plan, in violation  
19 of Cal. Civ. Code § 1770(a)(9).

20 258. In addition, under California law, a duty to disclose arises in four circumstances:  
21 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had  
22 exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively  
23 conceals a material fact from the plaintiff; and (4) when the defendant makes partial  
24 representations but also suppresses some material facts.

25 259. Defendants had a duty to disclose to Plaintiffs and the California Subclass the true  
26 nature of the Credit Protection program and its terms, conditions, and limitations on benefits  
27 because: (a) Defendants are in a fiduciary relationship with Plaintiffs and the California Subclass;  
28 (b) Defendants had exclusive knowledge at the time Plaintiffs and California Subclass members

1 were enrolled in the program with or without their permission; (c) Defendants actively concealed  
2 from Plaintiffs and the California Subclass the true nature of the terms, conditions, benefits,  
3 exclusions, and proof required for claims or that they were being enrolled in the Credit Protection  
4 program without their authorization, which was material information to customers; and (d)  
5 Defendants made partial representations regarding the nature and benefits and exclusions of  
6 Credit Protection that were misleading to Plaintiffs and the California Subclass, such as telling  
7 them they would be eligible for benefits if they met the terms and conditions and by sending  
8 materials about Credit Protection to customers without telling them they had to affirmatively  
9 decline enrollment in order to avoid being enrolled involuntarily.

10 260. Defendants violated the CLRA by concealing material information from Plaintiffs  
11 and the California Subclass regarding their enrollment in the Credit Protection program when  
12 they had a duty to disclose that information.

13 261. Defendants' fraudulent representations and omissions in violation of the CLRA  
14 were likely to mislead consumers, who reasonably interpreted their misrepresentations and  
15 omissions to mean that they would not be enrolled in Defendants' Credit Protection plan if they  
16 had not voluntarily enrolled in the plan or that they were eligible, would remain eligible, and  
17 would receive benefits from Credit Protection.

18 262. Defendants' conduct alleged herein was intentional and was specifically designed  
19 to enroll them in Credit Protection and impose charges on their credit card statements without  
20 their permission or to enroll consumers in Credit Protection when they were not eligible for  
21 benefits or could not get benefits from Credit Protection.

22 263. Defendants' misrepresentations and omissions alleged herein were material in that  
23 a reasonable person would attach importance to such information in deciding to enroll in Credit  
24 Protection or being enrolled in and charged for Credit Protection without their permission.

25 264. Plaintiffs and the California Subclass relied to their detriment on Defendants'  
26 misrepresentations and omissions in enrolling in the Credit Protection plan. Additionally,  
27  
28

1 Plaintiffs and the California Subclass were harmed by Defendants' failure to disclose that they  
2 were being enrolled without their consent in Credit Protection.

3 265. Plaintiffs, on behalf of themselves and the California Subclass, demand judgment  
4 against Defendants under the CLRA for injunctive relief and restitution to Plaintiffs and the  
5 California Subclass in an amount to be proven at trial.

6 266. Plaintiffs, on behalf of themselves and the California Subclass, further seek  
7 compensatory damages and, in light of Defendants' intentional and fraudulent conduct, an award  
8 of punitive damages.

9 267. Pursuant to Cal. Civ. Code § 1782(a), on November 2, 2010, Plaintiffs' counsel,  
10 on behalf of Plaintiffs Arevalo and Sandow, served Bank of America by United States certified  
11 mail, return receipt requested, with notice of Bank of America's violations of the CLRA. A true  
12 and accurate copy of the CLRA demand notice is attached hereto as Exhibit A.

13 268. Bank of America acknowledged receipt of the CLRA demand notice on November  
14 4, 2010, as evidenced by the Domestic Return Receipt signed by its agent, a true and accurate  
15 copy of which is attached hereto as Exhibit B.

16 269. Bank of America has refused or failed to timely respond to the CLRA demand  
17 notice.

18 270. Bank of America has failed to provide appropriate relief for its violations of the  
19 CLRA within 30 days of its receipt of Plaintiffs' demand notice. Accordingly, pursuant to  
20 §§ 1780 and 1782(b) of the CLRA, Plaintiffs Arevalo and Sandow are entitled to recover actual  
21 damages, punitive damages, attorneys' fees and costs, and any other relief the Court deems  
22 proper.

23 271. Pursuant to Cal. Civ. Code sec. 1782(a), on April 29, 2011, Plaintiffs' counsel, on  
24 behalf of Plaintiffs Arevalo and Sandow, served FIA, by and through their attorneys, with notice  
25 of FIA's violations of the CLRA. A true and accurate copy of the CLRA demand notice is  
26 attached hereto as Exhibit C.



1           272. FIA has failed to provide appropriate relief for its violations of the CLRA within  
2  
30 days of its receipt of Plaintiffs' demand notice. Accordingly, pursuant to §§ 1780 and 1782(b)  
3  
4 of the CLRA, Plaintiffs Arevalo and Sandow are entitled to recover actual damages, punitive  
5 damages, attorneys' fees and costs, and any other relief the Court deems proper.

**TENTH CLAIM FOR RELIEF**

**Violation of Cal. Bus. & Prof. Code Section 17200, *et seq.*—Unlawful, Fraudulent, and  
Unfair Business Acts and Practices**

**(On Behalf of Plaintiffs Arevalo and Sandow and the California Subclass)**

6           273. In the event that the Court determines not to certify the Nationwide Class on the  
7  
8 basis of its consumer protection claim (Second Claim for Relief), Plaintiffs Arevalo and Sandow  
9  
10 and the California Subclass hereby allege a state claim for relief under Cal. Bus. & Prof. Code  
11 Section 17200, *et seq.*

12           274. Plaintiffs Arevalo and Sandow restate and reallege the preceding paragraphs of  
13  
14 this Complaint as though set out here word for word.

15           275. Defendants' conduct alleged herein constitutes unfair, unlawful, and deceptive  
16  
17 business acts and practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* Such conduct  
18 includes, but is not limited to, (a) unilaterally imposing upon Plaintiffs Arevalo and Sandow and  
19 the Involuntary Enrollment Subclass Members the Credit Protection plan without their  
20 permission; (b) failing to disclose to Plaintiffs Arevalo and Sandow and the Involuntary  
21 Enrollment Subclass Members that they were being enrolled and could only affirmatively opt out  
22 if they did not wish to be enrolled; (c) refusing to refund the money that Plaintiffs Arevalo and  
23 Sandow and the Involuntary Enrollment Subclass Members paid for Credit Protection when they  
24 were involuntarily enrolled; (d) misrepresenting to Plaintiffs and the Voluntary Enrollment  
25 Subclass that they were eligible, would remain eligible, and would receive benefits under Credit  
26 Protection; (e) concealing the true nature of the benefits and exclusions of Credit Protection and  
27 the proof required for claims from Plaintiffs and the Voluntary Enrollment Subclass; and (f)  
28 denying Plaintiffs and the Voluntary Enrollment Class the promised benefits of the Credit  
Protection program.

1           276. In addition, the conduct alleged herein constitutes fraud and violations of the  
2 CLRA and FAL, thus providing the basis for a finding of liability under the “unlawful” prong of  
3 Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4           277. Defendants’ conduct of involuntarily enrolling customers in Credit Protection and  
5 then refusing to refund their money, and voluntarily enrolling customers who were ineligible for  
6 benefits or who were eligible but could not get benefits from Credit Protection, is “unfair”  
7 because it offends established public policy protecting consumers from deceptive practices and/or  
8 is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to customers.

9           278. Defendants’ conduct herein of involuntarily enrolling customers in Credit  
10 Protection and then refusing to refund their money and voluntarily enrolling customers who were  
11 ineligible for benefits or who were eligible for benefits but could not get them is “fraudulent”  
12 because it has deceived and/or is likely to deceive Plaintiffs and other reasonable consumers.

13           279. Defendants’ unfair, unlawful, and deceptive acts and practices alleged herein were  
14 specifically designed to enroll Plaintiffs and California Subclass Members in Credit Protection.

15           280. Defendants’ unfair, unlawful, and deceptive acts and practices alleged herein have  
16 deceived and/or are likely to deceive Plaintiffs and other reasonable consumers.

17           281. Defendants’ misrepresentations and omissions alleged herein were material in that  
18 a reasonable person would attach importance to such information and would be induced to act  
19 upon such information in paying for Credit Protection, whether voluntarily or involuntarily.

20           282. Defendants’ misrepresentations and omissions alleged herein are objectively  
21 material to the reasonable consumer, and therefore reliance upon such misrepresentations and  
22 omissions may be presumed as a matter of law.

23           283. Plaintiffs and the California Subclass relied to their detriment on Defendants’  
24 misrepresentations and omissions by not affirmatively opting out or declining to enroll in the  
25 program and by unknowingly and unwillingly paying for Credit Protection, or by voluntarily  
26 enrolling in Credit Protection with the reasonably justified expectation that they were eligible,  
27 would remain eligible, and would receive benefits.  
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1           289. Defendants' misrepresentations and omissions alleged herein were the type of  
2 misrepresentations and omission that are material—*i.e.*, a reasonable person would attach  
3 importance to them and would be induced to act on the information in paying for Credit  
4 Protection.

5           290. Defendants' misrepresentations and omissions alleged herein are objectively  
6 material to the reasonable consumer, and therefore reliance upon such misrepresentations may be  
7 presumed as a matter of law.

8           291. Defendants' false advertising is ongoing. Unless restrained by this Court,  
9 Defendants could continue to engage in untrue and misleading advertising, as alleged above, in  
10 violation of Cal. Bus. & Prof Code §§ 17500, *et. seq.*

11           292. As a result of the foregoing, Plaintiffs and each member of the California Subclass  
12 have been injured and have lost money or property, and are entitled to restitution and injunctive  
13 relief.

14  
15                                   **TWELFTH CLAIM FOR RELIEF**  
16                                   **Violation of New York Deceptive Practices Act, Gen. Bus. Law § 349**

17                                   **(On Behalf of Plaintiff Melendez and the New York Subclass)**

18           293. In the event that the Court determines not to certify the Nationwide Class on the  
19 basis of its consumer protection claim (Second Claim for Relief), Plaintiff Melendez and the New  
20 York Subclass hereby allege a state claim for relief under New York Deceptive Practices Act,  
21 Gen. Bus. Law § 349.

22           294. Plaintiff Melendez restates and realleges the preceding paragraphs of this  
23 Complaint as though set out here word for word.

24           295. Defendants' sale of Products and the Service to Plaintiff and the New York  
25 Subclass as described herein constitute the "conduct of any trade or commerce" in New York  
26 within the meaning of Gen. Bus. Law § 349.

27           296. Defendant's conduct has a broad impact on consumers at large.

28           297. Defendants' deceptive scheme related to Credit Protection Plus product constitutes  
deceptive and unfair practices.



1           307. As alleged with specificity herein, Defendants, through their sales pitches and  
2 solicitations, have employed deception, fraud, false pretenses, false promises, and  
3 misrepresentations in connection with the offer for sale of the Credit Protection Plan.

4           308. As alleged with specificity herein, by enrolling members of the New Jersey  
5 Subclass into the Plan without their express consent and authorization, Defendants have  
6 employed deception, fraud, false pretenses, false promises, and misrepresentations in connection  
7 with the offer for sale of the Credit Protection Plan.

8           309. As alleged with specificity herein, Defendants engaged in the concealment,  
9 suppression and omission of material facts, with the intent that Plaintiff and the New Jersey  
10 Subclass would rely upon such concealment, suppression or omission, regarding the Credit  
11 Protection Plan.

12           310. As alleged with specificity herein, Defendants fraudulently and deceptively caused  
13 members of the New Jersey Subclass to enroll in the Credit Protection Plan without obtaining  
14 consent or authorization to do so.

15           311. As a result of Defendants' deceptive and fraudulent business practices complained  
16 of herein, members of the New Jersey Subclass were unknowingly enrolled in the Plan and  
17 caused to pay the attendant monthly fees for the same.

18           312. As alleged with specificity herein, Defendants knowingly received and appreciated  
19 benefits at the expense and to the detriment of members of the New Jersey Subclass who were  
20 enrolled but did not meet the eligibility criteria in the Plan.

21           313. Based on the foregoing, Plaintiff, on behalf of himself and the New Jersey  
22 Subclass, demands judgment against Defendants under the NJCFA.

23           314. As a result of Defendants' activities which offend the NJCFA, Plaintiff has  
24 suffered an ascertainable loss of money and property. Specifically, Plaintiff has become  
25 responsible for payments attributable to Credit Protection coverage, even though the product is  
26 virtually worthless.



1           324. Plaintiffs and the Washington Subclass have suffered an injury to their business or  
2 property. *See* RCW 19.86.090.

3           325. Plaintiffs and the Washington Subclass's injuries were caused by Defendants'  
4 conduct. *See* RCW 19.86.090.

5           326. Through their conduct, as described in preceding paragraphs of this Complaint,  
6 Defendants have committed deception, fraud, false pretenses, false promises, misrepresentations,  
7 and the knowing concealment, suppression, and omission of material facts with intent that others  
8 rely upon such concealment, suppression, and omission, all in connection with the sale of  
9 Payment Protection coverage. This conduct is expressly declared unlawful by the Consumer  
10 Protection Act.

11           327. As a result of Defendants' activities, Plaintiffs and the Washington Subclass have  
12 suffered an ascertainable loss of money and property. Specifically, Plaintiffs and the Washington  
13 Subclass have become responsible for the payments attributable to Payment Protection coverage,  
14 even though that service is virtually worthless to Plaintiffs and the Washington Subclass.

15           328. Plaintiffs and the Washington Subclass seek judicial orders of an equitable nature  
16 against Defendants, including, but not limited to, orders declaring Defendants' practices to be  
17 unlawful, unfair, and/or deceptive, and enjoining Defendants from undertaking any further  
18 unlawful, unfair, and/or deceptive acts or omissions.

19           329. Plaintiffs and the Washington Subclass seek disgorgement and restitution plus  
20 interest on damages at the legal rate, as well as three times the amount of their damages caused by  
21 Defendants' violations of the Consumer Protection Act.

22           330. Because Plaintiffs and the Washington Subclass seek to enforce an important right  
23 affecting the public interest, Plaintiffs request an award of attorneys' fees and costs on behalf of  
24 themselves and the Washington Subclass.

25           331. Due to Defendants' violations of the Consumer Protection Act prohibiting unfair  
26 and deceptive acts and practices, Plaintiffs and members of the Washington Subclass have  
27 suffered monetary damages for which Defendants are liable.  
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**FIFTEENTH CLAIM FOR RELIEF**  
**Violation of Wisconsin Statute § 100.18(1)**

**(On Behalf of Plaintiff Rowley and the Wisconsin Subclass)**

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332. In the event that the Court determines not to certify the Nationwide Class on the basis of its consumer protection claim (Second Claim for Relief), Plaintiff Rowley and the Wisconsin Subclass hereby allege a state claim for relief under Wisconsin Statute § 100.18(1)

333. Plaintiff Rowley restates and realleges the preceding paragraphs of this Complaint as though set out here word for word.

334. Through advertisements and marketing representations, Defendants intended to and did misrepresent to Plaintiffs and the Wisconsin Subclass, at the time of purchase and at all relevant times, the eligibility, terms, and conditions of their Credit Protection coverage.

335. Specifically, Defendants' advertisements stated that Plaintiffs and Wisconsin Subclass members were eligible, would remain eligible, and would receive benefits under Defendants' Credit Protection plan, when these representations were false and misleading.

336. After seeing and hearing Defendants' advertisements and marketing representations, Plaintiff reasonably believed, and Plaintiff and the Wisconsin Subclass were reasonably likely to believe, that they were eligible, would remain eligible, and would receive benefits under Defendant's Credit Protection plan.

337. Defendants intended that Plaintiff and the Wisconsin Subclass rely upon Defendants' false, deceptive, and misleading representations regarding the quality and character of their Credit Protection plan.

338. Defendants' representations regarding the benefits and exclusions and limitations of their Credit Protection plan were material to Plaintiff and the Wisconsin Subclass in deciding to purchase the Credit Protection.

339. Plaintiff and the Class would not have purchased Defendants' Credit Protection altogether, or would have paid less for these products, had they known, or had reason to have known, the terms and conditions pertaining to Defendants' Credit Protection coverage.



1           348. Defendants’ deceptive marketing scheme related to the Credit Protection product  
2 constitutes unfair practices within the meaning of FDUTPA.

3           349. By engaging in the above described acts and practices, Defendants have  
4 committed one or more acts of unfair competition within the meaning of FDUTPA.

5           350. Defendants’ acts and practices as described herein have deceived and/or are likely  
6 to deceive members of the consuming public.

7           351. Plaintiff relied on Defendants’ misleading and incomplete information detailed  
8 herein regarding Credit Protection in deciding to “enroll” in Credit Protection.

9           352. As a result of the conduct described above, Defendants have been and will be  
10 unjustly enriched at the expense of Plaintiff and members of the proposed Florida Subclass.  
11 Specifically, Defendants have been unjustly enriched by the profits from Florida consumers who  
12 pay for the Credit Protection.

13           353. Pursuant to FDUTPA, Plaintiff seeks an order of this Court for Defendants to fully  
14 disclose the true nature of their misrepresentations. Plaintiff additionally requests an order  
15 requiring Defendants to disgorge their ill-gotten gains and award Plaintiff full restitution of all  
16 monies wrongfully acquired by Defendants by means of such acts of unfair competition, plus  
17 interest and attorneys’ fees so as to restore any and all monies to Plaintiff and members of the  
18 proposed Florida Subclass which were acquired and obtained by means of such unfair  
19 competition, misrepresentations and omissions, and which ill-gotten gains are still retained by  
20 Defendants. Plaintiff and members of the proposed Florida Subclass may be irreparably harmed  
21 and/or denied an effective and complete remedy if such an order is not granted.

22           354. Defendants, through their acts of unlawful and unfair competition, have acquired  
23 money from Plaintiff and the members of the proposed Florida Subclass. Thus, Plaintiff and the  
24 members of the proposed Florida Subclass request that this Court restore this money to them and  
25 enjoin Defendants from continuing to violate FDUTPA, as discussed above.

26           355. Such conduct is ongoing and continues to this date. Plaintiff and the proposed  
27 Florida Subclass members are therefore entitled to the relief described below.  
28

1 356. Plaintiff seeks reasonable attorneys' fees pursuant to, inter alia, Code of Fla. Stat.  
2 § 501.2105.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs pray:

5 A. That the Court determines that this action may be maintained as a class  
6 action under Rule 23 of the Federal Rules of Civil Procedure, that the Plaintiffs are proper class  
7 representatives, and their counsel are adequate class counsel;

8 B. That judgment be entered against Defendants and in favor of Plaintiffs and  
9 the Class and Subclasses on the Claims for Relief in this Complaint, for injunctive and equitable  
10 relief as requested above, and for actual, compensatory, punitive, and treble damages in an  
11 amount to be determined at trial;

12 C. That Declaratory Judgment be entered against Defendants finding that  
13 Defendants' conduct is in violation of: (1) TILA, (2) Delaware (and/or various states') consumer  
14 protection law, (3) Delaware breach of contract, (4) Delaware breach of the covenant of good  
15 faith and fair dealing, (5) Delaware unjust enrichment, and (6) Delaware fraud as described  
16 above, and enjoining Defendants from continuing in such conduct.

17 D. That judgment be entered imposing interest on damages, litigation costs,  
18 and attorneys' fees against Defendants;

19 E. For all other and further relief as this Court may deem necessary and  
20 appropriate.

21 **JURY DEMAND**

22 Plaintiffs demand a trial by jury on all issues so triable.

23  
24 Dated: April 25, 2012 Respectfully submitted,

25 **LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP**

26 By: /s/ Daniel M. Hutchinson

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**ATTORNEYS FOR PLAINTIFFS AND THE  
PROPOSED CLASS AND SUBCLASSES**

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 25, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Daniel M. Hutchinson