



4. Venue is proper because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Spartanburg County, South Carolina. 28 U.S.C. § 1391(b)(2).

### **FACTUAL ALLEGATIONS**

5. At all relevant times, BANA and its agents marketed a purportedly optional financial product promising "mortgage protection" to its clients. Such plans, including BANA's "Line Protection Plan," are essentially a specialized life insurance limited to paying specific portions of a mortgage payment under specific conditions. These plans are marketed, usually marketed at the time of closing, as an *option* to assist survivors make mortgage payments following the disability or death of a mortgagor. A "mortgage protection" plan is *not* "Private Mortgage Insurance" (widely referred to as "PMI") which is *required* by lenders to protect a mortgagee in case of default by a mortgagor.

6. BANA, and other companies, market mortgage protection plans because they are extremely profitable. Such profitability has resulted in such abuses of unsophisticated customers that Congress has established explicit disclosure and authorization requirements to protect citizens from unknowingly being duped into paying for unwanted mortgage protection plans. *See, e.g.*, 15 U.S.C. § 1604, 1637(c)(5), 1639(l); 12 C.F.R. § 226.4.

7. On June 13, 2006, Mr. and Mrs. Hughes opened a line of credit from BANA in the amount of \$120,000, secured by a mortgage ("Mortgage") on their Spartanburg County homestead. The line of credit is governed by a document entitled "Bank of America Maximizer Agreement and Disclosure Statement" ("Agreement") also signed by both borrowers on June 13, 2006.

8. At the same time, Mr. and Mrs. Hughes signed an acknowledgement and authorization (“Authorization”) which allowing BANA to automatically draft “loan payments” from the Hughes’s BANA bank account.

9. On the same date and, upon information and belief, during the meeting to complete the Mortgage transaction and in conjunction with the Mortgage and Agreement, BANA presented Mr. and Mrs. Hughes with a document entitled “Optional Line Protection Plan Addendum (“Addendum”).” As stated on the form, the “Line Protection Plan only provides protection on the variable portion of your credit line” and “This Product Is Optional.” As understood by the Hughes, if elected the Line Protection Plan allowed the cancellation of all or some monthly loan payments in the event of disability, accidental death, or involuntary unemployment. At the time that BANA presented the plan to the Hughes’s, LPP offered six protection options, with the monthly fee ranging in cost from 4.5% to 13.5% of the minimum monthly payment on the borrowers’ credit line.

10. The Agreement explicitly stated that in order to obtain LPP, the borrowers “must specifically request” the protection.

11. Mr. and Mrs. Hughes both signed a 2-page document captioned “OPTIONAL LINE PROTECTION PLAN ADDENDUM (“ADDENDUM”)” acknowledging that BANA had provided them with the Line Protection Plan information and elected to decline this optional plan by clearly and conspicuously checking a box next to “DECLINE to purchase any Protection on this Credit Line” option. *See* attached Exhibit A (OPTIONAL LINE PROTECTION PLAN ADDENDUM dated June 13, 2006).

12. In June 2006, Mr. Hughes was age 86. Mrs. Hughes was age 86 in June 2006 and underwent major heart surgery, suffered from dementia, and experienced vision impairments,

including cataracts and eye surgery, from June 2006 until her death. Mrs. Hughes also suffered a broken hip after June 2006 that required hospitalization and extensive rehabilitation at White Oak Manor Nursing Home in Spartanburg, South Carolina.

13. John P. Hughes died on October 22, 2008, at the age of 87. Mr. Hughes left his estate to his wife, Jane K. Hughes.

14. Over six years after Mr. Hughes's death, on or around March 17, 2015, BANA sent a form cancellation notice addressed to the Mr. and Mrs. Hughes, informing them that the LPP would be cancelled on September 30, 2015. The notice also indicated that John P. Hughes was a "protected" borrower.

15. By letter dated March 17, 2015, BANA notified Mr. and Mrs. Hughes that "The optional Line Protection Plan will be cancelled on September 30, 2015," and that "You're no longer being charged for the Protection Plan as of April 1, 2015." See attached Exhibit B.

16. Curiously, the BANA notice also stated that "Going forward, any payments that would have previously been applied to Protection Plan fees will be applied to other amounts owed as described in your loan documents, unless refunded to you. If we apply the payment to other amounts owed and you later determine that you mistakenly paid Protection Plan fees and prefer to have a refund of these amounts, please contact us at 1.866.731.4210." Ex. B. at 1.

17. Although Mr. and Mrs. Hughes never elected to purchase any "Protection Plan," BANA sent a second letter dated March 25, 2015, stating that Mr. Hughes had selected "6 month, Involuntary Unemployment, Disability, Accidental Death and Hospitalization" protection at a monthly rate of 9.5% of the Hughes' Minimum Monthly Payment.

18. In response to an inquiry from Mrs. Hughes, BANA stated in a May 6, 2015, letter that "The Line Protection Plan (Plan) addendum for your Bank of America loan ending in

4699 is enclosed, per your request” and enclosed an 8-page document entitled “OPTIONAL LINE PROTECTION PLAN ADDENDUM (“ADDENDUM”).” *See* attached Exhibit C.

19. The 8-page “ADDENDUM” provided by BANA in May 2015 is not the 2-page “ADDENDUM” signed by Mr. and Mrs. Hughes in 2006, and does not contain or provide for signatures or a place for election or rejection of the “protection.”

20. In any event, BANA did not provide the 8-page ADDENDUM to Mr. or Mrs. Hughes before May 2015.

21. The Line Protection Plan premium did not appear on the mortgage finance charge disclosed to Mr. and Mrs. Hughes in 2006.

22. Before March 2015, BANA did not provide any statement, notice, or communication of any sort to Mr. or Mrs. Hughes revealing that BANA believed that the Hughes had elected any “Protection Plan” or that an amount was to be or was being charged to them for such a plan.

23. To date, Plaintiff has been unable to locate, and BANA has been unable to provide, any documentation that Mr. or Mrs. Hughes ever elected or agreed to pay for any “Protective Plan” coverage of any sort.

24. Despite having declined to purchase the Line Protection Plan, BANA withdrew a monthly charge of \$28.40 from the Hughes’s BANA joint checking account beginning on or about June 2006. This charge was ambiguously listed as “Ad Insurance Des:XXXXXX4374 ID: R# XXXXXXXX1070 Indn:Hughes Sr, John P Co ID:XXXXXX4660 Ppd” and appeared amid numerous other monthly charges. *See* attached Exhibit D.

25. All other charges from BANA or its subsidiaries appearing on the Hughes’s bank statements during the relevant period were clearly designated as transactions with “Bank of

America” or “BkofAmerica” and other insurance transactions were clearly identified with the name of the charging company (i.e., “Patrons Mutual,” “Travelers Insur”).

26. In addition, none of the numbers in the Line Protection Plan transaction description were related to the Hughes’s BANA mortgage or line of credit.

27. As neither Mr. or Mrs. Hughes had elected Line Protection Plan coverage or had received any notice that BANA had ascribed such a plan to them, they were not expecting to be charged for any such service and they did not have any reason to expect that “Ad Insurance Des:XXXXXXXX4374 ID: R# XXXXXXXX1070 Indn:Hughes Sr, John P Co ID:XXXXXXXX4660 Ppd” was a BANA charge generally or a “Line Protection Plan” charge specifically until receiving the March 2015 BANA notices.

28. Upon receiving notice of Mr. Hughes’s death, on May 6, 2015, BANA declined coverage under the Line Protection Plan on the grounds that “[t]he death was the result of disease or treatment of disease or any medical treatment (and/or was not for the treatment of an accidental injury).”

29. Upon request, BANA refunded the payments drawn from the Hughes’s joint account after Mr. Hughes’s death.

30. BANA refused and continues to refuse to refund the payments drawn during Mr. Hughes’s lifetime.

31. On June 3, 2015, Jane K. Hughes passed away, and Plaintiff was named as personal representative of her estate.

**ALLEGATIONS AS TO THE CLASS**

32. Bank of America has been involved in or condoned similar fraudulent “protection” plan schemes in the past. *See* <http://topclassactions.com/lawsuit-settlements/lawsuit-news/2798-bank-of-america-credit-protection-class-action-settlement/>.

33. Upon information and belief, the Line Protection Plan and similar “mortgage protection” plans are a very profitable business line for BANA.

34. The Named Plaintiff seeks damages on behalf of the Jane Hughes’s estate and all other similarly situated against the Defendant in an amount to be determined at trial.

35. This civil action is brought by the Named Plaintiff as a class action on behalf of themselves and all others similarly situated under the provisions of Federal Rule of Civil Procedure 23.

36. The Class consists of BANA customers who, without the customer’s express and informed written consent, were enrolled in and charged for a protection plan insurance products known as “Borrower’s Protection Plan” and “Line Protection Plan.”

37. Under Federal Rule of Civil Procedure 23, a class action is appropriate in this case because:

- a. Based on Defendant’s volume of customers the class is so numerous that joinder of all members is impractical;
- b. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These questions include:
  - i. Whether BANA’s unilateral enrollment of the Proposed Class into the LPP program constitutes a violation of the Truth in Lending Act, fraud, breach of contract, or a breach of the duty of good faith and fair dealing;

- ii. Whether BANA committed fraudulent acts or otherwise was in breach of contract by drafting payments from the accounts of the Proposed Class without express authorization and in violation of the customer's election;
- c. The claims of Plaintiff are typical of the class members' claims. All are based on the same facts and legal theories;
- d. Plaintiff will fairly and adequately represent the class members' interests. All claims are based on the same facts and legal theories and Plaintiff's interests are consistent with the interests of the class; and
- e. Plaintiff has retained counsel experienced in bringing class actions.

38. Plaintiff's claims are typical of the claims of the members of the Proposed Class because: 1) Plaintiff satisfies each of the criteria of the Proposed Class; 2) all other members of the Proposed Class have suffered or may suffer the identical harm as the Proposed Class's plaintiff representative as a result of Defendant's violations of law as alleged herein; 3) the remedy sought by Plaintiff is also sought by each of the other members of the Proposed Class and is directed towards Defendant's conduct perpetrated on the Proposed Class as a whole.

39. A class action is superior for the fair and efficient adjudication of the class members' claims. The injury suffered by each individual class member may be disproportionate to the burden and expense of individual prosecution of complex and extensive litigation to proscribe Defendant's conduct and practices. Additionally, effective redress for each and every class member against Defendant may be limited or even impossible where serial, duplicitous, or concurrent litigation occurs on these disputes. Individualized litigation may lead to incongruous and conflicting judgments against Defendant. A class action procedure involving all class



members, Defendant and the court present fewer management difficulties, and provide the benefit of a single adjudication, economy of scale, and judicial efficiency and fairness.

**FOR A FIRST CAUSE OF ACTION**

**(Violation of the Truth in Lending Act—15 U.S.C. § 1601 *et seq.*)**

40. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

41. Residential mortgage loan agreements and line of credit agreements between Defendant BANA and its customers, including the Agreement signed by Mr. and Mrs. Hughes, are subject to the disclosure requirements of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*, and all related regulations, commentary, and interpretive guidance promulgated by the Federal Reserve Board.

42. BANA is a “creditor” as defined by TILA.

43. BANA is required to clearly, conspicuously, and timely disclose all finance charges, other charges, and third party charges that may be imposed in connection with a mortgage loan or line of credit.

44. Voluntary credit insurance premiums must be included in the finance charges unless:

- a. The coverage of the debtor by the insurance is voluntary and this fact is clearly disclosed in writing; and
- b. In order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so.

45. BANA charged Mr. and Mrs. Hughes for Line Protection Plan premiums not only without specific affirmative written indication of their desire to purchase Line Protection Plan, but contrary to an explicit written declination of the purportedly “optional” plan. In doing so, BANA violated TILA by excluding the plan premium from the finance charge disclosed to Jane and John Hughes.

46. Plaintiff’s TILA claim is timely because BANA admitted that it continued illegally charging the Hughes for the declined Line Protection Plan, until at least March 2015, which is within one year of the initially filed Complaint. Further, to the extent that the TILA violations set forth above occurred more than one year prior to the commencement of this action, Plaintiff did not discover and did not have a reasonable opportunity to discover BANA’s illegal conduct because of BANA’s fraudulent nondisclosures and misleading charge description and Mrs. Hughes age- and health- related cognitive difficulties until BANA sent its March 2015 cancellation notice.

47. BANA systematically and pervasively engaged in similar violations of TILA to the detriment of other members of the Proposed Class.

48. As a result of BANA’s violations, Plaintiff and the Proposed Class are entitled to recover actual damages and statutory damages as provided by 15 U.S.C. § 1640(a)(1)-(2).

49. Plaintiff and the Proposed Class are also entitled to recovery or attorneys’ fees and costs to be paid by BANA, as provided by 15 U.S.C. § 1640(a)(3).

**FOR A SECOND CAUSE OF ACTION**

**(Fraud)**

50. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

51. Defendant BANA made the following false and material representations, among others alleged herein:

- a. BANA, with knowledge of the falsity or reckless disregard for the truth of its representation, through its Authorization agreement represented to Mr. and Mrs. Hughes that BANA would draft funds from the Hughes's account solely for monthly loan payments; and
- b. Through its Agreement with Mr. and Mrs. Hughes, BANA represented, with knowledge of the falsity or reckless disregard for the truth of its representation, that the Line Protection Plan was optional coverage that would only be added to the Hughes's credit line upon their request.

52. BANA made these representations to Mr. and Mrs. Hughes with the intent that the borrowers be induced to enter into the Agreement with BANA and sign the Authorization to grant BANA access to their account for purposes of drafting funds.

53. Mr. and Mrs. Hughes had no knowledge of the falsity of BANA's representations and had the right to rely on these representations. The Hughes used reasonable prudence and diligence by documenting in writing their decision to decline LPP coverage.

54. Mr. and Mrs. Hughes relied on BANA's representations to their detriment, resulting in consequent and proximate injury in that BANA thereafter wrongly used its automatic drafting authorization to deduct payments from the Hughes's account for the Line Protection Plan without their knowledge and despite their expressed written rejection of that plan.

55. Due to the fraudulent nature of BANA's actions, Plaintiff is also entitled to punitive damages.

**FOR A THIRD CAUSE OF ACTION**

**(Fraudulent Concealment)**

56. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

57. Pleading in the alternative, Defendant BANA intentionally concealed the material facts that it enrolled Mr. Hughes in the Line Protection Plan by not providing any notice to him or Mrs. Hughes of the enrollment.

58. Defendant BANA wrongly withdrew monthly payments for the Line Protection Plan from the Hughes's account under the confusing and non-descript transaction of "Ad Insurance Des:XXXXXX4374 ID: R# XXXXXXXX1070 Indn:Hughes Sr, John P Co ID:XXXXXX4660 Ppd" with the intention that the Hughes's not be able to identify the true nature of the transaction.

59. Because the Hughes's entrusted BANA with authorization to draft monies from its account, and expressly reposed a trust in confidence in BANA with respect to automatic drafting transactions, BANA had a duty to disclose to Mr. and Mrs. Hughes that it unilaterally enrolled Mr. Hughes in the LLP problem and that BANA was drafting payments which were not authorized in the Authorization from the borrowers' account.

60. Alternatively, BANA had a duty to disclose the withdrawals arising from the fiduciary relationship between the parties.

61. As a result of BANA's concealment, Mr. and Mrs. Hughes suffered monetary damages in the amount of the unauthorized payments which BANA surreptitiously withdrew from their account.

62. Due to the fraudulent nature of BANA's actions, Plaintiff is also entitled to punitive damages.

**FOR A FOURTH CAUSE OF ACTION**

**(Breach of Contract)**

63. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

64. Mr. and Mrs. Hughes and BANA entered into a binding agreement supported by good and valuable consideration which is represented by the Mortgage, the Agreement, the Authorization, and the Addendum collectively.

65. The Hughes performed all obligations required of it under the agreement, or has had the performance of any obligation excused.

66. Defendant BANA breached the agreement by enrolling Mr. Hughes in the Line Protection Plan without his express agreement, and without having him sign a separate addendum electing such coverage.

67. BANA further breached the agreement by drafting LPP payments from the Hughes's account, thereby exceeding its authority under the agreement, which is limited to drafting loan payments.

68. As a result of these breaches by BANA, Plaintiff's decedent suffered damages in the amount of the unauthorized payments which BANA surreptitiously withdrew from the joint bank account.

**FOR A FIFTH CAUSE OF ACTION**

**(Breach of Contract Accompanied by Fraudulent Acts)**

69. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

70. BANA, in addition to breaching its contract with the Hughes as set forth above, acted fraudulently by concealing that it enrolled Mr. Hughes in its Line Protection Plan without express permission and by drafting unauthorized payments for LPP from the Hughes's Account.

71. BANA had a fiduciary and contractual duty to disclose these facts to Mr. and Mrs. Hughes.

72. As a result of BANA's breach of contract accompanied by fraudulent concealment, Plaintiff's decedent was damaged in that she unknowingly paid for a benefit that was expressly declined.

73. Due to the fraudulent nature of BANA's actions, Plaintiff is also entitled to punitive damages.

**FOR A SIXTH CAUSE OF ACTION**

**(Breach of Duty of Good Faith and Fair Dealing)**

74. Plaintiff restates and realleges each and every allegation as if repeated herein verbatim.

75. BANA breached the duty of good faith and fair dealing implied in the transaction and owed to Plaintiff, inasmuch as BANA undertook the fraudulent, unfair, and deceptive conduct described herein. Further, in marketing and selling insurance (i.e., the "Line Protection Plan") under the guise of mortgage "protection," BANA violated S.C. Code Ann. § 38-25-110, et. seq., by engaging in the unauthorized business of insurance because BANA is not licensed to transact insurance business in South Carolina.

76. As a direct and proximate result of this breach of duty, Plaintiff has suffered damages.

77. BANA is vicariously liable for this cause of action for the actions of its employees, agents, contractors and/or servants under the doctrine of respondeat superior.

**JURY TRIAL DEMAND**

78. Plaintiff hereby demands that all issues in this case triable before a jury be so tried.

**DAMAGES**

WHEREFORE, Plaintiff prays for the following relief:

- A. For an order certifying the class defined herein, appointing undersigned counsel as class counsel, approving Plaintiff as class representative, and requiring that notice be provided to the class;
- B. Actual and punitive damages in excess of \$75,000.00 as determined at trial;
- C. Attorney fees and costs;
- D. Pre-judgment interest and post-judgment interest; and
- E. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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