

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
(Spartanburg Division)**

PHILLIP FRANCIS LUKE HUGHES, on behalf of
the ESTATE OF JANE K. HUGHES and all others
similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.

Defendant.

Case No. 7:15-cv-05083-MGL

Removed from the Spartanburg
County Court of Common Pleas
Case No. 2015-CP-42-4748

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that under 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant Bank of America, N.A., through its attorneys, submits this Notice of Removal from the Spartanburg County Court of Common Pleas to the United States District Court for the District of South Carolina on the grounds that this Court has jurisdiction over this civil action under 28 U.S.C. § 1331, 28 U.S.C. § 1367, 28 U.S.C. § 1441, and all other appropriate grounds for removal.

BACKGROUND AND PROCEDURAL COMPLIANCE

1. On or about November 16, 2015, Plaintiff Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes and all others similarly situated, filed a Class Action Complaint for damages in the Spartanburg County Court of Common Pleas, Civil Action No. 2015-CP-42-4748, entitled *Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes and all others similarly situated v. Bank of America National Association* (the “Action”).

2. On November 30, 2015, Defendant Bank of America was served with a copy of

Plaintiff's Summons and Complaint. A copy of the Summons and Complaint along with "all process, pleadings and orders served upon" Defendant to date while this Action was pending in the Spartanburg County Court of Common Pleas is attached as Exhibit A. 28 U.S.C. § 1446(a).

3. This Notice of Removal is timely filed. Under 28 U.S.C. § 1446(b), a Notice of Removal must be filed within thirty days of receipt of the initial pleading setting forth the claim. Removal is timely because Defendants received the Summons and Complaint on November 30, 2015, less than thirty days before the date of removal.

4. Bank of America has the right to remove this case from the Spartanburg County Court of Common Pleas, in which court the case is currently pending, to the United States District Court for the District of South Carolina (Spartanburg Division). *See* 28 U.S.C. § 1441.

5. The United States District Court for the District of South Carolina (Spartanburg Division) is a proper venue for this Action under 28 U.S.C. § 121(10) and 28 U.S.C. § 1441(a), since this Court exercises jurisdiction over Spartanburg County, where the state court action is pending. *See also* 28 U.S.C. § 1391(b)(2).

6. Plaintiff's claim under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, presents a question of federal law. Accordingly, this case is a civil action over which this District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and is one which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441, in that it arises under the TILA.

7. Under 28 U.S.C. § 1367, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

8. This Court has supplemental jurisdiction over Plaintiff's state claims because those claims form part of the same case or controversy as the federal claims. Succinctly, Plaintiff's federal TILA claim and his four state law claims all arise out of the same set of facts. *See* (Compl. ¶¶ 11-26.)

9. A copy of this Notice of Removal will be filed with the Clerk of the Spartanburg County Court of Common Pleas, South Carolina, and served on all parties of record promptly after filing of this Notice of Removal. *See* 28 U.S.C. § 1446(d). A copy of the Notice of Filing Notice of Removal is attached as Exhibit B.

10. Consistent with Local Rule 26.01, a copy of Defendant's Answers to Local Rule 26.01 Interrogatories will be electronically filed and served upon all parties of record promptly after filing of this Notice of Removal.

11. By filing this Notice of Removal, Defendant does not waive any defenses either procedural or substantive, which may be available to it, specifically including, but not limited to, its right to contest improper service of process or the absence of venue in this Court or in the court from which the Action has been removed.

Dated: December 30, 2015

Respectfully submitted,

BANK OF AMERICA, N.A.

By Counsel

/s/ Robert A. Muckenfuss

Robert A. Muckenfuss

Federal Bar #7333

McGUIREWOODS LLP

201 North Tryon Street

Suite 3000

Charlotte, NC 28202-2146

(704) 343-2052

(704) 444-8707 (Facsimile)

rmuckenfuss@mcguirewoods.com

CERTIFICATE OF SERVICE

I certify that on this 30th day of December, 2015, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record registered with the CM/ECF system. I further certify that a true and accurate copy of the foregoing was sent by U.S. Mail to the following:

D. Michael Kelly, Esq.
Brad D. Hewett, Esq.
Jamie N. Smith, Esq.
Mike Kelly Law Group, LLC
500 Taylor Street
Post Office Box 8113
Columbia, SC 29201
mkelly@mklawgroup.com
bhewett@mklawgroup.com
jsmith@mklawgroup.com

Attorneys for Plaintiff

/s/ Robert A. Muckenfuss
Robert A. Muckenfuss

EXHIBIT A



Service of Process Transmittal

11/30/2015

CT Log Number 528231814

TO: CA LegalLit
Bank of America
225 W Hillcrest Drive
Thousand Oaks, CA 91360

RE: Process Served in South Carolina

FOR: Bank of America Corporation (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes and all others similarly situated, Pltf. vs. Bank of America National Association, Dft.
Name discrepancy noted.

DOCUMENT(S) SERVED: Letter, Cover Sheet, Attachment, Summons, Complaint

COURT/AGENCY: Spartanburg County Court of Common Pleas, SC
Case # 2015CP424748

NATURE OF ACTION: Breach of contract - Enrolling John Hughes in the LPP plan without his express agreement and without having him sign a separate addendum electing such coverage - Violation of the Truth in Lending Act

ON WHOM PROCESS WAS SERVED: CT Corporation System, Columbia, SC

DATE AND HOUR OF SERVICE: By Certified Mail on 11/30/2015 postmarked on 11/24/2015

JURISDICTION SERVED : South Carolina

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the date of service

ATTORNEY(S) / SENDER(S): D. Michael Kelly
Mike Kelly Law Group, LLC
500 Taylor Street
Columbia, SC 29201
803-726-0123

REMARKS: According to the South Carolina Secretary of State, the only entity registered to do business beginning with Bank of America is Bank of America Corporation.

ACTION ITEMS: CT has retained the current log, Retain Date: 11/30/2015, Expected Purge Date: 12/05/2015

Image SOP

Email Notification, CA LegalLit calegalit@bankofamerica.com

SIGNED: CT Corporation System
ADDRESS: 2 Office Park Court
Suite 103
Columbia, SC 29223
TELEPHONE: 404-965-3840

CERTIFIED MAIL

7:15-cv-05083-MGL Date Filed 12/30/15 Entry Number 1-1 Page 3 of 22



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neopost
11/24/2015
US POSTAGE



MIKE KELLY
LAW GROUP, LLC

PO Box 8113
Columbia, SC 29202

BOA

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
C T Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223



Columbia Office
500 Taylor Street
Columbia, SC 29201

Telephone 803.726.0123
Toll-Free 866.692.0123
Fax 803.252.7145

Mailing Address
PO Box 8113
Columbia, SC 29202

E-mail bhewett@mklawgroup.com

November 23, 2015

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

C T Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

RE: Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes and all
other similarly situated vs. Bank of America National Association
C/A No.: 2015-CP-42-4748

Dear Sir/Madam:

I enclose herewith and serve upon you as Registered Agent for Bank of America National Association a Summons and Complaint in the referenced matter.

Sincerely,

Brad D. Hewett
Attorney

BDH/mkm
Enclosures

OFFICES IN:

Columbia, Myrtle Beach and Winnsboro, South Carolina
www.mklawgroup.com

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Phillip Francis Luke Hughes, et al.

Plaintiff(s)

vs.

Bank of America National Association

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-42-4748

Submitted By: Brad D. Hewett
 Address: Mike Kelly Law Group, LLC
 500 Taylor Street
 PO Box 8113
 Columbia, SC 29201

SC Bar #: 77924
 Telephone #: (803) 726-0123
 Fax #: (803) 252-7145
 Other:
 E-mail: bhewett@mklawgroup.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input checked="" type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of-State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature: Brad D. Hewett

Date: 11/9/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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 SPARTANBURG COUNTY
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 M. HOPE BRACLEY

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Civil Action No.:

Phillip Francis Luke Hughes, on behalf of the
Estate of Jane K. Hughes and all others
similarly situated,

2015-CP-42-4748

Plaintiff,

COMPLAINT
(Jury Trial Demanded)
(Class Action)

vs.

Bank of America National Association,

Defendant.

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint
on the subscribed, **Mike Kelly Law Group, LLC., 500 Taylor Street, Post Office Box 8113,
Columbia, South Carolina 29202, within THIRTY (30) days** after the service hereof, exclusive
of the date of such service. If you fail to answer the complaint within the time aforesaid, judgment
by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

MIKE KELLY LAW GROUP, LLC

BY: De m

D. Michael Kelly
Brad D. Hewett
Jamie N. Smith
500 Taylor Street
Post Office Box 8113
Columbia, SC 29201
803/726-0123
mkelly@mklawgroup.com
bhewett@mklawgroup.com
jsmith@mklawgroup.com
Attorneys for Plaintiff

Columbia, South Carolina
November 9, 2015

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Phillip Francis Luke Hughes, on behalf of the
Estate of Jane K. Hughes and all others
similarly situated,

Plaintiff,

vs.

Bank of America National Association,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

2015-CP-42- 4748

COMPLAINT

(Jury Trial Demanded)
(Class Action)

Plaintiff, on behalf of the Estate of Jane K. Hughes and all others similarly situated ("Class"), would respectfully show unto the court as follows:

1. Plaintiff Phillip Hughes is the son of the Jane Hughes and has standing to bring this claim after being appointed as Personal Representative of the Estate of Jane K. Hughes by the Spartanburg County Probate Court. Prior to her death, Jane Hughes was a citizen and resident of Spartanburg County, South Carolina.

2. Bank of America National Association ("BANA") is one of the world's largest financial institutions. Upon information and belief, BANA was at all times relevant to this Complaint a nationally-chartered bank, regulated by the Office of the Comptroller of the Currency, with its principal place of business in North Carolina.

3. This court has personal jurisdiction over BANA because it is authorized to do business and has conducted business in South Carolina, it has specifically marketed, offered for sale, and sold Line Protection Plans in South Carolina, BANA has sufficient minimum contact with this State, and has sufficiently availed itself to the markets of this State through its promotion

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sales and marketing within this State to render the exercise of jurisdiction by this Court permissible.

4. Venue is proper because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Spartanburg County.

5. 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.

ALLEGATIONS AS TO THE CLASS

6. 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 Rule 23 of the Federal Rules of Civil Procedure.

7. 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 product known as "Borrower's Protection Plan" and "Line Protection Plan."

8. 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 fraud or breach of contract;
 - 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;

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- 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.

9. 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.

10. 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.

FACTUAL ALLEGATIONS

11. On June 13, 2006, Jane Hughes and her husband, John P. Hughes, opened a line of credit from BANA in the amount of \$120,000, secured by a mortgage ("Mortgage" or the Spartanburg County homestead. The line of credit is governed by a document entitled Bank

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America Maximizer Agreement and Disclosure Statement ("Agreement") signed by both borrowers also on June 13, 2006.

12. Jane and John Hughes signed, along with the Mortgage and Agreement, an acknowledgement and authorization ("Authorization") which authorizes BANA to automatically draft "loan payments" from the borrowers' BANA bank account.

13. On the same date and, upon information and belief, in conjunction with the Mortgage and the Agreement, BANA presented Jane and John Hughes with information about BANA's optional Line Protection Plan ("LPP"). The LPP is intended to provide optional protection on the variable portion of a credit line, for a monthly fee, by allowing 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', 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.

14. Along with the Mortgage and the Agreement, Jane and John Hughes signed an addendum statement ("Addendum") acknowledging that BANA had provided them with information regarding LPP. The statement provided an option for the borrowers to 1) elect single protection for one borrower; 2) elect joint protection for both borrowers; or 3) decline to purchase protection on the credit line. The decedent and her husband indicated in this statement that they did not wish to purchase LPP by clearly and conspicuously checking a box next to the "DECLINE to purchase any Protection on this Credit Line" option.

15. The Agreement between Jane and John Hughes also contains a provision pertaining to the LPP. The Agreement between the parties states that in order to obtain LPP, the borrowers "must specifically request" the protection.

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

17. Over six years after John Hughes' death, on or around March 17, 2015, BANA sent a form cancellation notice addressed to the Jane and John 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.

18. On or around March 25, 2015, BANA sent a follow-up letter indicating 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. Also enclosed was a Protection Plan addendum ("Addendum") for the policy.

19. Upon information and belief, Mr. Hughes never elected to purchase LPP after declining to do so on June 13, 2006.

20. Upon information and belief, Mr. Hughes never authorized BANA to draft any payments from his account other than the loan payments as set forth in the Authorization.

21. To date, Plaintiff has been unable to locate, and BANA has been unable to provide, any documentation that Mr. Hughes opted for LPP coverage.

22. Despite having declined to purchase LPP, BANA drafted a monthly charge of \$28.40 from the Hughes' account beginning in August 2008 or earlier. Upon information and belief, neither John nor Jane Hughes ever realized that BANA was withdrawing the funds from their account. BANA continued to draft this monthly charge until April of 2015, long after Mr. Hughes' death.

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23. Because no record existed of Mr. Hughes' LPP coverage, his family did not know that Mr. Hughes maintained or paid for any such coverage. His estate thus did not notify BANA of Mr. Hughes passing until receiving the March 2015 notices.

24. Upon receiving notice of Mr. Hughes' death, on May 6, 2015, BANA declined LPP coverage under the 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)."

25. Upon request, BANA refunded the payments drawn from the Hughes' account after Hughes death. However, BANA would not refund the payments drawn during Mr. Hughes' lifetime, nor would BANA provide proof or documentation that Mr. Hughes ever elected to purchase LPP.

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

FOR A FIRST CAUSE OF ACTION

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

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

28. Residential mortgage loan agreements and line of credit agreements between Defendant BANA and its customers, including the Agreement signed by Jane and John 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.

29. BANA is a "creditor" as defined by TILA.

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30. 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.

31. 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.

32. BANA charged Jane and John Hughes for the LPP premiums without specific affirmative written indication of their desire to purchase LPP. In doing so, BANA violated TILA by excluding from the finance charge, as disclosed to Jane and John Hughes, the LPP premium.

33. To the extent that the TILA violation 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 fraud and nondisclosures until BANA sent its March 17, 2015 cancellation notice.

34. Plaintiff's TILA claim is timely. The statute of limitations on Plaintiff's TILA claim did not begin to run and/or was equitably tolled until such time that she had a reasonable opportunity to discover BANA's TILA violations and complain about such violations. It would be manifestly unjust and inconsistent with the purposes of TILA to apply and enforce an earlier accrual date for Plaintiff's TILA claim.

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

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36. 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).

37. 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)

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

39. 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 Jane and John Hughes that BANA would draft funds from the Hughes' account solely for monthly loan payments; and
- b. Through its Agreement with the Hughes, BANA represented, with knowledge of the falsity or reckless disregard for the truth of its representation, that LPP was optional coverage that would only be added to the Hughes' credit line upon their request.

40. BANA made these representations to Jane and John 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.

41. Jane and John 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 maintaining in writing their decision to decline LPP coverage.

42. Jane and John Hughes relied on BANA's representations to their detriment, resulting in consequent and proximate injury in that BANA thereafter used its automatic drafting

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authorization to draft payments from the Hughes' account without their knowledge or express permission.

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

FOR A THIRD CAUSE OF ACTION

(Fraudulent Concealment)

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

45. Pleading in the alternative, Defendant BANA intentionally concealed the material facts that it enrolled John Hughes in LLP and withdrew monthly payments for same from his account.

46. Because the Hughes' 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 Jane and John Hughes that it unilaterally enrolled John Hughes in the LLP problem and that BANA was drafting payments which were not authorized in the Authorization from the borrowers' account.

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

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

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

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FOR A FOURTH CAUSE OF ACTION

(Breach of Contract)

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

51. Jane and John 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.

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

53. Defendant BANA breached the agreement by enrolling John Hughes in the LPP plan without his express agreement, and without having him sign a separate addendum electing such coverage.

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

55. 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 their account.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Acts)

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

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57. BANA, in addition to breaching its contract with the Hughes as set forth above, acted fraudulently by concealing that it enrolled John Hughes in its LPP plan without express permission and by drafting unauthorized payments for LPP from the Hughes' Account.

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

59. 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.

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

JURY TRIAL DEMAND

61. 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;
- 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,

MIKE KELLY LAW GROUP, LLC

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BY: Dea

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Attorneys for Plaintiff

Columbia, South Carolina
November 9, 2015

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Phillip Francis Luke Hughes, on behalf of
the Estate of Jane K. Hughes and all others
similarly situated,

Plaintiff,

vs.

Bank of America National Association,

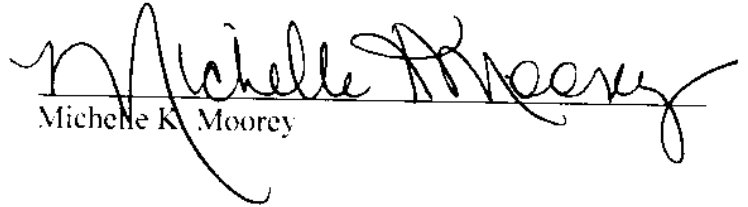
Defendants.

IN THE COURT OF COMMON PLEAS

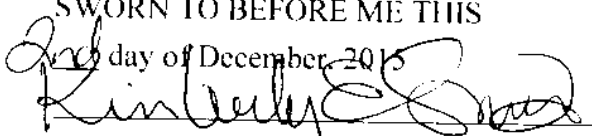
Civil Action No.: 2015-CP-42-4748

AFFIDAVIT OF SERVICE

The undersigned, an employee of the Mike Kelly Law Group, attorney for the Plaintiff of the above-entitled action, has served the Civil Action Coversheet, Summons and Complaint on the Registered Agent of Defendant Bank of America National Association, via certified mail, on November 30, 2015.


Michelle K. Moorey

SWORN TO BEFORE ME THIS


2nd day of December, 2015

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-29-17

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p>	
		<p>B. Received by (Printed Name) Pam Johnson</p> <p style="text-align: right;">Date of Delivery 11-30-15</p>	
<p>1. Article Addressed to:</p> <p style="text-align: center;">C T Corporate System 2 Office Park Court, Suite # 3 Columbia, SC 29223</p>		<p>D. Deliver to address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
		<p style="text-align: center;">7014 1200 0000 5022 6143</p>	
<p>PS Form 3811, July 2013</p>		<p style="text-align: center;">Domestic Return Receipt</p>	

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 M. HOPE BLANCHET



Columbia Office
500 Taylor Street
Columbia, SC 29201

Telephone 803.726.0123
Toll-Free 866.692.0123
Fax 803.252.7145

Mailing Address
PO Box 8113
Columbia, SC 29202

Send no money or information to:

December 2, 2015

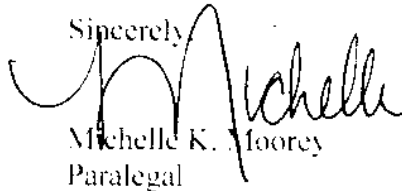
Honorable M. Hope Blackley
Spartanburg County Clerk of Court
PO Box 3483
Spartanburg, SC 29304-3483

Re: Phillip Francis Luke Hughes, on behalf of the Estate of Jane K. Hughes and all
other similarly situated vs. Bank of America National Association
C/A No.: 2015-CP-42-4748

Dear Ms. Blackley:

I enclose herewith an original and two copies of an Affidavit of Service for filing with the Court. Please file the original and return the clocked copies in the self-addressed stamped envelope.

Thank you for your kind assistance in this matter.

Sincerely,

Michelle K. Moorey
Paralegal

mkm
Enclosures

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SPARTANBURG COUNTY, SC
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M. HOPE BLACKLEY

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

PHILLIP FRANCIS LUKE HUGHES, on behalf of
the ESTATE OF JANE K. HUGHES and all others
similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-42-4748

**NOTICE OF REMOVAL TO
FEDERAL COURT**

TO THE CLERK OF COURT:

NOTICE IS GIVEN that Defendant Bank of America, N.A. has removed the above-captioned case based on the Notice of Removal filed in the United States District Court for the District of South Carolina on December 30, 2015. See Exhibit A. Under 28 U.S.C. § 1446(d), the filing of the Notice of Removal and this Notice of Filing of Notice of Removal effects the removal of this action to the United States District Court for the District of South Carolina.

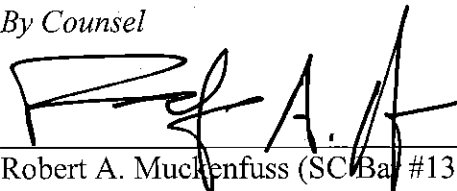
[signature page to follow]

Dated: December 30, 2015

Respectfully submitted,

BANK OF AMERICA, N.A.

By Counsel

A handwritten signature in black ink, appearing to read 'R. A. Muckenfuss', is written over a horizontal line.

Robert A. Muckenfuss (SC Bar #13903)

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(919) 755-6699 (Facsimile)

eztimmermans@mcguirewoods.com

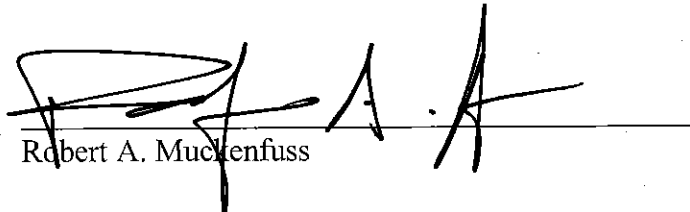
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2015, a copy of the foregoing *Notice of Removal to Federal Court*, with any and all attachments, was served by First-Class Mail, postage prepaid, addressed to:

D. Michael Kelly, Esq.
Brad D. Hewett, Esq.
Jamie N. Smith, Esq.
Mike Kelly Law Group, LLC
500 Taylor Street
P.O. Box 8113
Columbia, South Carolina 29201

Attorneys for Plaintiff


Robert A. Muckenfuss